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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

SMART STUDY CO., LTD.,

Plaintiff

v.

ACUTEYE-US, APZNOE-US,
 BEIJINGKANGXINTANGSHANGMAOYOUXIAN
 GONGSI, BLUE VIVI, BONUSWEN,
 CHANGGESHANGMAOYOUXIANGONGSI,
 CITIHOMY, CKYPEE, DAFA INTERNATIONAL,
 DAZZPARTY, FAMING, GAIFEI TRADE CO LTD,
 GEGEONLY, HAITING\$, HAOCHENG-TRADE,
 HAPPY PARTY-001, HEARTLAND GO, HUIBI-US,
 JOYSAIL, JYOKER-US1, KANGXINSHENG1,
 LADYBEETLE, LICHE CUPCAKE STAND,
 LVYUN, MARY GOOD SHOP, NA-AMZ001,
 NAGIWART, NUOTING, QINGSHU, QT-US,
 SALIMHIB-US, SAM CLAYTONDDG, SENSIAMZ
 BACKDROP,
 SHENZHENSHIXINDAJIXIEYOUXIANGONGSI,
 SMASSY US, SMSCHHX, SUJIUMAISUSU,
 SUNNYLIFYAU, TELIKE, THEGUARD,
 TONGMUMY, TOPIVOT, TUOYI TOYS, UNE
 PETITE MOUETTE, VETERANS CLUB a/k/a 老兵俱

**CIVIL CASE No.
 21-cv-5860 (GHW)**

**~~PROPOSED~~
 FINAL PARTIAL DEFAULT
 JUDGMENT AND
 PERMANENT INJUNCTION
 ORDER**

乐部, WCH- US, WEN MIKE, WONDERFUL
MEMORIES, WOW GIFT, XUANNINGSHANGWU,
XUEHUA INC, XUIYUI7I, YAMMO202, YICHENY
US, YLILILY,
YONGCHUNCHENGQINGMAOYIYOUXIANGON
GSI, YOOFLY and ZINGON US,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiff or Smart	Smart Study Co., Ltd.	N/A
Defendants	Acuteye-US, APZNOE-US, beijingkangxintangshangmaoyouxiangongsi, blue vivi, Bonuswen, changgeshangmaoyouxiangongsi, Citihomy, Ckypee, DAFA International, Dazzparty, FAMing, GaiFei Trade Co Ltd, GeGeonly, HAITing\$, Haocheng-Trade, HAPPY PARTY-001, Heartland GO, Huibi-US, Joysail, Jyoker-US1, Kangxinsheng1, LADYBEETLE, LICHE Cupcake stand, lvyun, Mary good shop, NA-AMZ001, Nagiwart, nuoting, Qingshu, QT-US, SALIMHIB-US, SAM CLAYTONddg, Sensiamz Backdrop, shenzhenshixindajixieyouxiangongsi, SMASSY US, SMSCHHX, sujiumaisusu, sunnylifayau, telike, Theguard, tongmumy, Topivot, Tuoyi Toys, Une petite mouette, Veterans Club a/k/a 老兵俱乐部, wch- us, WEN MIKE, WONDERFUL MEMORIES, WOW GIFT, xuanningshangwu, XueHua INC, Xuiyui7i, YAMMO202, Yicheny US, YLILILY, yongchunchengqingmaoyiyouxiangongsi, YooFly and Zingon US	N/A
Defaulting Defendants	Acuteye-US, APZNOE-US, beijingkangxintangshangmaoyouxiangongsi, blue vivi, Bonuswen, Citihomy, Ckypee, DAFA International, Dazzparty, FAMing, GeGeonly, HAITing\$, Haocheng-Trade, HAPPY PARTY-001, Heartland GO, Huibi-US, Joysail, Jyoker-US1, Kangxinsheng1, LADYBEETLE, LICHE Cupcake stand, lvyun, Mary good shop, NA-AMZ001, Nagiwart, nuoting, Qingshu, QT-US, SALIMHIB-US, SAM CLAYTONddg, Sensiamz Backdrop, SMSCHHX, sujiumaisusu, telike, Theguard, tongmumy, Une petite mouette, Veterans Club a/k/a 老兵俱乐部, wch- us, WEN MIKE, WONDERFUL MEMORIES, WOW GIFT, xuanningshangwu, Xuiyui7i, YAMMO202, Yicheny US, yongchunchengqingmaoyiyouxiangongsi, YooFly and Zingon US	N/A
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows	N/A

	manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York	
Sealing Order	Order to Seal File entered on July 6, 2021	Dkt. 1
Complaint	Plaintiff's Complaint filed on July 8, 2021	Dkt. 4
Application	Plaintiff's <i>ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on July 8, 2021	Dkts. 10-13
Yang Dec.	Declaration of Su Jeong Yang in Support of Plaintiff's Application	Dkt. 13
Futterman Dec.	Declaration of Danielle S. Futterman in Support of Plaintiff's Application	Dkt. 12
TRO	1) Temporary Restraining Order; 2) Order Restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Bifurcated and Alternative Service; and 5) Order Authorizing Expedited Discovery entered on July 9, 2021	Dkt. 14
PI Show Cause Hearing	July 30, 2021 hearing to show cause why a preliminary injunction should not issue	N/A
PI Order	July 30, 2021 Preliminary Injunction Order	Dkt. 16
User Account(s)	Any and all websites and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with	N/A

	Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	
Baby Shark Content	One of Smart’s most successful creations, which is the Pinkfong “Baby Shark” song and viral music video with characters	N/A
Baby Shark Registrations	U.S. Trademark Registration Nos.: 5,803,108 for “BABY SHARK” for a variety of goods in Class 28; 5,483,744 for “PINKFONG” for a variety of goods in Classes 3 and 21; 5,327,527 for “PINKFONG” for a variety of goods in Classes 9, 16 and 28; 4,993,122 for “PINKFONG” a variety of goods in Classes 9 and 25; 6,138,374 for pinkfong for a variety of goods in Class 41; 6,337,210 for “PINKFONG BABY SHARK” for a variety of goods in Class 21 and 6,021,523 for pinkfong Baby Shark for a variety of goods in Class 28	N/A
Baby Shark Applications	U.S. Trademark Serial Application Nos.: 79/253,035 for registration of “BABY SHARK” for a variety of goods in Classes 41, 25, 16 and 9; 88/396,786 for registration of “PINKFONG BABY SHARK” for a variety of goods in Class 25; 88/529,984 for registration of “PINKFONG” for a variety of goods in Class 2, 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 41; 88/530,086 for registration of “BABY SHARK” for a variety of goods in Class 2, 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 41; 88/594,141 for “PINKFONG” for a variety of goods in Class 5; and 88/594,122 for “BABY SHARK” for a variety of goods in Class 5	N/A
Baby Shark Marks	The Baby Shark Registrations and Baby Shark Applications	N/A
Baby Shark Works	U.S. Copyright Registration Nos.: VA 2-130-856, covering Baby Shark; VA 2-130-847, covering Daddy Shark; VA 2-130-854, covering Mommy Shark; VA 2-131-983, covering Pink Fong Mascot; SR 823-609, covering Baby Shark (Sound Recording and Music); PA 2-142-905, covering Baby Shark (Motion Picture)	N/A
Baby Shark Products	Smart has developed and initiated an extensive worldwide licensing program for a wide variety of consumer products such as toys, sound books, t-shirts, associated with and/or related to the Baby Shark Content	N/A

Counterfeit Products	Products bearing or used in connection with the Baby Shark Marks and/or Baby Shark Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Baby Shark Marks and/or Baby Shark Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works and/or products that are identical or confusingly or substantially similar to the Baby Shark Products	N/A
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon.com, Inc., Amazon Payments, Inc. ("Amazon Pay"), PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by Amazon, such as Amazon.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Defendants' Frozen Assets	Defendants' Assets from Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action	N/A
Amazon Discovery	The supplemental report identifying Defendants' Infringing ASIN Number, Merchant Customer ID, Net Ordered Units, among other things, provided by counsel for Amazon to Plaintiff's counsel pursuant to the	N/A

	expedited discovery ordered in both the TRO and PI Order	
August 17, 2022 Order	The Court's August 17, 2022 Order directing Plaintiff to show cause why this case should not be dismissed	Dkt. 101
Supplemental OSC MOL	Plaintiff's memorandum of law filed in response to the Court's August 17, 2022 Order	Dkt. 110
Supplemental Sands Dec.	Declaration by Ashly E. Sands in Support of Plaintiff's response to the Court's August 17, 2022 Order	Dkt. 109
Plaintiff's Motion for Default Judgment	Plaintiff's Application for an Order to Show Cause Why Default Judgment and a Permanent Injunction should not be entered Against Defaulting Defendants filed on August 11, 2023	Dkts. 116-119
Nastasi Aff.	Affidavit by Gabriela N. Nastasi in Support of Plaintiff's Motion for Default Judgment	Dkt. 117

This matter comes before the Court by motion filed by Plaintiff for the entry of final judgment and permanent injunction by default against Defaulting Defendants for Defaulting Defendants' trademark infringement, trademark counterfeiting, false designation of origin, passing off and unfair competition and related state and common law claims arising out of Defaulting Defendants' unauthorized use of Plaintiff's Baby Shark Marks and Baby Shark Works, without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.

The Court, having considered the Memorandum of Law and Affidavit of Gabriela N. Nastasi in support of Plaintiff's Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendants, the Certificate of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defaulting Defendants' Liability

1) Judgment is granted in favor of Plaintiff on all claims properly pled against Defaulting Defendants in the Complaint, partial judgment being appropriate given that Rule 54(b)'s three-part test is satisfied, *see Grand River Enterprises Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 164-65 (2d Cir. 2005), including that the Court finds there is no just reason for delay;

II. Damages Awards

1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages award requested in its Memorandum of Law in Support of its Motion for Default Judgment, the Court finds such an award to be reasonable and Plaintiff is awarded Fifty Thousand Dollars (\$50,000.000) in statutory damages against the following forty-nine (49) Defaulting Defendants: Acuteye-US, APZNOE-US, beijingkangxintangshangmaoyouxiangongsi, blue

vivi, Bonuswen, Citihomy, Ckypee, DAFA International, Dazzparty, FAming, GeGeonly, HAITing\$, Haocheng-Trade, HAPPY PARTY-001, Heartland GO, Huibi-US, Joysail, Jyoker-US1, Kangxinsheng1, LADYBEETLE, LICHE Cupcake stand, Ivyun, Mary good shop, NA-AMZ001, Nagiwart, nuoting, Qingshu, QT-US, SALIMHIB-US, SAM CLAYTONddg, Sensiamz Backdrop, SMSCHHX, sujiumaisusu, telike, Theguard, tongmumy, Une petite mouette, Veterans Club a/k/a 老兵俱乐, wch- us, WEN MIKE, WONDERFUL MEMORIES, WOW GIFT, xuanningshangwu, Xuiyui7i, YAMMO202, Yicheny US, yongchunchengqingmaoyiyouxiangongsi, YooFly and Zingon US (“Defaulting Defendants’ Individual Damages Award”) pursuant to 15 U.S.C. § 1117(c) of the Lanham Act for a total of Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000.00), plus post-judgment interest.

III. Permanent Injunction

1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defaulting Defendants, their respective officers, agents, servants, employees and all persons acting in concert with or under the direction of Defaulting Defendants (regardless of whether located in the United States or abroad), who receive actual notice of this Order are permanently enjoined and restrained from:

A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Baby Shark Marks and/or Baby Shark Works and/or marks and/or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Baby Shark Marks and/or Baby Shark Works;

- B. directly or indirectly infringing in any manner Plaintiff's Baby Shark Marks and/or Baby Shark Works;
- C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Baby Shark Marks and/or Baby Shark Works to identify any goods or services not authorized by Plaintiff;
- D. using Plaintiff's Baby Shark Marks and/or Baby Shark Works and/or any other marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- E. using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants and Defaulting Defendants' commercial activities by Plaintiff;
- F. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products; (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or Defendants' Assets and the manufacture,

importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and

G. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation exportation, advertising, marketing, promotion, distribution, displaying, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defaulting Defendants must deliver up for destruction to Plaintiff any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe Plaintiff's Baby Shark Marks and/or Baby Shark Works or bear any marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works pursuant to 15 U.S.C. § 1118.

3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Third Party Service Providers and Financial Institutions are permanently enjoined and restrained from:

A. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to Defaulting Defendants' Frozen Assets and Defaulting Defendants' Financial Accounts;

B. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs III(1)(A) through III(3)(A) above.

IV. Dissolution of Rule 62(a) Stay and Asset Turnover Pursuant to N.Y. C.P.L.R. § 5225


- 1) IT IS FURTHER ORDERED, as sufficient cause has been shown, the 30 day automatic stay on enforcing Plaintiff's judgment, pursuant to Fed. R. Civ. Pro. 62(a) is hereby dissolved.

V. Miscellaneous Relief

- 1) Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property; and
- 2) This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

SO ORDERED.

SIGNED this 16th day of November, 2023.



HON. GREGORY H. WOODS
UNITED STATES DISTRICT JUDGE