

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CARDS AGAINST HUMANITY, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:16-CV-01534 AGF
)	
SKKYE ENTERPRISES d/b/a/)	
SURFTHEMALL.COM and)	
HOMEANDBABYSTORE.COM;)	
JEREMY GOULD;)	
and AMY MICHELLE GOULD,)	
)	
Defendants.)	

MEMORANDUM AND ORDER
and
PERMANENT INJUNCTION

This copyright and trademark infringement matter is before the Court on the motion of Plaintiff Cards Against Humanity, LLC, for default judgment, including damages, a permanent injunction, and attorney’s fees, against Defendants Skkye Enterprises (“Skkye”) and two affiliated individuals. Plaintiff’s motion will be granted, under the terms set forth below.

BACKGROUND

Plaintiff alleges in its complaint that Skkye is a Missouri entity which does business online as SurfTheMall.com and HomeAndBabyStore.com, as well as through Amazon.com, eBay.com, and other websites. Plaintiff alleges that Defendants Jeremy Gould and Amy Gould are Skkye’s founders and sole employees. Plaintiff further alleges the following: Since December 2009, Plaintiff has designed, manufactured, and marketed

a highly successful card game titled “Cards Against Humanity” (“CAH” or the “Game”) which includes an original “base” set and four “expansion” sets. Plaintiff has copyright registrations for all five of these sets approved by the United States Copyright Office. Additionally, Plaintiff has used three registered trademarks: the name “Cards Against Humanity,” the tagline “A Party Game for Horrible People,” and a distinctive trade dress of white Helvetica Neue lettering on a black background.

Plaintiff alleges that Defendants have marketed and sold counterfeit versions of the Game on Skkye’s websites SurfTheMall.com and HomeAndBabyStore.com; through a storefront on Amazon.com; on eBay through an account “greatwhite430” managed by Defendants; and through other large retailer websites. Plaintiff sent Amazon a “takedown request” regarding removal of Defendants’ listing of counterfeit Games, to which Amy Gould responded to Plaintiff asserting Defendants’ compliance. Plaintiff also submitted a “takedown request” to eBay regarding a listing of a set of the Game and received an email from surfthmall79@gmail.com in response, with the email signed “Jeremy.” Plaintiff states that it notified Defendants on several occasions that their actions were infringing and demanded that Defendants cease and desist, through letters and emails to Skkye from Plaintiff’s counsel. Plaintiff alleges that Defendants have refused to comply with Plaintiff’s cease and desist requests, and caused injury to Plaintiff that will continue unless Defendants are restrained.

Count I of the complaint is brought under the federal Copyright Act, 17 U.S.C. § 101, *et seq.*; Counts II and III of the complaint assert trademark infringement and false designation of origin in violation of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a) respectively; Count IV claims common law trademark infringement and unfair competition

under Missouri law. In its complaint, Plaintiff requests a preliminary and permanent injunction enjoining Defendants from manufacturing, reproducing, or selling the counterfeit Games; impoundment or destruction of Defendants' infringing goods; an order for an accounting of all profits obtained by Defendants from sales of the counterfeits; either actual damages and profits attributable to the willful copyright infringements, or statutory damages of up to \$150,000 for each of the five copyrights infringed; actual damages and profits attributable to the infringement of Plaintiff's trademarks, trebled pursuant to 15 U.S.C. § 1117 for willfulness, or statutory damages of up to \$2,000,000 for each of the three trademarks counterfeited and infringed; as well as attorney's fees and costs.

On January 25, 2017, Plaintiff filed a motion for clerk's entry of default against Defendants; default was entered as to each Defendant on January 26, 2017. Plaintiff now seeks default judgment against Defendants in the form of a permanent injunction; an order for destruction of infringing goods and implements to manufacture them; maximum statutory damages of \$150,000 for each of the five willful copyright infringements, pursuant to 17 U.S.C. § 504(c); \$2,000,000 for each of the three willful trademark infringements, pursuant to 15 U.S.C. § 1117(c)(2); post judgment interest; and attorney's fees and costs. Plaintiff states that it will provide evidence to support its request for fees.

In support of its motion for default judgment, Plaintiff has submitted the declaration of its Operations Officer Nick Markos, in which Markos discusses Plaintiff's investigation of Defendants' counterfeiting operations, and states as follows:

Because Defendants have offered counterfeit CAH products for sale through multiple websites, including their Amazon storefront; their Rakuten storefront; the website Slickdeals.net; and Defendants' own websites (i.e., HomeandBabystore.com and SurftheMall.com), and based on the numbers that CAH could derive from the nature of Defendants' advertising and

product availability, and on my experience having spent years addressing counterfeiting matters for CAH, my best estimate of sales is that Defendants have likely sold between ten to twenty thousand dollars' (\$10,000 - \$20,000) worth of counterfeit CAH products. As noted above, a single one of Defendants' advertisements on the website Newegg.com received over 19,000 views. Upon review of Defendants' sales of counterfeit CAH products through Defendants' eBay storefront, I have determined that Defendants have sold at least \$1,000 worth of counterfeit CAH products through eBay alone.

ECF No. 16. at 3.

Plaintiff has also submitted 21 exhibits in support of its motion. ECF No. 17.

Exhibit 1 includes eight screenshots of listings of counterfeit Games on SurfTheMall.com with the base set for sale for \$23.95 and each expansion set for \$10.95, as well as two "bundles" including the base set and various expansions for \$64.95 and \$57.98. Exhibit 2 shows two similar listings on Amazon.com which state the product is "Sold by Surfthemall." Exhibit 3 is a letter dated June 5, 2015, from Plaintiff's counsel to Skkye stating that Plaintiff had recently learned of Skkye's sale of counterfeit copies of the Game and that, unless Skkye ceased further sales of the counterfeits and provide Plaintiff with information about Skkye's suppliers and purchasers of the counterfeit game, Plaintiff would pursue legal action; the letter indicated that it was emailed to sales@surfthemall.com and sent by FedEx to Skkye.

Exhibit 4 is an email, dated July 30, 2015, to sales@surfthemall.com, surfthemall79@gmail.com, and sales@homeandbabystore.com, from Plaintiff's counsel following-up on the initial cease and desist letter, stating that Skkye had failed to comply with Plaintiff's earlier requests, and allowing Skkye an additional month to comply. Exhibit 5 is an additional follow-up email, dated November 3, 2015, stating that if Plaintiff's demands were not met, Plaintiff would pursue action in federal court. Exhibit 6

is a screenshot of surfthemall.com listing “Skkye Enterprises LLC” under “Contact Info.” Exhibit 7 is a screenshot of HomeAndBabyStore.com listing the telephone number 877-760-7783 under “Contact Info.” Exhibit 8 is a screenshot of the Better Business Bureau website listing the same telephone number as the contact number for Surf the Mall.

Exhibit 9 is an email from surfthemall79@gmail.com, dated August 21, 2015, to a partially redacted address “nick@,” regarding an eBay violation filed against the eBay account “greatwhite430” for its listing of a set of the Game, with the “from” field listing “Natalie Asher,” and the email signed “Jeremy.” In a declaration accompanying the exhibits, Plaintiff’s counsel asserts that this was an email “to CAH,” ECF No. 17 at 2, and the complaint alleges that the Goulds’ two children were named Natalie and Asher, ECF No. 1 at 6.

Exhibit 10 is an email from eBay.com to Plaintiff concerning the removal of various listings in response to a notice of claimed infringement sent by Plaintiff. The email includes one listing from “greatwhite430” which was removed, and states that the sellers had been notified of the removal due to Plaintiff’s request. Exhibit 11 is a screenshot of Amazon.com’s website reflecting an advertisement link, sponsored by www.SurfTheMall.com for “Cards Against Humanity.” Exhibit 12 is a copy of an infringement report sent by Plaintiff to PayPal, dated February 24, 2015, concerning SurfTheMall.com’s and HomeAndBabyStore.com’s sales of counterfeit Games, and stating that Plaintiff used PayPal to complete the purchase of a sample of the counterfeit products. Exhibits 13 through 17 are copies of United States Copyright Office records for registrations of the CAH base set and four expansions. Exhibits 18 through 21 are copies

of the United States Patent and Trademark Office's records associated with the CAH trademarks allegedly infringed.

Defendants did not respond to the motion for default judgment.

DISCUSSION

Default Judgment Standard

Where default has been entered, the allegations of the complaint are taken as true, except as to the amount of damages; it then “remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.” *Murray v. Lene*, 595 F.3d 868, 871 (8th Cir. 2010) (citation omitted).

Federal Copyright Claims – Liability

To prevail on its federal copyright infringement claims (Count I), Plaintiff must establish “(1) ownership of a valid copyright and (2) copying of original elements of the copyrighted work.” *Warner Bros. Entm't v. X One X Prods.*, 644 F.3d 584, 595 (8th Cir. 2011). Taking the allegations in the complaint as true, Plaintiff has satisfied the two requirements for a claim of direct infringement, and so is entitled to default judgment as to liability against Defendants on Count I. *See, e.g., Microsoft Corp. v. McGee*, 490 F. Supp. 2d 874, 878-79 (S.D. Ohio 2007).

Federal Copyright Claims – Statutory Damages

The federal Copyright Act provides for statutory damages of not less than \$750 and not more than \$30,000 per copyright; subsection (2) provides for up to \$150,000 per copyright for willful infringements. 17 U.S.C. § 504(c)(1). The Copyright Act does not define “willful,” however, federal courts have determined that willfulness may be based on

actual or constructive knowledge of the infringement, or reckless disregard of a copyright holder's rights. *Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 799 (4th Cir. 2001); *RCA/Ariola Intern., Inc. v. Thomas & Grayston Co.*, 845 F.2d 773, 779 (8th Cir. 1988).

Upon a defendant's default, courts have wide discretion in determining the appropriate amount of statutory damages, based on three main factors: (1) "the expenses saved and profits reaped by the defendants in connection with the infringements;" (2) "the revenues lost by the plaintiffs as a result of the defendants' conduct;" and (3) "the infringers' state of mind whether willful, knowing, or merely innocent." *W. Coast Prods., Inc. v. Garrett*, No. 4:12CV01551 AGF, 2014 WL 752670, at *2 (E.D. Mo. Feb. 25, 2014) (quoting *Gnat Booty Music v. Creative Catering of Wadhams, LLC*, 761 F. Supp.2d. 604, 609 (E.D. Mich. 2011)). Statutory copyright damages should also be "designed to discourage wrongful conduct." *Cass Cty. Music Co. v. C.H.L.R., Inc.*, 88 F.3d 635, 643 (8th Cir. 1996) (citation omitted). And in crafting an award, courts must also consider "the strong public interest in insuring the integrity of the copyright laws." *Music City Music v. Alfa Foods, Ltd.*, 616 F. Supp. 1001, 1004 (E.D. Va. 1985).

In addition, there are due process considerations:

The Supreme Court long ago declared that damages awarded pursuant to a statute violate due process only if they are so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. . . . [T]he absolute amount of the award [in a Copyright Act case], not just the amount per violation, is relevant to whether the award is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.

Warner Bros. Entm't v. X One X Prods., 840 F.3d 971, 977 (8th Cir. 2016) (citations omitted).

“Copyright infringement is in the nature of a tort, for which all who participate in the infringement are jointly and severally liable.” *Cross Keys Publ’g Co. v. LL Bar T Land & Cattle Co.*, 887 F. Supp. 219, 222 (E.D. Mo. 1995) (citation omitted) (holding that the corporation that owned and operated the establishment where infringing performances occurred, as well as individuals managing the establishment, were jointly and severally liable for infringement damages).

Here, the willfulness of Defendants’ copyright infringement is established by Plaintiff’s allegation, accepted as true, that Defendants refused to comply with Plaintiff’s repeated requests to cease and desist their counterfeiting activities. Moreover, as described above, Plaintiff submitted evidence of several letters it sent to Skkye, indicating Defendant’s willful violation of the Copyright Act through its use of Plaintiff’s copyrighted material. Willfulness can also be implied from Defendants’ failure to defend themselves in this case. *See Blue Martini Founders, LLC v. Sadle Enterps., Inc.*, No. 8:15-CV-29, 2016 WL 3983254, at *2 (D. Neb. July 25, 2016).

The only information on record regarding the profits reaped by Defendants is Markos’ estimate that Defendants made \$10,000 to \$20,000 in sales of infringing Games. Based on Markos’ declaration, the Court believes this is a reliable estimate. The Court believes it would be unreasonable to award the maximum statutory damages of \$750,000, which would be more than 37 times greater than the highest estimate of the sales (not profits) made by Defendants. The Court believes that an award of \$12,000 per infringement, totaling \$60,000, or three times the highest estimated sales of Defendants’ infringing Games, is, in combination with the permanent injunction, order of

impoundment/destruction, and separate damages award for trademark infringement, all discussed below, is a just and suitably deterrent outcome.

Trademark Claims – Liability

Under the Lanham Act and Missouri common law,¹ to prove trademark infringement under 15 U.S.C. 1114(1), a plaintiff must show that it has ownership of “a valid, protectable mark” and “that there is a likelihood of confusion between its mark and the defendant’s mark.” *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 569 F.3d 383, 389 (8th Cir. 2009). Use of a “counterfeit,” defined as a spurious mark which is identical to, or substantially indistinguishable from, a registered mark, in connection with the sale of a good, is a form of infringement. 15 U.S.C. §§ 1114(1)(a), 1127; *see also Council of Better Bus. Bureaus v. Bailey & Assocs.*, 197 F. Supp. 2d 1197, 1219-22 (E.D. Mo. 2002).

Registration of a trademark, as the Plaintiff has alleged for the three trademarks in question here (ECF No. 1 at 4), is “prima facie evidence of the validity and subsistence of the [m]arks and the [Plaintiff’s] exclusive right to use them in commerce.” *Council of Better Bus. Bureaus, Inc.*, 197 F. Supp. 2d at 1211. And it may be presumed that counterfeiting another’s mark, as the Plaintiff alleges Defendants did, creates a likelihood of confusion. *See George & Co., LLC v. Xavier Enters., Inc.*, No. 09–2973 (DWF/RLE), 2009 WL 4730331, at *4, (D. Minn. Dec. 4, 2009) (citing *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 986 (11th Cir. 1995)). Accordingly, the Court will enter default judgment against Defendants as to liability on Counts II, III, and IV.

¹ The same facts which support a suit for trademark infringement support a suit for unfair competition and common law infringement under Missouri law. *Cmty. of Christ Copyright Corp. v. Devon Park Restoration Branch of Jesus Christ’s Church*, 634 F.3d 1005, 1010 (8th Cir. 2011).

Trademark Claims – Statutory Damages

The Lanham Act allows for statutory damages for use of counterfeit marks of not less than \$1,000 and not more than \$200,000 per counterfeit mark. 15 U.S.C. § 1117(c). If the court finds that the use of the counterfeit mark was willful, the maximum award is raised to \$2,000,000 per counterfeit mark, “as the court considers just.” *Id.*, § 1117(c)(2). A defendant’s continued infringement after notice of his wrongdoing is “probative evidence of willfulness.” *Ford Motor Co. v. Cross*, 441 F. Supp. 2d 837, 852 (E.D. Mich. 2006). Here, willfulness is established by the same allegations, evidence, and procedural posture of the case that established willfulness with respect to Defendants’ copyright infringement claims.

There is a split of authority on whether a plaintiff may recover statutory damages under both the Copyright Act and the Lanham Act for the same conduct. *Compare, e.g., Cengage Learning, Inc. v. Shi*, No. 13 Civ. 7772 (VSB), 2017 WL 1063463, at *3 (S.D.N.Y. Mar. 21, 2017) (“[A] recovery of statutory damages under both [the Copyright Act and the Lanham Act] seems inappropriate here, as the awards would compensate the same injury and a plaintiff seeking compensation for the same injury under different legal theories is of course entitled to only one recovery.”), *with Nintendo of Am., Inc. v. Dragon Pac. Int’l*, 40 F.3d 1007, 1011 (9th Cir. 1994) (“Congress created two separate statutory schemes to govern copyrights and trademarks; in order to effectuate the purposes of both statutes, damages may be awarded under both.”).

Plaintiff has not cited, nor has the Court found, controlling Eighth Circuit precedent on this issue. This Court believes that the best approach is that adopted in *Spectrum Brands v. I&J Apparel*, which recognizes the availability of two separate awards

of damages when violations of both the Copyright Act and the Lanham Act have been established, “but this does not mean that the damages award for one is entirely irrelevant to the other.” *Spectrum Brands, Inc. v. I&J Apparel, LLC*, No. 16-CV-741-JDP, 2017 WL 2303577, at *4 (W.D. Wis. May 26, 2017). Instead, “a court’s damage award must avoid ‘a windfall to a prevailing plaintiff’ . . . [and] represent at least ‘some approximation of actual damages.’” *Id.* (citations omitted).

As noted above, Plaintiff seeks statutory damages between \$3,000 and \$6,000,000 for the three willful trademark infringements. The Lanham Act “does not provide guidelines for courts to use in determining an appropriate award,” *Louis Vuitton Malletier v. Veit*, 211 F. Supp. 2d 567, 583 (E.D. Pa. 2002), and the award is only limited by what “the court considers just.” 15 U.S.C. § 1117(c). Factors courts have considered in determining a statutory damages award under the Lanham Act are similar to the factors for a statutory damages award under the Copyright Act. *See, e.g., Michael Kors, L.L.C. v. Mulberry St. Props. Corp.*, No. 15-CV-5504, 2016 WL 3034333, at *3 (S.D.N.Y. May 27, 2016).

The Court is not convinced that a balance of the factors here points to a maximum award of \$6,000,000, as Plaintiff seeks. “Most judges have issued awards far below the statutory maximum (\$2 million per infringed mark), on a per mark basis, where the defendant willfully infringes on the plaintiff’s mark and fails to stop such behavior after being put on notice by the plaintiff or the court, but where there is no concrete information about the defendant’s actual sales figures and profits and the estimate of plaintiff’s lost revenue.” *All-Star Mktg. Grp., LLC v. Media Brands Co.*, 775 F. Supp. 2d 613, 624 (S.D.N.Y. 2011) (collecting cases). Upon review of the record and the relevant factors,

the Court will award Plaintiff \$20,000 per trademark infringement, for a total award of \$60,000. The Court believes this figure compensates Plaintiff in a fashion consistent with the purposes of the Lanham Act and case law by trebling the highest estimate of Defendants' sales. *See, e.g., Chanel, Inc. v. Doan*, No. C 05 03464 VRW, 2007 WL 781976, at *5 (N.D. Cal. Mar. 13, 2007). The Court further believes that this award of \$60,000 in statutory damages under the Lanham Act, in conjunction with the \$60,000 award for statutory damages under the Copyright Act, represents a suitable approximation of actual damages and sufficiently deters future wrong-doing, while avoiding a "windfall" to the Plaintiff. The Court also concludes that this award does not violate due process.

Injunctive Relief

Both the Copyright Act and the Lanham Act provide for permanent injunctive relief. 17 U.S.C. § 502(a), 15 U.S.C. § 1116. As courts approach the granting injunctive relief under each Act in a consistent manner, and the relief sought here is coextensive, the Court will analyze the matters together. When a "history of continued infringement" is present and there is "a significant threat of future infringement," a permanent injunction is appropriate. *Twentieth Century Fox Film Corp. v. Jordon*, No: 4:07CV01249 (CEJ), 2007 WL 4365746, at *2 (E.D. Mo. Dec. 10, 2007) (citing *Olan Mills, Inc. v. Linn Photo Co.*, 23 F.3d 1345, 1349 (8th Cir. 1994)). An award of a permanent injunction for copyright infringement must also conform to traditional equity principles. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 392 (2006). Thus, a plaintiff seeking a permanent injunction must demonstrate:

- (1) that it has suffered an irreparable injury;
- (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff

and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

Id. at 391.

“In copyright cases, irreparable harm is presumed on a showing of a reasonable likelihood of success on the merits,” a showing satisfied here by the default of Defendants. *See Arista Records, Inc. v. Beker Enterps., Inc.*, 298 F. Supp. 2d 1310, 1314 (S.D. Fla. 2003). The hardship to Plaintiff resulting from the infringement and the possibility of continued infringement, outweighs any burden Defendants face from being enjoined from continuing their infringement, as “there is no harm to Defendant inasmuch as an injunction will merely require Defendant to comply with the Copyright Act and Lanham Act.” *See Microsoft Corp. v. McGee*, 490 F. Supp.2d 874, 883 (S.D. Ohio 2007). With respect to public interest, because Congress has elected to grant certain exclusive rights to the owner of a copyright in a protected work, “it is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected work.” *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3rd Cir. 1983) (citation omitted). The Court has reviewed the permanent injunction proposed by Plaintiff and believes it is appropriate; accordingly, it will be entered as set forth below.

Plaintiff additionally requests that the Court order the impoundment or destruction of infringing goods, all articles by means of which such infringing goods may be reproduced, and all marketing, advertising, or promotional materials depicting Defendants’ infringing goods. This request is provided for by the Copyright Act, 17 U.S.C. § 503 and

will be awarded here. *See, e.g., Walker Mfg., Inc. v. Hoffmann, Inc.*, 220 F. Supp. 2d 1024, 1039 (N.D. Iowa 2002).

Attorney's Fees and Costs

Under the Copyright Act, “the court may award a reasonable attorney’s fee to the prevailing party.” 17 U.S.C. § 505. A district court’s “‘equitable discretion’ to award such fees to a prevailing party is ‘to be exercised in an evenhanded manner by considering factors such as whether the lawsuit was frivolous or unreasonable, the losing litigant’s motivations, the need in a particular case to compensate or deter, and the purposes of the Copyright Act.’” *Pearson Educ., Inc. v. Almgren*, 685 F.3d 691, 695–96 (8th Cir. 2012) (quoting *Action Tapes, Inc. v. Mattson*, 462 F.3d 1010, 1014 (8th Cir. 2006)).

Pursuant to the Lanham Act, prevailing parties are entitled to recover reasonable attorney’s fees “in exceptional cases.” 15 U.S.C. § 1117(a). Courts have held that willful and deliberate trademark infringement is such an “exceptional case” where an award of attorney’s fees is appropriate. *See Metric & Multistandard Components Corp. v. Metric’s Inc.*, 635 F.2d 710, 716 (8th Cir. 1980); *Xiem Studio, LLC v. Nguyen*, No. 4:14-CV-1366-CEJ, 2015 WL 3795852, at *5 (E.D. Mo. June 18, 2015).

The Court will thus grant Plaintiff attorney’s fees in this case, to the extent that the reasonableness of its fees is supported by further submission to the Court, as requested by Plaintiff.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for default judgment against Defendants is **GRANTED** in the total amount of **\$120,000**, plus post judgment interest as allowed by law.

IT IS FURTHER ORDERED that a **PERMANENT INJUNCTION** is entered in this case, as follows:

Defendants, their agents, employees, representatives, partners, joint venturers, and/or anyone acting on behalf of, or in concert with, Defendants, shall be and hereby are permanently enjoined from:

- a. manufacturing, reproducing, selling, offering for sale, promoting, advertising, distributing, and/or commercially exploiting in any manner, either directly or indirectly, the counterfeit products or other works which incorporate Plaintiff's registered copyrights and trademarks at issue in this case; and
- b. using any false description, representation, or designation, or otherwise engaging in conduct that is likely to create an erroneous impression that Defendants' products are endorsed by Plaintiff or are connected in any way with Plaintiff.

IT IS FURTHER ORDERED that Defendants shall, within **ten days** of the date of this Memorandum and Order, destroy all of Defendants' infringing goods; all articles by means of which such infringing goods may be reproduced, to the extent the articles are specific to the infringing goods; and all marketing, advertising, or promotional materials depicting Defendants' infringing goods.²

² Plaintiff has not asked to the Court to put in place a means of verifying Defendants' compliance with the order of destruction.

IT IS FURTHER ORDERED that Plaintiff shall submit within **14 days** of the date of this Memorandum and Order, documentation in support of an award of reasonable attorney's fees and costs incurred in this action.

IT IS FURTHER ORDERED that the Clerk of Court shall mail a copy of this Memorandum and Order to Defendants, at the addresses reflected in the file.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 9th day of August, 2017