

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SREAM, INC., :
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 Plaintiff, :
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 -against- :
 :
 MEGA NEWS INC., SMOKE SCENE INC., CITY :
 SMOKE SHOP INC. and JOHN DOE 1-10, :
 :
 Defendant. :
 :
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VALERIE CAPRONI, United States District Judge:

15-CV-5185 (VEC)

ORDER

Plaintiff Sream Inc. (“Sream”) filed this action arising under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, alleging that Defendants sold counterfeit products that were branded with the “RooR” mark, of which Sream is the exclusive licensee. On December 7, 2015, this Court entered default judgment against Defendant Smoke Scene as to liability and referred the case to Magistrate Judge Ellis for an inquest on damages. (Dkt. 26) On November 28, 2016, Magistrate Judge Ellis issued a Report and Recommendation (“R&R”), recommending that Plaintiff be awarded statutory damages of \$50,000 against Smoke Scene, that Smoke Scene be enjoined from continuing to sell, or offer to sell, products branded with the counterfeit marks at issue in this case, and that Sream be denied attorneys’ fees and costs without prejudice. (Dkt. 47) The parties did not file objections to the R&R. For the following reasons, the R&R is ADOPTED in its entirety.

DISCUSSION

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When, as here, no party objects to the Magistrate Judge’s report and

recommendation the court may accept the report and recommendation provided that “there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72(b) advisory committee’s note. Under a clear-error standard of review, “[s]o long as there is a basis in the evidence for a challenged inference, [the court] do[es] not question whether a different inference was available or more likely.” *United States v. Freeman*, 443 F. App’x 664, 666 (2d Cir. 2011) (quoting *Siewe v. Gonzales*, 480 F.3d 160, 168 (2d Cir. 2007)). Careful review of the R&R reveals that there is no facial error in its conclusions.

Finding no clear error, the Court adopts the R&R. Accordingly, the Court hereby directs that judgment be entered against Smoke Scene as follows:


1. \$50,000 in statutory damages due to Sream, Inc.;
2. A permanent injunction enjoining Smoke Scene from further sale or distribution of counterfeit RooR-marked products.

Sream’s request for attorneys’ fees and costs is DENIED without prejudice to renew upon Sream’s submission of (1) a request for a specific amount of fees or costs and (2) evidence to support the requested fees award.

Because Defendants Mega News and City Smoke Shop have been terminated from this case, *see* Dkts. 37–38, 44–45, the Clerk of Court is respectfully directed to close this case.

SO ORDERED.

January 5, 2017
New York, New York


VALERIE CAPRONI
United States District Judge