Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Brieanne Scully (BS 3711)
bscully@ipcounselors.com
Andrew S. Chung (AC 1988)
achung@ipcounselors.com
EPSTEIN DRANGEL LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
Mattel, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTEL, INC.,

Plaintiff

v.

1994_HONEYMOON, ACTOR, ALAN_FLYTIMES, ANGELO BEAUTY COSMETICS COMPANY, ANIME BAG WORLD, ANIME CLOCK WORLD, ANIMETOPIA, APOWU522, BABYSBREATHLIVE, BAFFIN, BAND SUNGLASS, BAOLILIBAO, BEARMAMA1314, BELONG 2 U, BIG OUTLETS, C&R TECHNOLOGY CO., LIMITED, CHANG YAO, CHEAPMALL, CHENGXINDIANPU, CHINA YANGZHANG TRADE MALL, COLORFUL CANDY, CRAZT FAST STOY, CULTURAL TRANSMISSION, CXY666, DONGXING CLOTHING STORE, DX.COM, EMA BEST, ESCALA, EVERYTHING I DO, EXCELWORD, FASHION SUNSHINE STORE, FASHION20156, FIRE SHIELD, FLAG FLAG SHOP, FOCAL MEN FASHION, FOUR CATS, FREAKY FITNESS TINTIN SHOP, FUJIAN LANGSHEN, FUTONGSHANGMAOYOUXIANGONGSI, FUZHOUMUXIAOHUWAIYONGPINDIAN, GEM WEN, GLAMOUR LIFE CO., LTD, GOOG AGAIN FLAGSHIP STORE, GROOVE COVERAGE, GUANGZHOU WHEELER CO., LTD, HANGWEI,

CIVIL ACTION No. 18-cv-10427 (KPF)

HANGZHOUJINGPINBAOBAO, HEAD324BIRD, HEFANGXIANGSTORE, HEKOGUANGHUA4823, HELLO BEAUTY GIRL, HEREIN, HUASHENG COMPANY LTD, HUPING-WELL, IREVIN SHOP, JACKLUO'S SHOP, JACKYANG8, JMZ, JUST A START, KISMET INTERNATIONAL, LABOUTIQUEDESTOONS, LANCE SHOP, LHQ_SHOP, LIFTCART, LIIFASHION, LIJUAN_SUM, LINLI SHOP, LINLINSHIPIN, LINQUANSHOP, LINSAISAI, LIPENGJINGPINDIANPU, LIVING AT HOME, LIYING FASHION, LJSTORE1, LU LU MIN SHOP, MAOGEGE, MQSTYLE INTERNATIONAL, MULTI LEGEND, NANANA, NEVCO, NEW CL, NEW GOOD GOODS, NEW WORLD NEW LIFE, NONGNONG, PATRA, PENGMEI JINGPIN DIANPU, QIAO FENG CHOU, RAOHUIYUAN, RUNSHION, SHANGHAIHUWAIYUNDONGSHANGMAOYOUXIANG ONGSI, SHENZHENSHISHENGNUOSIKEJIYOUXIANGONGSI, SHENZHENSHIYIYOUWENJULIPINYOUXIANGONGSI, SHIMAOYONGTONG, SHIRLY STORE, SHURRIKTOYS, SIADE-EYS888, SIX STAR TRADING CO., LTD., SO FASHION 2015, SOMETIMES321, SPARTAN3411, SPORT SCOPE, SPRINGBUY, SUN DIGIMON SPECIAL COUNTER, SUPER STORE, SVEN STORES, TEENAGE DREAM, THE COLOURFUL LIFE, THE DEBUT, THE LIFE STORE, THINK1989, THREE TREE, TIANTIANS, TIANTIANTOP, TINGTINGGUAIGUAI, TOP1STORE_JIANG, TRIUMPH GENUINE YONG JU, VAITEX4YOU, VIVIAN ZHAO INTERNATIONAL, VK BEAUTY CO.,LTD, WANGXIN8520, WASH, WGHZ TEAM, WGTD WHOLESALE CO.,LTD., WOMEN'S FASHION TOOLS, WUHAN SHANG QUAN TRADING CO., LTD., WUYOU, XIAMEN HONGXIN ELECTRONIC, XUKE INTERNATIONAL TRADE CORPORATION, XXNNCC, YIDEA, YINSHUNLONG, YIWU FASHIONSHOW ECOMMERCE CO.,LTD, YIWU PUER E-COMMERCE, YIWU PU'ER E-COMMERCE CO.,LTD, YONGMAOGIFTS, YOUNG STYLE, YOUNG-FOREVER, YUANZHENZHEN, YUEBO88YUEBO01, ZALA TRADE, ZFQLP16, ZHANGHONGMEI830 and ZHANGYUEXIN,

Defendants

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS APPLICATION FOR AN ORDER TO SHOW CAUSE WHY DEFAULT JUDGMENT AND A PERMANENT INJUNCTION SHOULD NOT BE ENTERED AGAINST DEFAULTING DEFENDANTS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 5

III. STATEMENT OF FACTS 6

IV. ARGUMENT 7

A. Default Judgment is Appropriate as Defaulting Defendants Have Failed to Appear in This Action 7

B. Plaintiff is Entitled to a Permanent Injunction 7

C. Defaulting Defendants Acted Willfully 11

D. Plaintiff is Entitled to Heightened Statutory Damages 12

E. Plaintiff is Entitled to a Post-Judgment Asset Restraint, The Transfer of Defaulting Defendants' Frozen Assets and Post-Judgment Interest on Defaulting Defendants' Frozen Assets 20

V. CONCLUSION 23

TABLE OF AUTHORITIES

Cases

Allee v. Medrano, 416 U.S. 802 (1974) 6
Allstar Marketing Group, LLC v. _GB Housewear Store, et al., No. 17-cv-7596 (SHS) (S.D.N.Y. July 9, 2018)..... 17
Artemide Inc. v. Spero Elec. Corp., 2010 U.S. Dist. LEXIS 136870 (E.D.N.Y. Nov. 23, 2010)... 6
AW Licensing, LLC v. Bao, 15-CV-1373-KBF, 2016 U.S. Dist. LEXIS 101150 (S.D.N.Y. Aug. 2, 2016) 12
Bambu Sales, Inc. v. Ozak Trading, Inc., 58 F.3d 849 (2d Cir. 1995)..... 9
Belstaff Grp. SA v. Doe, No. 15-cv-2242 (PKC) (MHD), 2015 U.S. Dist. LEXIS 178124 (S.D.N.Y. June 18, 2015)..... 17
Burger King Corp. v. Rudzewicz, 471 U.S. 462 (U.S. 1985)..... 4
City of New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114 (2d Cir. 2011) 4
Coach, Inc. v. Melendez, No. 10-cv-6178 (BSJ) (HBP), 2011 U.S. Dist. LEXIS 116842 (S.D.N.Y. Sep. 2, 2011) 9
Coach, Inc. v. Weng, 2014 U.S. Dist. LEXIS 79005 (S.D.N.Y. June 7, 2014) 10
eBay Inc. v. MercExchange, LLC, 547 U.S. 388 (2006)..... 5
Enron Oil Corp. v. Diakuhara, 10 F.3d 90 (2d Cir. 1993) 4
Fitzgerald Publ'g Co., Inc. v. Baylor Publ'g Co., 807 F.2d 1110 (2d Cir. 1986) 11
Gray v. Sanders, 372 U.S. 368 (1963)..... 6
Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155 (2d Cir. 1992) 5
Gucci Am. Inc. v. Bank of China, 768 F.3d 122 (2d Cir. 2014)..... 15
Gucci Am., Inc. v. Curveal Fashion, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831 (S.D.N.Y. Jan. 20, 2010)..... 17
Gucci Am., Inc. v. Daffy's Inc., 354 F.3d 228 (3d Cir. 2003) 9
Gucci Am., Inc. v. Duty Free Apparel, Ltd., 315 F. Supp. 2d 511 (S.D.N.Y. 2004) 9
Harris v. Fairweather, 2012 U.S. Dist. LEXIS 128409 (S.D.N.Y. Sept. 10, 2012) 5
HICKIES, Inc. v. SHOP1668638 Store a/k/a Professional Shoes Company, et al., No. 17-cv-9101 (ER) (S.D.N.Y. May 4, 2018)..... 17
Hounddog Prods., L.L.C. v. Empire Film Group, Inc., 826 F. Supp. 2d 619 (S.D.N.Y. 2011) 8
Ideavillage Prods. Corp. v. 29shyans2012, et al., 18-cv-6266 (AT), (S.D.N.Y. Nov. 6, 2018) .. 17
Ideavillage Prods. Corp. v. 711 Market, et al., No. 18-cv-7832-JMF (S.D.N.Y. Dec. 12, 2018) 17
Ideavillage Prods. Corp. v. Bling Boutique Store, et al., No. 16-cv-9039 (KMW) (S.D.N.Y. July 24, 2018) 17
Ideavillage Prods. Corp. v. Chinafocus, et al., No. 17-cv-3894 (RA) (S.D.N.Y. Feb. 9, 2018).. 17
Ideavillage Prods. Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., LTD., et al., No. 17-cv-9099 (JMF) (S.D.N.Y. March 1, 2018) 17
JLM Couture, Inc. v. Aimibridal, et al., No. 18-cv-1565 (JMF) (S.D.N.Y. June 7, 2018)..... 17
Louis Vuitton Malletier v. Carducci Leather Fashions, Inc., 648 F. Supp. 2d 501 (S.D.N.Y. 2009) 11, 12
Mattel, Inc. v. 86755, et al., No. 18-cv-8825-JSR (S.D.N.Y. Dec. 17, 2018) 17
Mint, Inc. v. Iddi Amad, 2011 U.S. Dist. LEXIS 49813 (S.D.N.Y. May 9, 2011) 7
Montblanc Simplo GMBH v. Colibri Corp., 692 F. Supp. 2d 245 (E.D.N.Y. 2010)..... 7, 8
Moose Toys Pty Ltd., et al. v. 963, et al., No. 18-cv-2187-VEC (S.D.N.Y. Nov. 30, 2018)..... 17

N.A.S. Imp. Corp. v. Chenson Enters., 968 F.2d 250 (2d Cir. 1992) 9
Nike, Inc. v. Top Brand Co., 00 Civ. 8179 (KMW) (RLE), 2006 U.S. Dist. LEXIS 76543 (S.D.N.Y. Feb. 27, 2006) 14
NY City Triathlon, LLC v. NYC Triathlon Club, Inc., 704 F. Supp. 2d 305 (S.D.N.Y. 2010) 8
Off-White LLC v. A445995685, et al., No. 18-cv-2099-LGS-KNF (S.D.N.Y. Nov. 16, 2018) ... 17
Ontel Prods. Corp. v. Airbrushpainting Makeup Store, 17-cv-871 (KBF), 2017 Dist. LEXIS 221489 (S.D.N.Y. June 29, 2017) 14
Ontel Prods. Corp. v. Auto Mall, et al., No. 17-cv-5190 (AT) (S.D.N.Y. Nov. 27, 2017) 17
Pearson Educ., Inc. v. Vegara, No. 09 Civ. 6832 (JGK)(KNF), 2010 U.S. Dist. LEXIS 101597 (S.D.N.Y. Sept. 27, 2010) 7
Rovio Entertainment Ltd. and Rovio Animation Oy v. Angel Baby Factory d/b/a Angelbaby_Factory, et al., No. 17-cv-1840 (KPF) (S.D.N.Y. Sept. 13, 2017) 17
Rovio Entertainment Ltd. and Rovio Animation Oy v. Best Baby and Kid Store, et al., No. 17-cv-4884 (KPF) (S.D.N.Y. June 28, 2018) 17
Salinger v. Colting, 607 F.3d 68 (2d Cir. 2010) 5
Spin Master Ltd. v. Alan Yuan's Store, 325 F. Supp. 3d 413 (S.D.N.Y. 2018) 17
Steele v. Bell, 2014 U.S. Dist. LEXIS 44976 (S.D.N.Y. Mar. 3, 2014) 6
Tapestry, Inc., et al. v. baoqingtianff, et al., No. 18-cv-7650-PAE (S.D.N.Y. Jan. 8, 2019) 17
Tiffany (NJ) Inc. v. Luban, 282 F. Supp. 2d 123 (S.D.N.Y, 2003) 8
Tiffany (NJ) LLC v. Forbse, No. 11-cv-4976 (NRB), 2015 US Dist. LEXIS 129647 (S.D.N.Y. Sep. 22, 2015) 15
Tory Burch LLC v. Yong Sheng Int'l Trade Co., No. 10 Civ. 9336 (DAB), 2011 U.S. Dist. LEXIS 158882 (S.D.N.Y. May 13, 2011) 17
Trans World Airlines, Inc. v. Hughes, 449 F.2d 51 (2d Cir. 1971) 5
Twin Peaks Prods., Inc. v. Publ'ns Int'l, Ltd., 996 F.2d 1366 (2d Cir. 1993) 9
Wow Virtual Reality, Inc. v. BIENBEST, et al., No. 18-cv-3305-VEC (S.D.N.Y. Dec. 5, 2018) 17
WowWee Group Limited, et al. v. A249345157, et al., No. 17-cv-9358 (VEC) (S.D.N.Y. July 31, 2018) 17

Statutes

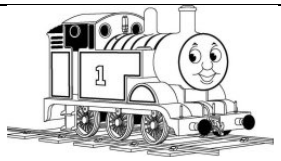
15 U.S.C. § 1116 ..... 5, 17
15 U.S.C. § 1117 ..... 1, 10, 11, 13
17 U.S.C. § 502 5
28 U.S.C. § 1961 ..... 13, 17
Fed. R. Civ. P. 55 ..... 1, 4
Fed. R. Civ. P. 64 17
Fed. R. Civ. P. 69 15
Fed. R. Evid. 1006 13
N.Y. C.P.L.R. § 5222 15

GLOSSARY

Term	Definition	Docket Entry Number
Plaintiff or "Mattel"	Mattel, Inc.	N/A
Defendants	1994_honeymoon, Actor, alan_flytimes, angelo beauty cosmetics company, Anime Bag World, Anime Clock World, Animetopia, apowu522, Babysbreathlive, Baffin, band sunglass, baolilibao, bearmama1314, BELONG 2 U, Big Outlets, C&R TECHNOLOGY CO., LIMITED, Chang Yao, cheapmall, chengxindianpu, China YangZhang Trade Mall, Colorful candy, crazt fast stoy, Cultural Transmission, cxy666, Dongxing clothing store, dx.com, EMA BEST, escala, Everything I do, excelword, fashion sunshine store, Fashion20156, Fire Shield, Flag flag shop, focal men fashion, Four Cats, Freaky Fitness Tintin shop, FuJian LangShen, futongshangmaoyouxiangongsi, fuzhoumuxiaohuwaiyongpindian, Gem Wen, Glamour life co., LTD, Goog again flagship store, Groove Coverage, Guangzhou wheeler co., LTD, HangWei, hangzhoujingpinbaobao, Head324Bird, hefangxiangstore, hekoguanghua4823, hello beauty girl, Herein, huasheng company ltd, huping-well, irevin shop, JACKLUO'S SHOP, jackyang8, JmZ, Just a start, Kismet International, laboutiquedestoons, Lance shop, LHQ_shop, LIFTCART, Liifashion, LIJUAN_SUM, linli shop, linlinshipin, linquanshop, linsaisai, lipengjingpindianpu, Living at home, liying fashion, ljstore1, lu lu min shop, maogege, MQStyle International, Multi Legend, Nanana, Nevco, new cl, new good goods, New world new life, Nongnong, patra, pengmei jingpin dianpu, Qiao Feng Chou, raohuiyuan, runshion, shanghaihuwaiyundongshangmaoyouxiangongsi, shenzhenshishengnuosikejiyouxiangongsi, shenzhenshiyiyouwenjulipinyouxiangongsi, SHIMAOYONGTONG, shirly store, shurriktoys, SIade-eys888, Six Star Trading Co., Ltd., So Fashion 2015, Sometimes321, spartan3411, Sport Scope, springbuy, Sun Digimon Special Counter, Super Store, Sven Stores, Teenage Dream, The Colourful life, The debut, The life store, Think1989, Three Tree, tiantians, TiantianTop, tingtingguaiguai, top1store_Jiang, Triumph Genuine Yong Ju, vaitex4you, vivian zhao international, VK Beauty Co.,Ltd, wangxin8520, wash, WGHZ Team, WGTD wholesale Co.,Ltd., Women's Fashion tools, Wuhan Shang Quan	N/A

	Trading Co., Ltd., wuyou, XIAMEN Hongxin electronic, Xuke International Trade Corporation, xxnncc, YIDEA, yinshunlong, yiwu fashionshow Ecommerce co.,ltd, yiwu puer E-commerce, YIWU PU'ER E-commerce Co.,Ltd, yongmaogifts, Young Style, Young-Forever, yuanzhenzhen, yuebo88yuebo01, ZALA Trade, Zfqlp16, zhanghongmei830 and zhangyuexin	
Defaulting Defendants	1994_honeymoon, Actor, alan_flytimes, angelo beauty cosmetics company, Anime Bag World, Anime Clock World, Animetopia, apowu522, Babysbreathlive, Baffin, band sunglass, baolilibao, bearmama1314, BELONG 2 U, Big Outlets, C&R TECHNOLOGY CO., LIMITED, Chang Yao, cheapmall, chengxindianpu, Colorful candy, crazt fast stoy, Cultural Transmission, cxy666, Dongxing clothing store, dx.com, EMA BEST, escala, Everything I do, excelword, Fashion20156, Fire Shield, Flag flag shop, Four Cats, Freaky Fitness Tintin shop, FuJian LangShen, futongshangmaoyouxiangongsi, Gem Wen, Glamour life co., LTD, Goog again flagship store, Guangzhou wheeler co., LTD, HangWei, hangzhoujingpinbaobao, Head324Bird, hefangxiangstore, hekoguanghua4823, hello beauty girl, Herein, huasheng company ltd, huping-well, irevin shop, JACKLUO'S SHOP, jackyang8, JmZ, Just a start, Lance shop, LHQ_shop, LIFTCART, LIJUAN_SUM, linli shop, linlinshipin, linquanshop, linsaisai, lipengjingpindianpu, Living at home, liying fashion, ljstore1, lu lu min shop, maogege, MQStyle International, new cl, new good goods, New world new life, Nongnong, patra, pengmei jingpin dianpu, Qiao Feng Chou, raohuiyuan, runshion, shanghaihuwaiyundongshangmaoyouxiangongsi, shenzhenshishengnuosikejiyouxiangongsi, shenzhenshiyiyouwenjulipinyouxiangongsi, SHIMAOYONGTONG, shirly store, shurriktoys, So Fashion 2015, Sometimes321, spartan3411, Sport Scope, springbuy, Sun Digimon Special Counter, Super Store, Sven Stores, The Colourful life, The debut, The life store, Three Tree, TiantianTop, tingtingguaiguai, top1store_Jiang, vaitex4you, vivian zhao international, VK Beauty Co.,Ltd, wangxin8520, wash, WGHZ Team, WGTD wholesale Co.,Ltd., Women's Fashion tools, Wuhan Shang Quan Trading Co., Ltd., wuyou, XIAMEN Hongxin electronic, Xuke International Trade Corporation, xxnncc, YIDEA, yinshunlong, yiwu fashionshow Ecommerce co.,ltd, yiwu puer E-commerce, YIWU PU'ER E-commerce Co.,Ltd, yongmaogifts, Young	N/A

	Style, Young-Forever, yuanzhenzhen, yuebo88yuebo01, ZALA Trade, zhanghongmei830 and zhangyuexin	
Sealing Order	Order to Seal File entered on November 9, 2018	1
Complaint	Plaintiff's Complaint filed on November 9, 2018	7
Application	Plaintiff's *ex parte* application for: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 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 November 9, 2018	14-18
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiff's Application	17
Delanty Dec.	Declaration of Lisa Delanty in Support of Plaintiff's Application	16
Scully Dec.	Declaration of Brieanne Scully in Support of Plaintiff's Application	18
TRO	1) Temporary Restraining Order; 2) Order Restraining Assets and Merchant Storefronts, 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 November 9, 2018	19
PI Order	November 26, 2018 Preliminary Injunction Order	20
Wish	A San Francisco, California-based, online marketplace and e-commerce platform located at Wish.com, which is owned by ContextLogic, Inc., that allows 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.	N/A
User Account(s)	Any and all websites and/or accounts with online marketplace platforms such as Wish, 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 other persons in active concert with any of them	N/A

Merchant Storefront(s)	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 products, including Counterfeit and/or Infringing Products, which are 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
Mattel Products	Mattel's well-known children's toys and games under its iconic brands, including, but not limited to: Barbie, Thomas & Friends, Hot Wheels, American Girl and Fisher-Price	N/A
Thomas & Friends Products	A vast range of commercial products, including trains and tracks, games, puzzles and books featuring the main character Thomas the Tank Engine as a blue, cheery, anthropomorphic steam engine and other train characters	N/A
Thomas & Friends Marks	 U.S. Trademark Reg. No. 3,799,968 for for a variety of goods in Classes 9, 16, 24, 25 and 28, U.S. Reg. No. 3,085,762 for "THOMAS & FRIENDS" for a variety of goods in Classes 9, 16, 25, 28 and 41, U.S. Trademark Reg. No. 3,500,987 for "THOMAS & FRIENDS" for a variety of goods in Classes 3, 11, 14 and 24 and U.S. Trademark Reg. No. 3,531,151 for "THOMAS & FRIENDS" for a variety of goods in Classes 18, 20, 21 and 29	N/A
Thomas & Friends Works	U.S. Copyright Reg. PA 1-930-773, covering Thomas & Friends: The Thomas Way, U.S. Copyright Reg. TX 7-953-676, covering Thomas & Friends: Story Time Collection, U.S. Copyright Reg. TX 7-973-191, covering Thomas & Friends: Special Delivery (Lift-a-Flap Sound Book), U.S. Copyright Reg. TX 7-973-196, covering Thomas & Friends: Railway Race Day (Lift-a-Flap Sound Book), U.S. Copyright Reg. TX 7-973-208, covering Thomas & Friends: I'm Ready to Read with Thomas (Play-a-Sound book), U.S. Copyright Reg. TX 7-985-398, covering Thomas & Friends: I Can Help Thomas (Play-a-Sound book), U.S. Copyright Reg. TX 7-992-119, covering Thomas & Friends: Nine Favorite Tales (Little Golden Book Collection), U.S. Copyright Reg. TX 8-149-304, covering Thomas & Friends: Books & Blocks and U.S. Copyright Reg. TX 4-442-061, covering Thomas the tank engine / by W. Awdry	N/A

Counterfeit and/or Infringing Products	Products bearing or used in connection with the Thomas & Friends Marks and/or Thomas & Friends Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Thomas & Friends Marks and/or Thomas & Friends Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Thomas & Friends Marks and/or Thomas & Friends Works and/or products that are identical or confusingly or substantially similar to the Thomas & Friends Products	N/A
Financial Institutions	Any and all banks, financial institutions, credit card companies and payment processing agencies, such as ContextLogic, PayPal Inc., Payoneer Inc., PingPong Global Solutions, Inc. and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	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	Defendants' Assets from any and all accounts associated with or utilized by any Defendant or any Defendant's Merchant Storefront(s) and User Account(s) (whether said account is located in the U.S. or abroad)	N/A
Defendants' Frozen Accounts	Defendants' Financial Accounts that were and/or are attached and frozen or restrained by the Financial Institutions 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
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
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 February 25, 2019	TBD
Chung Aff.	Affidavit by Andrew Sup Chung in Support of Plaintiff's Motion for Default Judgment	TBD

I. INTRODUCTION[1]

In accordance with Your Honor's Individual Rules and Practices in Civil Cases, the Court's Individual Local Civil Rule 55.2(b) and Federal Rule of Civil Procedure 55(b)(2), Plaintiff respectfully submits that entry of default judgment against Defaulting Defendants is appropriate and seeks the following relief against Defaulting Defendants: 1) entry of a final judgment and permanent injunction by default; 2) individual statutory damages awards pursuant to 15 U.S.C. § 1117, plus post-judgment interest calculated pursuant to the statutory rate, as follows:

a. an award of $50,000.00 in statutory damages against the following seventy-two (72) Defaulting Defendants, totaling $3,600,000.00: C&R TECHNOLOGY CO., LIMITED, Dongxing clothing store, escala, Everything I do, Gem Wen, hekoguanghua4823, huping-well, Just a start, LIJUAN_SUM, ljstore1, Qiao Feng Chou, SHIMAOYONGTONG, Sven Stores, tingtingguaiguai, wangxin8520, wash, wuyou, yuanzhenzhen, zhanghongmei830, zhangyuexin, Colorful candy, Fire Shield, HangWei, LHQ_shop, maogege, new good goods, Fashion20156, patra, BELONG 2 U, liying fashion, springbuy, XIAMEN Hongxin electronic, YIDEA, excelword, vivian zhao international, chengxindianpu, spartan3411, Goog again flagship store, vaitex4you, Actor, futongshangmaoyouxiangongsi, shirly store, baolilibao, cxy666, yinshunlong, Sport Scope, The life store, Guangzhou wheeler co., LTD, Four Cats, new cl, Babysbreathlive, Shenzhenshishengnuosikejiyouxiangongsi, lu lu min shop, TiantianTop, VK Beauty Co.,Ltd, The debut, Wuhan Shang Quan Trading Co., Ltd., The Colourful

[1] Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary, Complaint or Application.

life, Young-Forever, Freaky Fitness Tintin shop, LIFTCART, Chang Yao, Baffin, Super Store, dx.com, hangzhoujingpinbaobao, Anime Bag World, Sun Digimon Special Counter, Three Tree, Living at home, Yongmaogifts and linquanshop;

b. an award of $75,000.00 in statutory damages against the following five (5) Defaulting Defendants, totaling $375,000.00: Head324Bird, top1store_Jiang, shenzhenshiyiyouwenjulipinyouxiangongsi, Glamour life co., LTD and So Fashion 2015;

c. an award of $100,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $300,000.00: linli shop, WGHZ Team and pengmei jingpin dianpu;

d. an award of $125,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $125,000.00: Cultural Transmission;

e. an award of $150,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $150,000.00: Lance shop;

f. an award of $175,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $350,000.00: hefangxiangstore and angelo beauty cosmetics company;

g. an award of $200,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $400,000.00: New world new life and Jmz;

h. an award of $225,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $450,000.00: alan_flytimes and shurriktoys;

i. an award of $250,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $250,000.00: huasheng company ltd;

j. an award of $300,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $300,000.00: Anime Clock World;

k. an award of $325,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $325,000.00: JACKLUO'S SHOP;

l. an award of $350,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $350,000.00: raohuiyuan;

m. an award of $375,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $750,000.00: irevin shop and Big Outlets;

n. an award of $400,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $400,000.00: WGTD wholesale Co.,Ltd.;

o. an award of $450,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $1,350,000.00: Linsaisai, Xuke International Trade Corporation and crazt fast stoy;

p. an award of $500,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,000,000.00: Animetopia and Sometimes321;

q. an award of $550,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $550,000.00: MQStyle International;

r. an award of $575,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,150,000.00: yuebo88yuebo01 and Women's Fashion tools;

s. an award of $650,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,300,000.00: cheapmall and apowu522;

t. an award of $775,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $775,000.00: hello beauty girl;

u. an award of $800,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,600,000.00: yiwu puer E-commerce and ZALA Trade;

v. an award of $925,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,850,000.00: YIWU PU'ER E-commerce Co.,Ltd and 1994_honeymoon;

w. an award of $975,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,950,000.00: Lipengjingpindianpu and xxnncc;

x. an award of $1,000,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $4,000,000.00: bearmama1314, Nongnong, Young Style and shanghaihuwaiyundongshangmaoyouxiangongsi;

y. an award of $1,250,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $3,750,000.00: EMA BEST, runshion and band sunglass;

z. an award of $1,500,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $3,000,000.00: FuJian LangShen and linlinshipin;

aa. an award of $1,750,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $1,750,000.00: Flag flag shop;

(3) a post-judgment asset restraining order and (4) an order authorizing the release and transfer of Defaulting Defendants' Frozen Assets to satisfy the damages awarded to Plaintiff.[2]

II. PROCEDURAL HISTORY

Plaintiff filed the Application, including the Complaint, on November 9, 2018. (Chung Aff., ¶ 9.) Subsequently, the Court entered the TRO on November 9, 2018. *Id.* at ¶ 11. The TRO specifically authorized service by electronic means.[3] *Id*. at ¶ 13. On November 16, 2018, pursuant to the TRO, Plaintiff served each and every Defaulting Defendant, among other Defendants, with the Summons, Complaint, TRO and all papers filed in support of Plaintiff's Application. *Id*. at ¶ 14. On November 26, 2018, the Court held the Show Cause Hearing, at which no Defendants appeared. *Id*. at ¶ 16. Subsequently, on November 26, 2018, the Court entered a PI Order against all Defendants, mirroring the terms of the TRO and extending through the pendency of the Action. *Id*. at ¶ 17.

Also at the Show Cause Hearing, the Court directed Plaintiff to move for default judgment by February 26, 2019. *Id.* at ¶ 19. On February 20, 2019, Plaintiff filed an application for a Clerk's Certificate of Default against Defaulting Defendants and, subsequently, on February 20, 2019, the Clerk of the Court entered a Certificate of Default against Defaulting Defendants. *Id*. at ¶¶ 20-21, Ex. C. Accordingly, Plaintiff respectfully submits the instant Motion for Default Judgment.

---

[2] Through its Motion for Default Judgment, in addition to permanent injunctive relief, Plaintiff only seeks damages for its First and Second Causes of Action (Trademark Counterfeiting and Infringement), however does not waive its Fourth Cause of Action (Copyright Infringement). Plaintiff does not seek monetary relief in connection with the remaining causes of action plead in the Complaint.

[3] The TRO specifically ordered that service shall be made on Defendants and deemed effective as to all Defendants if it was completed by the following means: 1) delivery of (i) PDF copies of the TRO together with the Summons and Complaint, or (ii) a link to a secure website (including Dropbox.com, Nutstore.com, a large mail link created through RPost.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download PDF copies of the TRO together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking the TRO to Defendants' e-mail addresses to be determined after having been identified by ContextLogic pursuant to Paragraph V(C) of the TRO.

III. STATEMENT OF FACTS

Plaintiff Mattel is a leading developer, producer, marketer, and distributor of the Mattel Products. Plaintiff promotes and sells the Mattel Products throughout the United States and the world through major retailers, quality toy stores and online marketplaces. (Delanty Dec., ¶¶ 3-4.) One of Mattel's most popular and successful products is Thomas the Tank Engine, a blue, cheery and anthropomorphic steam engine. *Id*. at ¶ 5. Plaintiff's Thomas & Friends Products have achieved tremendous success around the world. *Id*. at ¶¶ 7-8. The Thomas & Friends Products have annual global retail sales totaling approximately, $1 billion, and as of December 2017, more than one (1) Thomas & Friends Product engine is sold per second. *Id*. at ¶ 10.

While Mattel has gained significant common law trademark and other rights in its Thomas & Friends Products, through use, advertising and promotion, Mattel has also protected its valuable rights by filing for and obtaining a federal trademark registration. *Id.* at ¶¶ 11-12. In addition, Mattel also owns both registered and unregistered copyrights related to the Thomas & Friends Products. *Id*. at ¶¶ 15-16.

Defaulting Defendants are located in China but conduct business in the U.S., including within this judicial district, and other countries through their User Accounts and Merchant Storefronts with and on Wish. (Complaint, Ex. C.) Plaintiff retained New Alchemy Limited, a company that provides trademark infringement and other intellectual property research services to investigate and research manufacturers, wholesalers, and/or third-party merchants offering for sale and/or selling Counterfeit Products on Wish. (Arnaiz Dec., ¶¶ 3-4; Delanty Dec., ¶ 25, Scully Dec., ¶ 16.) Through their Merchant Storefronts, without Plaintiff's authorization or consent, Defaulting Defendants were and/or are currently manufacturing, importing, exporting, advertising, marketing,

promoting, distributing, displaying, offering for sale and/or selling Counterfeit Products. (Arnaiz Dec., ¶ 6; Delanty Dec., ¶ 27; Complaint, Ex. C.)

IV. ARGUMENT

A. DEFAULT JUDGMENT IS APPROPRIATE AS DEFAULTING DEFENDANTS HAVE FAILED TO APPEAR IN THIS ACTION

Federal Rule of Civil Procedure 55(b) provides for a court-ordered default judgment following the entry of default by the court clerk under Rule 55(a). "It is an ancient common law axiom that a defendant who defaults thereby admits all well-pleaded factual allegations contained in the complaint." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011). Ultimately, the entry of a default judgment is entrusted to the sound discretion of the district court. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95 (2d Cir. 1993). Moreover, as fully briefed in the Application and as the Court already acknowledged, the Court has personal jurisdiction over Defaulting Defendants. (*See* TRO and PI Order.) *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-476 (U.S. 1985). Therefore, Plaintiff respectfully submits that the Court should enter default judgment against each and every Defaulting Defendant since Defaulting Defendants failed to Answer or otherwise appear in this Action and Plaintiff's requests for damages are reasonable and supported by evidence. (Chung Aff., ¶¶ 23-29.)

B. PLAINTIFF IS ENTITLED TO A PERMANENT INJUNCTION

Plaintiff respectfully requests that the Court permanently enjoin Defaulting Defendants from any further counterfeiting and/or infringement of Plaintiff's Thomas & Friends Marks and Thomas & Friends Works for the reasons detailed below, coupled with the Court's earlier findings on the same issues in its entrance of the TRO and PI Order. By virtue of Defaulting Defendants' defaults, Plaintiff's well-plead factual allegations set forth in the Complaint, except those relating to the amount of damages, are taken as true. *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51,

70 (2d Cir. 1971); *see also Greyhound Exhibit group, Inc. v. E.L.U.L. Realty Corp*., 973 F.2d 155, 158 (2d Cir. 1992) *cert. denied*, 113 S.Ct. 1049 (1993).

A district court has authority under the Lanham Act and the Copyright Act to grant injunctive relief to prevent further violations of Plaintiff's trademark and copyrights. 15 U.S.C. § 1116, 17 U.S.C. § 502. Furthermore, a district court has the authority to grant a permanent injunction on a motion for default judgment. *See*, *e.g.*, *Harris v. Fairweather*, 11-cv-2152 (PKC) (AJP), 2012 U.S. Dist. LEXIS 128409, at *38-40 (S.D.N.Y. Sep. 10, 2012) (holding that in a default situation, permanent injunctive relief was appropriate under the Lanham Act taking the complaint's allegations as true). Here, since Defaulting Defendants' defaults constitute admissions of liability and Plaintiff successfully established its claims for trademark infringement and counterfeiting and copyright infringement, Plaintiff respectfully submits that a permanent injunction against Defaulting Defendants should be entered.[4]

Specifically, a permanent injunction may be granted where a plaintiff demonstrates that it has succeeded on the merits and: "(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." *eBay Inc. v. MercExchange, L.L.C*., 547 U.S. 388, 391 (2006); *see also Salinger v. Colting*, 607 F.3d 68, 79-80 (2d Cir. 2010) (extending the *eBay* standard to copyright injunctions). In intellectual property actions, permanent injunctions are normally granted when there is "a threat of continuing violations." *Steele v. Bell*, 11-cv-9343 (RA) (RLE), 2014 U.S. Dist. LEXIS 44976,

[4] As detailed at length in the Application and omitted here for brevity, Plaintiff has demonstrated success on its uncontroverted claims for trademark counterfeiting and infringement and copyright infringement against Defaulting Defendants. *See* Application; *see also* TRO and PI Order.

at *22 (S.D.N.Y. Mar. 3, 2014). Here, as plead in the Complaint and supported by the uncontroverted evidence, Defaulting Defendants infringed Plaintiff's Thomas & Friends Marks and Thomas & Friends Works by, *inter alia*, willfully and knowingly advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Counterfeit Products, thereby causing irreparable injury to Plaintiff. (Complaint, Ex. C.) While Wish's compliance with the TRO and PI Order – insofar as it has frozen the identified User Accounts and Merchant Storefronts owned by Defaulting Defendants – has prevented further sales of Counterfeit Products by Defaulting Defendants on Wish during the pendency of this action, there remains a serious possibility that Defaulting Defendants will continue to infringe Plaintiff's intellectual property rights should such restraints be lifted. *Allee v. Medrano*, 416 U.S. 802, 810-11 (1974) ("It is settled that an action for an injunction does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, since otherwise the defendants 'would be free to return to '[their] old ways.'"') (citing *Gray v. Sanders*, 372 U.S. 368, 376 (1963)) (internal quotation marks omitted).

While irreparable harm is no longer presumed, courts have issued permanent injunctions when intellectual property rights holders have shown a potential loss of goodwill and control over its trade dress and/or trademark(s). *See, e.g.*, *Artemide Inc. v. Spero Elec. Corp.,* 09-cv-1110 (DRH) (ARL), 2010 U.S. Dist. LEXIS 136870 at *9 (E.D.N.Y. Nov. 23, 2010) (finding irreparable harm where likelihood of confusion as to source and likelihood of injury to reputation were shown). Here, not only has Plaintiff suffered lost profits as a result of Defaulting Defendants' competing, substandard Counterfeit Products, but Defaulting Defendants' actions have caused irreparable harm to Plaintiff's goodwill and reputations as well as to the goodwill and reputations associated with its Thomas & Friends Marks, Thomas & Friends Works and Thomas & Friends

Products. (Delanty Dec., ¶ 31.) Further, because of Defaulting Defendants' failures to appear in this action, Plaintiff was unable to obtain complete and accurate information regarding the actual profits derived from Defaulting Defendants' sales of Counterfeit Products, making Plaintiff's actual damages effectively impossible to measure. (Chung Aff., ¶¶ 23-29.) *See*, *e.g., Mint, Inc. v. Iddi Amad*, 2011 U.S. Dist. LEXIS 49813 at *10 (S.D.N.Y. May 9, 2011) (finding irreparable harm where "determining the amount of damages from [defendant's] infringing conduct [is] especially difficult, if not impossible").

Given such injury to Plaintiff's goodwill and reputations, as well as the absence in the record of any assurance against Defaulting Defendants' continued violation of Plaintiff's Thomas & Friends Marks and Thomas & Friends Works, monetary damages alone are inadequate to compensate Plaintiff for the damage it has incurred and will continue to incur if an injunction is not entered. A showing that there is no adequate remedy at law "is satisfied where the record contains no assurance against defendant's continued violation" of a plaintiff's rights. *Montblanc Simplo GMBH v. Colibri Corp.*, 692 F. Supp. 2d 245, 259 (E.D.N.Y. 2010). When a default judgment is entered, "[a] court may infer from a defendant's default that it is willing to, or may continue its infringement." *Pearson Educ., Inc. v. Vegara,* No. 09 Civ. 6832 (JGK)(KNF), 2010 U.S. Dist. LEXIS 101597, at *12 (S.D.N.Y. Sept. 27, 2010) (internal citations omitted), adopted by, Order at Dkt. 21 (S.D.N.Y. May 11, 2011). As discussed above, Defaulting Defendants' failure to participate in this action emphasizes that Defaulting Defendants have no intention of ceasing their wrongful conduct, namely continued infringement and counterfeiting of Plaintiff's Thomas & Friends Marks and Thomas & Friends Works. Since Plaintiff demonstrated a credible threat of future infringement and cannot be compensated properly with monetary relief alone, they respectfully submit that the requested injunction is necessary to fully redress the irreparable injury

that they have suffered due to Defaulting Defendants' illegal and infringing actions. *Hounddog Prods., L.L.C. v. Empire Film Group, Inc.*, 826 F. Supp. 2d 619, 633 (S.D.N.Y. 2011) ("Given the significant threat of future infringement, Plaintiffs cannot be compensated with monetary relief alone.").

Further, the balance of hardships unquestionably and overwhelmingly favors Plaintiff since it has suffered and will continue to suffer irreparable harm to its businesses, profits, goodwill and reputations as a result of Defaulting Defendants' willful and knowing sales of Counterfeit Products. (Delanty Dec, ¶ 31.) Additionally, the public interest is clearly served by a permanent injunction, as "the public has an interest in not being deceived – in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality." *N.Y.C. Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 344 (S.D.N.Y. 2010) (granting a motion to enjoin the defendant from any further trademark violations); *see also Montblanc*, 692 F. Supp. 2d at 259. Here, the public has an interest in being able to rely on the high quality of the Thomas & Friends Products bearing the Thomas & Friends Marks and Thomas & Friends Works.

C. DEFAULTING DEFENDANTS ACTED WILLFULLY

Since Defaulting Defendants failed to appear in this action, no further analysis is required into willfulness because, and axiomatically, infringement is deemed willful "[b]y virtue of the default[.]" *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003). Nevertheless, Plaintiff respectfully submits that Defaulting Defendants unequivocally engaged in willful counterfeiting for the following reasons.

The standard for willfulness "is simply whether the defendant had knowledge that its conduct represented infringement or perhaps recklessly disregarded the possibility." *Twin Peaks Prods., Inc. v. Publ'ns Int'l, Ltd.*, 996 F.2d 1366, 1382 (2d Cir. 1993). Such knowledge may be

actual or constructive and may be inferred from defendant's conduct rather than proven directly. *See N.A.S. Imp. Corp. v. Chenson Enters.*, 968 F.2d 250, 252 (2d Cir. 1992) (holding that for "the purpose of awarding enhanced statutory damages," the knowledge component of willfulness "need not be proven directly but may be inferred from the defendant's conduct."). First, in the instant action, the Counterfeit Products contain marks and/or artwork that are identical to Plaintiff's Thomas & Friends Marks and/or Plaintiff's Thomas & Friends Works. (Complaint, Ex. C) *See also Coach, Inc. v. Melendez*, No. 10-cv-6178 (BSJ) (HBP), 2011 U.S. Dist. LEXIS 116842, at *12-13 (S.D.N.Y. Sep. 2, 2011) ("Because the marks used by defendants on their products are virtually identical to the Coach Registered Trademarks, the conclusion is inescapable that defendants' infringement and counterfeiting is intentional."). Second, the undisputed evidence demonstrates that none of the Counterfeit Products sold by Defaulting Defendants were purchased from Plaintiff. (Delanty Dec., ¶¶ 27-28) S*ee also Bambu Sales, Inc. v. Ozak Trading, Inc.*, 58 F.3d 849, 854 (2d Cir. 1995) (finding defendants to have acted willfully due in part to their failure to take any measures to verify the authenticity of the infringing product); *Gucci Am., Inc., v. Duty Free Apparel*, *Ltd.*, 315 F. Supp. 2d 511, 521 (S.D.N.Y. 2004) ("'Selling products acquired outside the customary chain of retail distribution and without the usual authenticating documentation' is a 'high risk business.'") (quoting *Gucci Am., Inc. v. Daffy's Inc.*, 354 F.3d 228, 245 (3d Cir. 2003)) (internal quotation marks omitted). Thus, the uncontradicted evidence demonstrates that Defaulting Defendants unequivocally engaged in willful counterfeiting activities. (Complaint, Ex. C.)

D. PLAINTIFF IS ENTITLED TO HEIGHTENED STATUTORY DAMAGES

Both the Lanham Act and the Copyright Act allow a plaintiff to elect either statutory damages or actual damages for willful infringement. 15 U.S.C. § 1117(c); 17 U.S.C. § 504(c). The

Lanham Act provides that, at any time before final judgment is rendered, a trademark owner may elect to recover an award of statutory damages, rather than actual damages, for the use of a counterfeit mark in connection with goods or services in the amount of: (1) "not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just" or (2) if the use of the counterfeit mark is found to be willful, up to "$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c). Whereas, Section 504(c) of the Copyright Act allows a copyright owner to elect statutory damages in the amount of "not less than $750 or more than $30,000 as the court considers just" with respect to any one work. Alternatively, where a court finds willful infringement, "the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000.00." 17 U.S.C. § 504(c)(l)-(2).

Here, without waiving its claims under the Copyright Act, Plaintiff respectfully elects to seek statutory damages solely under the Lanham Act. Congress enacted the statutory damages remedy in trademark counterfeiting cases because evidence of a counterfeiter's profits is almost impossible to ascertain since "records are frequently nonexistent, inadequate, or deceptively kept." *Gucci Am., Inc.*, 315 F Supp. 2d at 520. *See also Coach, Inc. v. Weng*, 2014 U.S. Dist. LEXIS 79005, at *41 (S.D.N.Y. June 7, 2014) ("Section 1117(c) of the Lanham Act was created to give victims of trademark infringement and unfair competition an avenue for recovering damages when a defendant hides, alters, or destroys business records."). Given Defaulting Defendants' propensities to conceal their identities, disappear and destroy or hide any evidence or records of their counterfeiting and infringing actions, and that to date, no Defaulting Defendants have appeared, answered or otherwise responded to the Complaint, Plaintiff cannot ascertain Defaulting Defendants' actual profits. (Scully Dec., ¶¶ 13-14, 24-25; Chung Aff., ¶¶ 23-29.) Simply put, this

case presents the exact circumstances that Congress envisioned in its enactment of Section 1117(c).

In making a determination of appropriate statutory damages awards, courts consider the following factors under Section 504(c) of the Copyright Act, which have also been used as guidance for determining an appropriate statutory damages award under Section 1117(c) of the Lanham Act: "(1) the expenses saved and the profits reaped; (2) the revenues lost by the plaintiff; (3) the value of the copyright [or trademark]; (4) the deterrent effect on others besides the defendant; (5) whether the defendant's conduct was innocent or willful; (6) whether a defendant has cooperated in providing particular records from which to assess the value of the infringing material produced; and (7) the potential for discouraging the defendant." *Gucci Am., Inc.*, 315 F. Supp. 2d at 520 (quoting *Fitzgerald Publ'g Co., Inc. v. Baylor Publ'g Co.*, 807 F.2d 1110, 1117 (2d Cir. 1986)) (internal quotation marks omitted); *Louis Vuitton Malletier v. Carducci Leather Fashions, Inc*., 648 F. Supp. 2d 501, 504 (S.D.N.Y. 2009) ("In the absence of any guidelines for determining the appropriate award in a case involving willful trademark violations, courts often have looked for guidance to the better developed case law under the Copyright Act, 17 U.S.C. § 504(c), which permits an award of statutory damages for willful copyright infringement.").

With respect to the first, second and sixth factors, Defaulting Defendants' propensities to secrete evidence pertaining to sales and profits – along with their failure to appear, answer or otherwise respond to the Complaint or comply with the expedited discovery ordered in the TRO and PI Order – have made it impossible to determine Defaulting Defendants' profits, quantify any expenses that Defaulting Defendants may have saved by infringing Plaintiff's Thomas & Friends Marks and/or one or more of Plaintiff's Thomas & Friends Works or assess any revenues lost by Plaintiff as a result of Defaulting Defendants' infringing and counterfeiting activities. (Scully Dec.,

¶¶ 13-14, 24-25; Chung Aff., ¶¶ 23-29.). Thus, these three factors support a higher statutory damage award for Plaintiff. *See AW Licensing, LLC v. Bao*, 15-CV-1373-KBF, 2016 U.S. Dist. LEXIS 101150, at *7 (S.D.N.Y. Aug. 2, 2016) ("[C]ourts have supported an inference of a broad scope of operations in cases dealing specifically with websites that ship and sell to a wide geographic range," like Defendants' User Accounts and Merchant Storefronts in this Action).

The third factor – the value of Plaintiff's Thomas & Friends Marks – also weighs in favor of increased statutory damages awards for Plaintiff against Defaulting Defendants. Here, Plaintiff established that the Thomas & Friends Products achieved worldwide recognition and success as a result of Plaintiff's efforts in building up and developing consumer recognition, awareness and goodwill in its Thomas & Friends Products and Thomas & Friends Marks. (Delanty Dec., ¶¶ 5-10, 17-22.) By virtue of the foregoing, Plaintiff amassed enormous value in the Thomas & Friends Marks, and the Thomas & Friends Marks identify Plaintiff as the exclusive source of the Thomas & Friends Products to which the Thomas & Friends Marks are applied. Therefore, the remaining factors also support significant statutory damages awards against Defaulting Defendants. Particularly where, like here, Defaulting Defendants acted willfully, "a statutory award should incorporate not only a compensatory, but also a punitive component to discourage further wrongdoing by the defendants and others." *Louis Vuitton Malletier*, 648 F. Supp. 2d at 504.

Plaintiff seeks statutory damages awards against each and every Defaulting Defendant.[5] Since Defaulting Defendants have defaulted, and therefore have not provided any evidence of their purchases or sales of Counterfeit Products, the amount of Defaulting Defendants' profits is unknown. (Chung Aff., ¶¶ 23-29.) Therefore, Plaintiff is deprived of the ability to prove a specific

[5] Plaintiff respectfully submits that it is entitled to post-judgment interest calculated pursuant to the statutory rate. "Interest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a).

amount of actual damages and instead has been left with no choice but to seek an award of statutory damages. Plaintiff's respectful requests for statutory damages are based upon a combined analysis of the following: 1) the discovery provided by Wish which shows the number of sales of Counterfeit Products made by each Defaulting Defendant and 2) each Defaulting Defendants' wrongful use of the Thomas & Friends Marks. (Chung Aff., ¶ 25, Ex. D.)[6]

Given that the Lanham Act provides for statutory damages of up to "$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just" 15 U.S.C. § 1117(c), Plaintiff respectfully seeks statutory damages awards as follows:

a. an award of $50,000.00 in statutory damages against the following seventy-two (72) Defaulting Defendants, totaling $3,600,000.00: C&R TECHNOLOGY CO., LIMITED, Dongxing clothing store, escala, Everything I do, Gem Wen, hekoguanghua4823, huping-well, Just a start, LIJUAN_SUM, ljstore1, Qiao Feng Chou, SHIMAOYONGTONG, Sven Stores, tingtingguaiguai, wangxin8520, wash, wuyou, yuanzhenzhen, zhanghongmei830, zhangyuexin, Colorful candy, Fire Shield, HangWei, LHQ_shop, maogege, new good goods, Fashion20156, patra, BELONG 2 U, liying fashion, springbuy, XIAMEN Hongxin electronic, YIDEA, excelword, vivian zhao international, chengxindianpu, spartan3411, Goog again flagship store, vaitex4you, Actor, futongshangmaoyouxiangongsi, shirly store, baolilibao, cxy666, yinshunlong, Sport Scope, The life store, Guangzhou wheeler co., LTD, Four Cats, new cl, Babysbreathlive,

[6] Plaintiff respectfully submits that Fed. R. Evid. 1006 authorizes the use of a summary sheet such as Exhibit D to the Chung Aff. to establish damages in civil actions such as the instant Action. (*See also* Arnaiz Dec., Ex. A; Complaint, Ex. C.)

Shenzhenshishengnuosikejiyouxiangongsi, lu lu min shop, TiantianTop, VK Beauty Co.,Ltd, The debut, Wuhan Shang Quan Trading Co., Ltd., The Colourful life, Young-Forever, Freaky Fitness Tintin shop, LIFTCART, Chang Yao, Baffin, Super Store, dx.com, hangzhoujingpinbaobao, Anime Bag World, Sun Digimon Special Counter, Three Tree, Living at home, Yongmaogifts and linquanshop;

b. an award of $75,000.00 in statutory damages against the following five (5) Defaulting Defendants, totaling $375,000.00: Head324Bird, top1store_Jiang, shenzhenshiyiyouwenjulipinyouxiangongsi, Glamour life co., LTD and So Fashion 2015;

c. an award of $100,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $300,000.00: linli shop, WGHZ Team and pengmei jingpin dianpu;

d. an award of $125,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $125,000.00: Cultural Transmission;

e. an award of $150,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $150,000.00: Lance shop;

f. an award of $175,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $350,000.00: hefangxiangstore and angelo beauty cosmetics company;

g. an award of $200,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $400,000.00: New world new life and Jmz;

h. an award of $225,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $450,000.00: alan_flytimes and shurriktoys;

i. an award of $250,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $250,000.00: huasheng company ltd;

j. an award of $300,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $300,000.00: Anime Clock World;

k. an award of $325,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $325,000.00: JACKLUO'S SHOP;

l. an award of $350,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $350,000.00: raohuiyuan;

m. an award of $375,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $750,000.00: irevin shop and Big Outlets;

n. an award of $400,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $400,000.00: WGTD wholesale Co.,Ltd.;

o. an award of $450,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $1,350,000.00: Linsaisai, Xuke International Trade Corporation and crazt fast stoy;

p. an award of $500,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,000,000.00: Animetopia and Sometimes321;

q. an award of $550,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $550,000.00: MQStyle International;

r. an award of $575,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,150,000.00: yuebo88yuebo01 and Women's Fashion tools;

s. an award of $650,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,300,000.00: cheapmall and apowu522;

t. an award of $775,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $775,000.00: hello beauty girl;

u. an award of $800,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,600,000.00: yiwu puer E-commerce and ZALA Trade;

v. an award of $925,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,850,000.00: YIWU PU'ER E-commerce Co.,Ltd and 1994_honeymoon;

w. an award of $975,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $1,950,000.00: Lipengjingpindianpu and xxnncc;

x. an award of $1,000,000.00 in statutory damages against the following four (4) Defaulting Defendants, totaling $4,000,000.00: bearmama1314, Nongnong, Young Style and shanghaihuwaiyundongshangmaoyouxiangongsi;

y. an award of $1,250,000.00 in statutory damages against the following three (3) Defaulting Defendants, totaling $3,750,000.00: EMA BEST, runshion and band sunglass;

z. an award of $1,500,000.00 in statutory damages against the following two (2) Defaulting Defendants, totaling $3,000,000.00: FuJian LangShen and linlinshipin;

aa. an award of $1,750,000.00 in statutory damages against the following one (1) Defaulting Defendant, totaling $1,750,000.00: Flag flag shop;

(Chung Aff., Ex. D.) Generally, "[t]he lack of information about any of the defendants' sales and

profits, and the suspect nature of any information that was provided, make statutory damages particularly appropriate for this case." *Nike, Inc. v. Top Brand Co*., 00 Civ. 8179 (KMW) (RLE), 2006 U.S. Dist. LEXIS 76543, at *6 (S.D.N.Y. Feb. 27, 2006). Specifically, Plaintiff respectfully submits that its tiered requests for statutory damages based upon the currently known numbers of sales of Counterfeit Products by Defaulting Defendants are appropriate. Plaintiff reiterates that the number of sales of Counterfeit Products made by Defaulting Defendants as identified in Wish's discovery responses are the lowest possible number of sales. In other words, it is likely that Defaulting Defendants' sales of Counterfeit Products are significantly higher than what has been identified through the limited discovery Plaintiff was able to obtain. (Chung Aff., ¶ 29.) Furthermore, Plaintiff confirmed that each and every Defaulting Defendant wrongfully used the Thomas & Friends Marks. (Chung Aff., Ex. D.) Since "the amount of defendants' likely profits from their infringement, the possibility of deterrence, and the need for redress of wrongful conduct are appropriate factors to consider," Plaintiff respectfully submits that Defaulting Defendants' willful violations of the Lanham Act make its requests for damages appropriate. *Nike, Inc*., 2006 U.S. Dist. LEXIS 76543 at *6-7. "Moreover, this Court has 'wide discretion' in 'setting the amount of statutory damages.'" *Ontel Prods. Corp. v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al*., 17-cv-871 (KBF), 2017 Dist. LEXIS 221489, at *3 (S.D.N.Y. June 29, 2017) citing *Fitzgerald Publ'g Co., Inc.*, 807 F.2d at 1116 (internal quotation marks omitted).

E. PLAINTIFF IS ENTITLED TO A POST-JUDGMENT ASSET RESTRAINT, THE TRANSFER OF DEFAULTING DEFENDANTS' FROZEN ASSETS AND POST-JUDGMENT INTEREST ON DEFAULTING DEFENDANTS' FROZEN ASSETS

Plaintiff respectfully submits that the Court should provide a post-judgment continuance of the pre-judgment asset restraint imposed on Defaulting Defendants by the TRO and extended through the PI Order because it is necessary to preserve Plaintiff's right to the relief sought in the

Complaint, including an equitable accounting. The Second Circuit expressly affirmed the Court's authority to freeze counterfeiters' assets as a matter of equity and "in favor of plaintiffs seeking an accounting against allegedly infringing defendants in Lanham Act cases" – whether such assets are located in the United States or abroad, and "impos[ed] on a defendant the obligation to disclose and return profits." *Gucci Am. Inc. v. Bank of China*, 768 F.3d 122, 131-32, 137-38 (2d Cir. 2014).

Pursuant to this Court's inherent equitable powers and N.Y. C.P.L.R. § 5222, as incorporated by Fed. R. Civ. P. 69, this Court regularly grants post-judgment assets restraints. *Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976 (NRB), 2015 US Dist. LEXIS 129647, at *10-11 (S.D.N.Y. Sep. 22, 2015). In *Forbse*, the Court ordered a post-judgment asset restraint against the defendants who engaged in counterfeiting activities in reliance on both the Court's equitable powers and state law, notwithstanding the Court's award of statutory damages. *Id*. at *9-11. The Court held that, "[t]he asset restraint should remain in place in order to prevent the very harm initially contemplated by the preliminary injunction, just as, analogously, a prejudgment attachment, issued pursuant to New York law and Rule 64 against a defendant seeking to evade enforcement of a possible judgment by secreting property, continues (absent vacatur, modification, or discharge) after the entry of judgment." *Id*. at 10-11.

As demonstrated by *Forbse*, post-judgment asset restraints entered to aid in the enforcement of a judgment, ensure the availability of relief under the Lanham Act and prevent defendants who have defaulted in similar cases from disposing of their assets upon entry of final judgment. *Id*. Such restraints are particularly necessary and entered in cases like the instant Action where Defaulting Defendants' complete failure to participate in the Action or comply with discovery made any calculation on Plaintiff's claim for an accounting impossible. *Id*. at 8, 10-11. Here, there remains a significant risk that Defaulting Defendants will dispose of, transfer and/or

hide all assets to which Plaintiff may be entitled if Defaulting Defendants' Frozen Assets do not remain frozen post-judgment. (Scully Dec., ¶ 13.) As the uncontroverted evidence demonstrates, Defaulting Defendants are foreign individuals or entities that have engaged in counterfeiting and infringing activities. (Complaint, Ex. C.) They have failed to answer or otherwise formally appear in this Action or comply with the expedited discovery ordered in the TRO and PI Order. (Chung Aff., ¶¶ 23-24.) Moreover, Defaulting Defendants are highly likely to dispose of, transfer and/or hide their ill-gotten Defaulting Defendants' Frozen Assets from Defaulting Defendants' Frozen Financial Accounts. (Scully Dec., ¶ 13.) This risk is not lessened by entry of judgment, but likely elevated. *Forbse*, 2015 US Dist. LEXIS 129647, at *10 ("[T]he need for the injunction is clear: without this relief, defendants would have available a fourteen-day window in which to hide their assets" and "[t]he risk that they might do so, which in part justified the preliminary injunction, is not lessened by entry of judgment."). Accordingly, Plaintiff respectfully requests that the post-judgement asset restraint be entered immediately and continue, at a minimum, until Plaintiff may enforce and satisfy the final judgments entered by this Court against Defaulting Defendants.

Additionally, "in accordance with Fed. R. Civ. P. 64, 15 U.S.C. § 1116(a) and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief," Plaintiff respectfully request that the Court order Defaulting Defendants' Frozen Assets and Defaulting Defendants' Frozen Financial Accounts, be transferred to Plaintiff as partial or complete satisfaction of the damages awarded to Plaintiff by the Court. *Gucci Am., Inc. v. Curveal Fashion*, No. 09 Civ. 8458 (RJS), 2010 U.S. Dist. LEXIS 5831, at *15 (S.D.N.Y. Jan. 20, 2010); *see also Spin Master Ltd. v. Alan Yuan's Store*, 325 F. Supp. 3d 413, 427-428 (S.D.N.Y. 2018) (the Hon. Denise L. Cote held in an analogous counterfeiting case that, in addition to keeping in place the asset restraint imposed at the outset of the litigation, the plaintiff was "entitled to the

transfer of the frozen assets to the plaintiffs as full or, when relevant, partial satisfaction of the damages award") and *AW Licensing, LLC*, 15-cv-1373-KBF, 2016 US Dist. LEXIS 101150, at *19-20 (same).[7] Further, and pursuant to 28 U.S.C. § 1961(a), Plaintiff respectfully requests that until such time as Plaintiff has fully recovered the entire judgment from each Defaulting Defendant, this Court order that post-judgment interest accrue against any remaining balance after Defaulting Defendants' Frozen Assets are transferred to Plaintiff as part of this judgment.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Default Judgment and a Permanent Injunction in its entirety.

Dated: February 25, 2019

Respectfully submitted,

EPSTEIN DRANGEL LLP

BY: _____

[7] *See also*, *e.g.*, *Tapestry, Inc., et al. v. baoqingtianff, et al.,* No. 18-cv-7650-PAE, Dkt. 34 (S.D.N.Y. Jan. 8, 2019); *Mattel, Inc. v. 86755, et al.,* No. 18-cv-8825-JSR, Dkt. 47 (S.D.N.Y. Dec. 17, 2018); *Ideavillage Prods. Corp. v. 711 Market, et al.,* No. 18-cv-7832-JMF, Dkt. 61 (S.D.N.Y. Dec. 12, 2018); *Wow Virtual Reality, Inc. v. BIENBEST, et al.,* No. 18-cv-3305-VEC, Dkts. 210-289, 302 (S.D.N.Y. Dec. 5, 2018); *Moose Toys Pty Ltd., et al. v. 963, et al.,* No. 18-cv-2187-VEC, Dkts. 160-251, 257 (S.D.N.Y. Nov. 30, 2018); *Off-White LLC v. A445995685, et al.,* No. 18-cv-2099-LGS-KNF, Dkt. 129 (S.D.N.Y. Nov. 16, 2018); *Ideavillage Prods. Corp. v. 29shyans2012, et al.,* 18-cv-6266 (AT), Dkt. No. 49 (S.D.N.Y. Nov. 6, 2018); *WowWee Group Limited, et al. v. A249345157, et al.,* No. 17-cv-9358 (VEC), Dkts. 46-179 (S.D.N.Y. July 31, 2018); *Ideavillage Prods. Corp. v. Bling Boutique Store, et al.,* No. 16-cv-9039 (KMW), Dkt. 92 (S.D.N.Y. July 24, 2018); *Allstar Marketing Group, LLC v. _GB Housewear Store, et al.,* No. 17-cv-7596 (SHS), Dkt. 92 (S.D.N.Y. July 9, 2018); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Best Baby and Kid Store, et al.,* No. 17-cv-4884 (KPF), Dkt. 38 (S.D.N.Y. June 28, 2018); *JLM Couture, Inc. v. Aimibridal, et al.,* No. 18-cv-1565 (JMF), Dkt. 49 (S.D.N.Y. June 7, 2018); *HICKIES, Inc. v. SHOP1668638 Store a/k/a Professional Shoes Company, et al.,* No. 17-cv-9101 (ER), Dkt. 22 (S.D.N.Y. May 4, 2018); *Ideavillage Prod.s Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., LTD., et al.,* No. 17-cv-9099 (JMF), Dkt. 34 (S.D.N.Y. March 1, 2018); *Ideavillage Prods. Corp. v. Chinafocus, et al.,* No. 17-cv-3894 (RA), Dkt. 50 (S.D.N.Y. Feb. 9, 2018); *Ontel Prods. Corp. v. Auto Mall, et al.,* No. 17-cv-5190 (AT), Dkt. 36 (S.D.N.Y. Nov. 27, 2017); *Rovio Entertainment Ltd. and Rovio Animation Oy v. Angel Baby Factory d/b/a Angelbaby_Factory, et al.,* No. 17-cv-1840 (KPF), Dkt. 65 (S.D.N.Y. Sept. 13, 2017); *Ontel Prods. Corp. v. Airbrushpainting Makeup Store, et al.,* No. 17-cv-871 (KBF), Dkt. 40 (S.D.N.Y. June 29, 2017); *Belstaff Grp. SA v. Doe*, No. 15-cv-2242 (PKC) (MHD), 2015 U.S. Dist. LEXIS 178124, at *10 (S.D.N.Y. June 18, 2015) and *Tory Burch LLC v. Yong Sheng Int'l Trade Co.*, No. 10 Civ. 9336 (DAB), 2011 U.S. Dist. LEXIS 158882, at *8 (S.D.N.Y. May 13, 2011).

Andrew S. Chung (AC 1988)
achung@ipcounselors.com
Jason M. Drangel (JD 7204)
jdrangel@ipcounselors.com
Ashly E. Sands (AS 7715)
asands@ipcounselors.com
Brieanne Scully (BS 3711)
bscully@ipcounselors.com
60 East 42nd Street, Suite 2520
New York, NY 10165
Telephone: (212) 292-5390
Facsimile: (212) 292-5391
Attorneys for Plaintiff
Mattel, Inc.