

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

GEMS, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 3:13-CV-572-PLR-HBG
)	
)	
GLEN WEATHERLY d/b/a)	
RESORT PRO HOSPITALITY GROUP,)	
)	
Defendant.)	

MEMORANDUM OPINION

Plaintiff, GEMS, LLC, filed this action alleging that Defendant, Glen Weatherly d/b/a Resort Pro Hospitality Group, acquired domain names using Plaintiff’s registered mark LOG HOMES OF THE SMOKIES. GEMS, alleges that these websites operated as link farms that directed consumers to GEMS’ competitors, and that the use of the LOG HOMES OF THE SMOKIES mark was done without the license, consent or acquiescence of GEMS, LLC. The domain names alleged to violate GEMS’ mark include:

1. www.loghomesofthesmokies.com
2. www.loghomesofthesmokies.org
3. www.loghomesofthesmokies.info
4. www.loghomesofthesmokies.us
5. www.loghomesofthesmokies.biz

Weatherly failed to respond to the complaint and default was entered against him on November 21, 2013. On April 8, 2014, Magistrate Judge H. Bruce Guyton conducted an

evidentiary hearing on GEMS' motion for default judgment. Neither Weatherly nor counsel on his behalf appeared for the hearing. Magistrate Judge Guyton issued his Report and Recommendation on GEMS' motion for default judgment on April 11, 2014. There have been no timely objections to the Report and Recommendation, and enough time has passed since the filing of the Report and Recommendation to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

Having reviewed the record, evidence, and applicable law in this matter, the Court is in complete agreement with the recommendations contained in the Report and Recommendation. Accordingly, the Court **ACCEPTS IN WHOLE** the Report and Recommendation under 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b); and finds that Glen Weatherly d/b/a Resort Pro Hospitality Group has violated 15 U.S.C. § 1125(d)(1). Therefore, the court may award damages between \$1,000 and \$100,000 per domain name, pursuant to 15 U.S.C. § 117(d). The court finds that the appropriate amount of damages for the violations of 15 U.S.C. § 1125(d)(1) is \$5,000 per domain registered, for a total of \$25,000 in statutory damages. Further, the court finds that this is a case in which an award of attorney's fees and cost is appropriate under 15 U.S.C. § 117(a). Accordingly, the court finds that judgment should be granted to GEMS, LLC as follows:

1. The Motion for Default Judgment [R. 7] is **GRANTED**.
2. Defendant Glen Weatherly d/b/a Resort Pro Hospitality Group, is adjudged to have violated 15 U.S.C. § 1125(d)(1).
3. GEMS, LLC is awarded statutory damages in the amount of \$25,000.
4. GEMS, LLC is awarded attorney's fees and costs against Glen Weatherly d/b/a Resort Pro Hospitality Group in the amount of \$7,000.
5. GEMS, LLC's request for prejudgment interest is **DENIED**.

6. GEMS, LLC is awarded post-judgment interest under 28 U.S.C. § 1961, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the entry of judgment.

7. A **permanent injunction** shall issue, as follows:

a. Glen Weatherly d/b/a Resort Pro Hospitality Group is prohibited from making further use of any domain name containing the LOG HOMES OF THE SMOKIES mark alone or in combination with any other words, and Defendant and/or the registrar for Defendant's domains shall transfer the following domains to GEMS, LLC:

1. www.loghomesofthesmokies.com
2. www.loghomesofthesmokies.org
3. www.loghomesofthesmokies.info
4. www.loghomesofthesmokies.us
5. www.loghomesofthesmokies.biz

b. Glen Weatherly d/b/a Resort Pro Hospitality Group is prohibited from unfairly competing with GEMS, LLC through the use of spurious designations confusingly similar to GEMS, LLC's LOG HOMES OF THE SMOKIES mark.

c. Glen Weatherly d/b/a Resort Pro Hospitality Group is prohibited from all further use of the LOG HOMES OF THE SMOKIES mark or any other mark, name, words, symbols, and/or letters confusingly similar to GEMS, LLC's LOG HOMES OF THE SMOKIES mark, alone or in combination with any other words, for or in connection with home construction or design services or any other goods or services related thereto.

Enter:


UNITED STATES DISTRICT JUDGE