

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**USDC-SDNY
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EVRIHOLDER PRODUCTS, LLC,

Plaintiff,

v.

SIMPLY LBS LTD COMPANY,

Defendant.

No. 17-CV-4329 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff Erivholder Products, LLC, brought this action for patent infringement on June 8, 2017 against Defendants Simply LBS Ltd Company, Impulseev Ltd., Huanyu HK, Ltd. and John Does 1-10. Dkt. 1. On August 30, 2018 the Clerk of Court entered a certificate of default against Defendant Simply LBS Ltd. Company, Dkt. 25, and on December 20, 2018, Plaintiff moved for a default judgment against Defendant Simply LBS Ltd Company, Dkt 31. That same day, Plaintiff filed notices of voluntary dismissal as to Defendants Impulseev Ltd. and Huanyu HK, Ltd. Dkt. 33. The Court ordered Defendant Simply LBS Ltd Company—the only remaining Defendant—to show cause at a conference on January 25, 2019 why a default judgment should not be entered in favor of Plaintiff. Dkt. 32. Defendant Simply LBS Ltd Company failed to appear at the conference.

At the conference on January 25, 2019, the Court noted that, although Plaintiff had otherwise demonstrated its entitlement to default judgment, the Court could not discern whether Plaintiff had been transferred “all substantial rights” to the patent, because the copy of the License Agreement provided to the Court was heavily redacted. *Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A.*, 944 F.2d 870, 874 (Fed. Cir. 1991). The Court, accordingly, requested

supplemental briefing regarding the rights transferred to Plaintiff in the License Agreement and Plaintiff's standing to sue to enforce the patent. Plaintiff thereafter provided the Court with the requested supplemental briefing, as well as an unredacted copy of the License Agreement. Dkt. 39.

On April 24, 2019, the Court issued an Order concluding that Plaintiff had standing to sue to enforce the patent and granting default judgment in favor of Plaintiff against Defendant Simply LBS Ltd Company on Plaintiff's first cause of action for patent infringement.¹ Dkt. 43. By separate order, the Court referred the case to Magistrate Judge Moses for an inquest as to damages. Dkt. 44.

On April 30, 2019, Judge Moses ordered Plaintiff to serve and file Proposed Findings of Fact and Conclusions of Law regarding the damages and other relief sought. Dkt. 45. On July 10, 2019, Plaintiff filed its Proposed Findings of Fact and Conclusions of Law, as well as two supporting declarations and an affidavit of service. Dkts. 48-51. Defendant Simply LBS Ltd Company did not respond.

On April 21, 2020, Judge Moses issued a Report & Recommendation (the "Report"), recommending that this Court grant Plaintiff's request for compensatory damages in the total amount of \$325,153.76, in addition to prejudgment interest on that sum at the rate of 3.75% from March 15, 2017, to the date on which judgment is entered, and \$202.87 in costs. Rpt. at 25. Judge Moses also recommended "entry of a permanent injunction prohibiting Simply LBS Ltd Company, its officers, directors, managing members, and others acting in concert with them, from infringing or inducing the infringement of the '612 Patent until the expiration of that

¹ In its motion for default judgment, Plaintiff withdrew, without prejudice, its second cause of action for Lanham Act violations. *See* Fornari Affidavit at ¶ 17.

patent.” *Id.* Judge Moses’s Order provided, “The parties shall have fourteen days from the service of this report and recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure.” *Id.* at 26. While no party has filed a written objection to the Report, it is not clear from the docket whether Defendant Simply LBS Ltd Company was ever served with a copy of the Report. No later than October 16, 2020, Plaintiff shall serve the Report on Defendant Simply LBS Ltd Company and file proof of such service on the docket. Defendant Simply LBS Ltd Company shall thus have until October 30 to file any written objections.

SO ORDERED.

Dated: October 6, 2020
New York, New York



Ronnie Abrams
United States District Judge