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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States Olympic Committee, et al.,)	No. CV-08-1345-PHX-ROS
Plaintiffs,	ORDER
vs.)
Official Ticket Ltd., et al.,)
Defendants.)

Background

On July 22, 2008, Plaintiffs filed a six-count Complaint seeking both monetary and injunctive relief for Defendants’ alleged violations of federal trademark law and the Arizona Consumer Fraud Act. The Complaint specifically alleges Defendants, without permission, used Plaintiffs’ registered marks in the operation of fraudulent websites purporting to sell tickets to the 2008 Olympic Games in Beijing (Doc. 1). On July 24, 2008, an *ex parte* temporary restraining order was issued enjoining Defendants’ use of the contested marks and impounding the allegedly fraudulent websites (Doc. 17). On August 11, 2008, Plaintiffs were granted leave to serve Defendants via e-mail pursuant to Federal Rule of Civil Procedure 4(f)(3) (Docs. 31, 35). E-mail service was executed the same day (Doc. 39). On August 20, 2008, a preliminary injunction was issued implementing the same restrictions as the July 24 temporary restraining order (Doc. 43). On November 25, 2008, Plaintiffs filed

1 a First Amended Complaint, joining Defendant Official Ticket Ltd., and, on December 1,
2 2008, service was executed via e-mail per the Court's August 11 Order (Docs. 47, 51). On
3 December 24, 2008, default was entered against Official Ticket Ltd. ("Defendant") for failure
4 to answer the Complaint or otherwise appear, pursuant to Federal Rule for Civil Procedure
5 55(a) ("Rule 55(a)") (Doc. 54). On February 2, 2009, Plaintiffs filed a Motion for Entry of
6 Default Judgment, seeking to permanently enjoin Defendant's use of the contested
7 trademarks and operation of the fraudulent websites (Doc. 56). For the following reasons,
8 the Motion will be granted.

10 Discussion

11 A. Standard

12 Federal Rule of Civil Procedure 55(b)(2) ("Rule 55(b)") permits a trial court, upon
13 motion, to enter judgment against a defendant who has defaulted under Rule 55(a). While
14 a Rule 55(a) default constitutes the defendant's admission of all facts alleged in the
15 complaint and may establish liability, it is the responsibility of the trial court, before entering
16 judgment on a Rule 55(b) motion, to determine whether the complaint states a claim and
17 assess appropriate damages. See Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir.
18 1977) (*per curiam*) ("The general rule of law is that upon default the factual allegations of
19 the complaint, except those relating to the amount of damages, will be taken as true.");
20 Benny v. Pipes, 799 F.2d 489, 495 (9th Cir. 1986) ("Well-pleaded allegations are taken as
21 admitted on a default judgment."); cf. Danning v. Levine, 572 F.2d 1386, 1388-89 (9th Cir.
22 1978) (a complaint which is not well-pleaded, pursuant to Federal Rule of Civil Procedure
23 8, cannot support a default judgment).

24 Equitable relief may be granted on default if a court's factual findings satisfy the
25 requirements for the requested remedy. See e.g. Sec. & Exch. Comm'n v. Mgmt. Dynamics,
26 Inc., 515 F.2d 801, 814 (2d Cir. 1975) (permanent injunction may be granted on default if
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1 the court's fact findings satisfy the applicable standard for granting injunctive relief); e360
2 Insight v. The Spamhaus Project, 500 F.3d 594, 603-04 (7th Cir. 2007) (same).

3 A Rule 55(b) determination falls squarely within the discretion of the trial court. See
4 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (*per curiam*) (“The district court’s
5 decision whether to enter a default judgment is a discretionary one.”). However, trial courts
6 are encouraged to look at seven factors: “(1) the possibility of prejudice to the plaintiff, (2)
7 the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum
8 of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6)
9 whether the default was due to excusable neglect, and (7) the strong policy underlying the
10 Federal Rules of Civil Procedure favoring decisions on the merits.” Eitel v. McCool, 782
11 F.2d 1470, 1471-72 (9th Cir. 1986).

12 13 14 **B. Liability**

15 Although the Complaint states six causes of action, only the § 43(a) Lanham Act
16 allegations will be addressed, as the requested relief may be awarded based solely on § 43(a)
17 liability. To state a claim under § 43(a) for false designation of origin or false advertising,
18 the Complaint must plead that Defendant’s websites:

19 (1) purported to sell goods or services;

20 (2) affected interstate or international commerce;

21 (3) displayed “any word, term, name, symbol, or device, or any combination thereof,
22 or any false designation of origin, false or misleading description of fact, or false or
23 misleading representation of fact” which;

24 (3a) with respect to commercial advertising found on the websites, misrepresented
25 “the nature, characteristics, qualities, or geographic origin” of the goods or services
26 for sale or;
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1 (3b) with respect to the websites' non-advertising content, was likely to cause
2 confusion concerning the websites' affiliation with Plaintiffs or Plaintiffs'
3 sponsorship of the goods or services purportedly for sale on the websites; and

4 (4) Plaintiffs were or are likely to be harmed by Defendant's conduct.
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6 15 U.S.C. § 1125(a)(1).

7 The Complaint satisfies prongs (1) and (2) alleging Defendant operated websites from
8 Victoria, Seychelles which sold fraudulent Olympic tickets to consumers in the United States
9 (Doc. 47 at ¶¶ 31-37, 42-45). The Complaint satisfies prong (3) alleging the websites
10 displayed Plaintiffs' registered trademarks for the purpose of misleading prospective
11 customers into believing the websites were affiliated with Plaintiffs and sold authentic tickets
12 to 2008 Olympic events in Beijing (Doc. 47 at ¶¶ 26-37). The Complaint satisfies prong (4)
13 alleging injury to Plaintiffs' relationships with sponsors and the consuming public (Doc. 47
14 at ¶¶ 38-41). Accordingly, Defendant's liability under § 43(a) of the Lanham Act is
15 established.
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17 **C. Remedy**

18 The Lanham Act provides for injunctive relief as a remedy for violations of § 43(a).
19 See 15 U.S.C. § 1116(a) ("The several courts vested with jurisdiction of civil actions arising
20 under this chapter shall have power to grant injunctions, according to the principles of equity
21 and upon such terms as the court may deem reasonable . . . to prevent a violation under
22 subsection (a), (c), or (d) of section 1125 of this title."). To be entitled to such relief,
23 Plaintiff must satisfy the traditional four-factor analysis required to issue an equitable
24 injunction. See Reno Air Racing Ass'n v. McCord, 452 F.3d 1126, 1137-38 (9th Cir. 2006)
25 (requiring the application of the traditional four-factor equitable injunction analysis when
26 awarding injunctive relief under § 1116(a)); see also Sec. & Exch. Comm'n, 515 F.2d at 814;
27 e360 Insight, 500 F.3d at 603-04. The four factors are: irreparable injury, inadequate
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1 remedies at law to compensate for that injury, a balance of hardships between parties
2 demonstrating the equitable remedy is warranted and benefit to the public interest. See Reno
3 Air Racing Ass'n, 452 F.3d at 1138 n.11.

4 The Complaint sufficiently pleads irreparable injury, alleging Defendant's websites
5 have damaged, and if permitted will continue to damage, Plaintiffs' goodwill vis-a-vis the
6 consuming public and Plaintiffs' relationships with sponsors by associating Plaintiffs with
7 fraud and other deceptive sales practices (Doc. 47 at ¶¶ 39-41). The Complaint sufficiently
8 pleads inadequate remedies at law, alleging Defendant's continuing and largely successful
9 efforts to conceal its true identity and the likelihood that such efforts would prevent
10 enforcement of a money judgment (Doc. 47 at ¶¶ 42-45). The Complaint sufficiently pleads
11 that the balance of hardships tips in Plaintiffs' favor, demonstrating continued irreparable
12 harm to Plaintiffs posed by the websites and Defendant's complete lack of justification for
13 the misappropriation of Plaintiffs' marks and operation of the fraudulent websites (Doc. 47
14 at ¶¶ 39-45). Lastly, the Complaint sufficiently pleads that impounding Defendant's websites
15 and enjoining Defendant's misappropriation of Plaintiffs' marks would protect the public
16 from future fraud (Doc. 47 at ¶ 45). Accordingly, Plaintiffs have satisfied the requirements
17 for issuing the requested permanent injunction.

18 **D. Discretion**

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20 For the reasons stated above, the Court will exercise its discretion, enter default
21 judgment against Defendant and award Plaintiffs' requested permanent injunction.¹ See
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25 ¹ Only one of the six Eitel factors weighs against entering the requested default judgment:
26 "the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits."
27 782 F.2d at 1472. As discussed above, the Complaint is both sufficient and has merit, weighing
28 factors (2) and (3) in Plaintiffs' favor. Plaintiffs request no monetary damages and thus factor (4)
weighs neutrally. Moreover, there is no indication that Plaintiffs' material facts are disputed or that
Defendant defaulted because of excusable neglect. Thus, factors (1), (5) and (6) weigh in Plaintiffs'
favor.

1 Aldabe, 616 F.2d at 1092 (“The district court’s decision whether to enter a default judgment
2 is a discretionary one.”).

3 Accordingly,

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5 **IT IS ORDERED** Plaintiff’s Motion for Entry of Default Judgment (Doc. 56) **IS**
6 **GRANTED**.

7 **FURTHER ORDERED** Defendants and all persons and/or entities acting on their
8 behalf, for their benefit or in active concert or participation with them are **HEREBY**
9 **PERMANENTLY ENJOINED** as follows:

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- 11 a. They shall not display (1) the word mark OLYMPIC, U.S. Trademark Registration
12 Nos. 968,566,493 and 2,777,890; (2) the word mark BEIJING 2008, U.S.
13 Trademark Registration Nos. 2,739,492 and 2,764,102; or (3) the official emblem
14 of the Beijing 2008 Olympic Games, U.S. Trademark Registration No. 3,043,229,
15 or any part or variation thereof (the “Olympic Marks”), or any terms that are
16 confusingly similar thereto, on the websites www.beijing-2008tickets.com,
17 www.beijing-2008tickets.net and www.official-ticket.com or any other website;
 - 18 b. They shall not directly or indirectly infringe the Olympic Marks in any manner
19 including, but not limited to, by using them in advertising or offering for sale any
20 tickets or other goods or services using said trademarks;
 - 21 c. They shall not engage in any conduct that tends falsely or misleadingly to
22 represent that the actions of Defendant, the tickets sold by Defendant, or
23 Defendant itself are connected with Plaintiffs or organizations guided by the
24 Olympic Charter, including the International Olympic Committee, the United
25 States Olympic Committee, the international sports federations, and the other
26 National Olympic Committees, Organizing Committees of the Olympic Games
27 and local clubs and the persons belonging to them (the “Olympic Movement”), are
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1 sponsored, approved, or licensed by Plaintiffs or the Olympic Movement, or are
2 in some way connected to or affiliated with Plaintiffs or the Olympic Movement,
3 or that is likely to confuse, mislead, or deceive members of the public into
4 believing Plaintiffs and Defendant to be the same;

5 d. They shall not affix, apply, annex, or use in connection with tickets or any other
6 goods or services, a false description or representation, including words or other
7 symbols, tending to falsely describe or represent such goods or services as being
8 those of Plaintiffs;

9 e. They shall not otherwise compete unfairly with Plaintiffs in any manner;


10 f. The following domain names shall remain impounded so that neither Defendant
11 nor the consuming public can gain access thereto: www.beijing-2008tickets.com,
12 www.beijing-2008tickets.net and www.official-ticket.com;
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14 g. They shall no longer continue to operate the following websites under the current
15 domain names or under any other domain name: www.beijing-2008tickets.com,
16 www.beijing-2008tickets.net and www.official-ticket.com; and
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18 h. They shall not effect assignments or transfers, form new entities or associations
19 or utilize any other means or device for the purpose of circumventing or otherwise
20 avoiding prohibitions set forth herein.

21 **FURTHER ORDERED** Plaintiffs have **TEN DAYS** from the date of this Order to
22 file additional motions, in the absence of which, the Clerk of Court will close the case.
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24 DATED this 24th day of August, 2009.

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Roslyn O. Silver
United States District Judge