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United States District Court
Central District of California

TEXKHAN, INC.,
Plaintiff,
v.
I JOAH et al.,
Defendants.

Case No. 2:18-cv-09313-ODW (MRWx)

**ORDER GRANTING PLAINTIFF’S
MOTIONS FOR DEFAULT
JUDGMENT AGAINST
DEFENDANTS I JOAH [18] AND
Q FASHION, INC. [20]**

I. INTRODUCTION

Presently before the Court are Plaintiff Texkhan, Inc.’s (“Texkhan”) Motions for Default Judgment against Defendants I Joah and Q Fashion, Inc. (“Defendants”). (Mot. for Default J. 1, ECF No. 18 (I Joah); Mot. for Default J. 1, ECF No. 20 (Q Fashion, Inc.) (“Mots.”)) For the following reasons, the Court **GRANTS** Texkhan’s Motions for Default Judgment, and **AWARDS** Texkhan \$10,000.00 in statutory damages, \$1,200.00 in attorney’s fees, and \$516.94 in litigation costs against Defendants.¹

¹ After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 **II. BACKGROUND**

2 **A. Factual Background**

3 Texkhan is a Los Angeles-based corporation that purchases and maintains a
4 library of exclusive two-dimensional artwork. (Decl. of Miena Lee in Supp. of Mots.
5 (“Lee Decl.”) ¶ 3, ECF Nos. 18-1, 20-1.) Texkhan asserts that its business’
6 competitive advantage relies heavily on the exclusivity of its copyrighted designs, and
7 that its business is “seriously undercut” when others infringe its exclusive designs.
8 (Mots. 1–2.) One such copyrighted design is “HA-1465” (“Subject Design”), which
9 Texkhan samples and sells to parties in the fashion industry. (Mots. 2, 7; Compl.
10 ¶¶ 9–11.)

11 Texkhan discovered that Defendants, Los Angeles-based apparel companies,
12 impermissibly manufactured and sold garments (“Alleged Product”) bearing a design
13 substantially similar to Texkhan’s registered Subject Design. (Compl. ¶¶ 5–6, 12;
14 Mots. 1, 7.) Texkhan further alleges that the Alleged Product were sold by Q Fashion
15 and bore the “iJOAH” label, identifying I Joah as the manufacturer and supplier of the
16 Alleged Product. (Compl. ¶ 12.) Texkhan concedes that it is unsure as to how many
17 garments Defendants manufactured or sold bearing the Subject Design (Mots. 2), yet,
18 Texkhan asserts that Defendants willfully infringed Texkhan’s copyrighted design
19 (Compl. ¶ 14).

20 In its Motions, Texkhan stresses that discovery is essential to uncovering and
21 determining the scope of Defendants’ infringement. (Mots. 1–2, 9–10, 13.) Through
22 discovery, Texkhan intended to determine Defendants’ access source to the Subject
23 Design, how many infringing garments Defendants produced and sold, the channels
24 Defendants used to distribute the Alleged Product, and other networks of
25 infringement. (Mots. 2.) Without an answer from Defendants, Texkhan’s ability to
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1 take “reasonable steps” to prevent future copyright infringement is hindered.
2 (Mots. 2.)

3 **B. Procedural Background**

4 Texkhan filed its Complaint on October 30, 2018, alleging textile design
5 copyright infringement against Defendants. (Compl.) Texkhan served Defendants
6 with the Summons and Complaint on November 7 and 19, 2018, pursuant to Federal
7 Rule of Civil Procedure (“FRCP”) 4(e). (ECF Nos. 10–11.) Defendants did not
8 answer the Complaint, and, on December 14, 2018 Texkhan filed Requests to Enter
9 Default against Defendants. (ECF Nos. 13–14.) The Clerk entered default against
10 Defendants on December 14, 2018. (ECF No. 15.) Texkhan now requests that this
11 Court find that Defendants are willful infringers, enter a default judgment in the
12 amount of \$30,000 against both Defendants, and award attorney’s fees and costs.
13 (Mots. 7.)

14 **III. LEGAL STANDARD**

15 Pursuant to FRCP 55(b), a Court may grant default judgment after the Clerk
16 enters default under Rule 55(a). *See PepsiCo Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d
17 1172, 1174 (C.D. Cal. 2002). A district court has discretion whether to enter default
18 judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising its
19 discretion, a court must consider several factors, including: (1) the possibility of
20 prejudice to plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency
21 of the complaint; (4) the sum of money at stake; (5) the possibility of a dispute
22 concerning material facts; (6) whether the defendant’s default was due to excusable
23 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
24 favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
25 1986).

26 Upon default, the defendant’s liability generally is conclusively established, and
27 the well-pleaded factual allegations in the complaint are accepted as true. *Televideo*
28 *Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–19 (9th Cir. 1987) (per curiam) (citing

1 *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)). If the allegations
2 sufficiently establish liability, the court must then determine the amount and character
3 of the relief that should be awarded. *Elektra Entm't Grp. Inc. v. Crawford*, 226
4 F.R.D. 388, 394 (C.D. Cal. 2005).

5 **IV. DISCUSSION**

6 **A. Procedural Requirements**

7 Before a court can enter default judgment, the requesting party must satisfy the
8 procedural requirements set forth in FRCP 55 and the Local Rules of this district.
9 *PepsiCo*, 238 F. Supp. 2d at 1174. Central District of California Local Rule 55-1
10 requires the movant to submit a declaration establishing: (1) when and against whom
11 the default was entered; (2) identification of the pleading to which default was
12 entered; (3) whether the defaulting party is a minor, an incompetent person, or exempt
13 under the Servicemembers' Civil Relief Act; and (4) that the defaulting party was
14 served with notice, if required by FRCP 55(b)(2). *Vogel v. Rite Aid Corp.*, 992 F.
15 Supp. 2d 998, 1006 (C.D. Cal. 2014).

16 In accordance with FRCP 55 and Local Rule 55-1, Texkhan's attorney
17 identified the Complaint and established that the Clerk of the Court entered default
18 against Defendants. (Decl. of Justin M. Gomes in Support of Mots. ("Gomes Decl.")
19 ¶¶ 1–3, ECF Nos. 18, 20.) Additionally, Defendants are neither minors nor
20 incompetent persons, nor exempted under the Servicemember's Civil Relief Act.
21 (Gomes Decl. ¶ 4.) Lastly, Defendants were served with notice of the amount
22 requested and application of default judgement. (ECF Nos. 19, 21.) Accordingly, the
23 Court finds that Texkhan complied with all procedural requirements.

24 **B. The *Eitel* Factors Weigh in Favor of Granting Default Judgment**

25 The Court also finds that the *Eitel* factors favor default judgment. The Court
26 discusses each factor in turn.

27 **1. Texkhan Will Suffer Prejudice if Default is Not Entered**

28 The first *Eitel* factor considers whether Texkhan will suffer prejudice if default

1 judgment is not entered. *PepsiCo*, 238 F. Supp. 2d at 1177. When a defendant fails to
2 appear and defend its claims, the plaintiff is without recourse and suffers prejudice
3 unless default judgment is entered. *Id.* Here, Defendants failed to appear to contest
4 Texkhan’s allegations. Absent default judgment, Texkhan is left without recourse for
5 the damages it incurred as a result of Defendants’ conduct, and is thereby prejudiced.
6 Accordingly, the first *Eitel* factor weighs in favor of granting default judgment.

7 **2. Texkhan’s Claim is Meritorious and Sufficiently Pleaded**

8 The second and third *Eitel* factors address the merits and sufficiency of
9 plaintiff’s claims pleaded in the complaint. *Eitel*, 782 F.2d at 1471–72. To establish
10 copyright infringement, Texkhan must prove “(1) ownership of a valid copyright, and
11 (2) copying of constituent elements of the work that are original.” *L.A. Printex Indus.,*
12 *Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012) (citing *Feist Publ’ns, Inc.*
13 *v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)).

14 Here, Texkhan presented a Certificate of Registration from the United States
15 Copyright Office for its Subject Design. (Mots., Ex. 1, ECF Nos. 18-2, 20-2.) A
16 Certificate of Registration constitutes prima facie evidence of copyright ownership.
17 *See Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1144 (9th Cir.
18 2003). Accordingly, Texkhan has demonstrated copyright ownership of its Subject
19 Design.

20 Second, through circumstantial evidence, Texkhan has shown that:
21 (1) Defendants had access to the Subject Design when Texkhan’s distributed its
22 design samples to potential customers prior to the creation of the Alleged Product;
23 (2) substantial similarity exists between the Subject Design and the Alleged Product;
24 and (3) I Joah is the manufacturer and Q Fashions is the seller of the Alleged Product.
25 (Compl. ¶¶ 11–13, 16); *see Unicolors, Inc. v. Urban Outfitters*, 853 F.3d 980, 984–85
26 (9th Cir. 2017) (noting that a plaintiff may prove the element of “copying” through
27 circumstantial evidence). Accordingly, Texkhan has satisfied the second element of
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1 copying and the Court finds that the well-pleaded allegations in the Complaint state a
2 claim against Defendants for copyright infringement.

3 Therefore, the second and third *Eitel* factors weigh in favor of granting default
4 judgment.

5 **3. The Sum of Money at Stake Weighs in Favor of Default Judgment**

6 The fourth *Eitel* factor balances “the amount of money at stake in relation to the
7 seriousness of [the] [d]efendant’s conduct.” *PepsiCo*, 238 F. Supp. 2d at 1176. Stated
8 otherwise, the Court is required to assess whether the recovery sought is proportional
9 to the harm caused by Defendants’ conduct. *Landstar Ranger, Inc. v. Parth Enters.,*
10 *Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010). Here, although Texkhan seeks
11 \$30,000 in statutory damages against both Defendants, the Court awards it \$10,000
12 against both Defendants. For reasons provided below, the Court finds this amount
13 proportional to the harm caused. Accordingly, the fourth *Eitel* factor favors entry of
14 default judgement.

15 **4. There is No Possibility of Disputed Fact**

16 The fifth *Eitel* factor examines whether material facts are disputed. *Eitel*, 782
17 F.2d at 1471–72. Upon default, all well-pleaded facts in the complaint are taken as
18 true except those relating to damages. *Televideo Sys*, 826 F.2d at 917–18. Here,
19 Defendants defaulted. Accordingly, Texkhan’s facts supporting its claims are
20 undisputed and the fifth *Eitel* factor favors entry of default judgment.

21 **5. Defendants’ Default is Not Due to Excusable Neglect**

22 The sixth *Eitel* factor considers whether Defendants’ default was due to
23 excusable neglect. *Eitel*, 782 F.2d at 1471–72. Here, Plaintiff properly served
24 Defendants according to FRCP 4(e) on November 7, 2018, and Plaintiff filed the
25 Proof of Service with the Court. (ECF Nos. 10–11.) Accordingly, the possibility of
26 excusable neglect is remote and the sixth *Eitel* factor favors entry of default judgment.

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1 **6. Policy for Decision on the Merits Does Not Preclude Default**
2 **Judgment**

3 Finally, the seventh *Eitel* factor reflects the policy that “cases should be decided
4 upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. However,
5 “a decision on the merits [is] impractical, if not impossible” when a defendant fails to
6 answer the plaintiff’s complaint. *PepsiCo Inc.*, 238 F. Supp. 2d at 1177. Here,
7 because Defendants failed to answer the Complaint, a decision on the merits is not
8 possible. Accordingly, the seventh *Eitel* factor favors entry of default judgment.

9 Since the *Eitel* factors weigh in favor of granting default judgment, Texkhan is
10 entitled to Default Judgment against Defendants.

11 **C. Relief Sought**

12 Having determined that Texkhan is entitled to Default Judgment, the Court
13 turns to Texkhan’s measure of relief.

14 **1. Statutory Damages**

15 Statutory damages range from \$750 to \$30,000 per work infringed. 17 U.S.C.
16 § 504(c)(1). A single statutory award is available for each copyrighted work that has
17 been infringed. *See Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936,
18 946–47 (9th Cir. 2011) (quoting 18 C.J.S. *Copyright* § 127 (2011)) (“Only a single
19 award of statutory damages within the statutory limits may be made for all
20 infringements involved in the action with respect to any one work, except where
21 multiple defendants are not jointly liable.”). If the copyright holder proves that the
22 infringement was “willful,” the Court may, in its discretion, increase statutory
23 damages up to \$150,000 per work. 17 U.S.C. § 504(c)(2). Conversely, if an infringer
24 is innocent, the Court may decrease statutory damages to \$200 per work. *Id.* The
25 infringer bears the burden of proving innocent infringement. *Id.*

26 Since Defendants have not appeared to argue innocent infringement, the Court
27 can award no less than \$750.00 in statutory damages. *See* 17 U.S.C. § 504(c)(1).
28 Given the undisputed nature of the claim, and Texkhan’s inability to address the full

1 scope of Defendants’ culpability, the Court is willing to award Texkhan more than the
2 minimum statutory damages imposed on non-innocent infringers. However, viewing
3 the record as a whole, the Court is unwilling to grant Texkhan’s request for \$30,000 in
4 statutory damages. *See Neman Bros. & Assoc., Inc. v. Zulily, LLC*, No. CV 17-4465-
5 DMG (AGRx), 2018 WL 6321655, at *2 (C.D. Cal. May 10, 2018) (awarding only
6 \$10,000 in statutory damages for textile design infringement because plaintiff failed to
7 substantiate with evidence its lost revenue).

8 The Court’s decision is based on the most natural reading of the record.
9 Texkhan owns and controls a set library of exclusive copyright artwork. (Mots. 2.)
10 Texkhan sent the Subject Design to various individuals within the fashion and apparel
11 industries. (Mots. 2.) One of these samples bearing the Subject Design was accessed
12 by Defendants, who impermissibly manufactured, distributed, and sold the Alleged
13 Product. (Mots. 2.) Consequently, Texkhan asserts that Defendants are willful
14 infringers of the Subject Design. (Mots. 6.) However, Texkhan neither substantiated,
15 with evidence, its lost revenue; nor offered any further explanation for seeking
16 \$30,000, against both Defendants, beyond the fact that the amount is within statutorily
17 prescribed minimum and maximum damages. *See Zulily, LLC*, 2018 WL 6321655,
18 at *2. Furthermore, Texkhan has not presented any evidence to substantiate that
19 Defendants were individually liable, rather than joint and severally liable. Thus, the
20 Court reduces the award to \$10,000.00.

21 For the aforementioned reasons, the Court concludes that Defendants are jointly
22 and severally liable for copyright infringement, rather than individually liable. *See*
23 *Louis Vuitton Malletier, S.A.*, 658 F.3d at 946–47 (“[A]ny two or more infringers are
24 liable jointly and severally.”). Consequently, Texkhan is entitled to only a single
25 award of statutory damages. *LHF Prods. Inc. v. Doe 1*, 736 F. App’x 688, 691 (9th
26 Cir. 2018) (upholding a single award of statutory damages for copyright infringement
27 because the allegations in the complaint established that defendants were jointly and
28 severally liable.)

1 Accordingly, the Court **AWARDS** Texkhan: (1) \$10,000.00 in statutory
2 damages against Defendants.

3 **2. Costs and Attorney's Fees**

4 Texkhan requests the Court award \$459.29 in costs and \$2,400.00 in attorneys'
5 fees associated with its initial Motion against I Joah. (Gomes Decl. ¶¶ 5–6, ECF
6 No. 18.) And an additional award of \$459.29 in costs and \$2,400.00 in attorneys' fees
7 associated with its subsequent Motion against Q Fashion. (Gomes Decl. ¶¶ 5–6, ECF
8 No. 20.) The Central District Local Rules provide a schedule for attorney's fees
9 awarded in default judgments. L.R. 55-3.

10 Texkhan calculated its fee request according to the fee schedule, assuming
11 \$30,000 in statutory damages. However, since the Court awards a single statutory
12 damage of \$10,000 against Defendants, Texkhan's awarded attorney fees must be
13 reduced accordingly. The Central District Local Rules schedule provides that for a
14 default judgment award of \$10,000.00, Texkhan is entitled to \$300.00 plus 10% of the
15 amount over \$1,000.00 of the awarded sum (or \$900.00). *Id.* Therefore, the Court
16 **AWARDS** Texkhan \$1,200.00 (\$300.00 + \$900.00) in attorneys' fees against
17 Defendants.

18 Texkhan further seeks to recover \$459.29 in litigation costs against Defendant I
19 Joah, and \$457.65 in litigation costs against Defendant Q Fashion. These litigation
20 costs include the \$400 filing fee, the \$59.29 expended in serving the Complaint on I
21 Joah, and \$57.65 expended in serving the Complaint on Q Fashion. (Gomes Decl.
22 ¶¶ 5–6.) Since Plaintiff incurred a single filing fee, the court will only grant \$400.00
23 in filing fees but grants each of the serving costs. *See* L.R 54-3.1, 54-3.2.

24 Therefore, the Court **AWARDS** Texkhan \$516.94 in litigation costs against
25 Defendants.

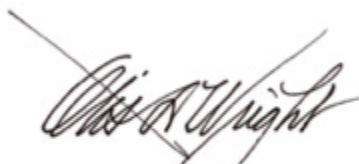
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V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Texkhan’s Motions for Entry of Default Judgment (ECF Nos. 18, 20.) and **AWARDS** Texkhan \$11,716.94 against Defendants.

IT IS SO ORDERED.

August 22, 2019



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE