UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANE CRAWFORD LLC,

Plaintiff,

-against-

KELEX TRADING (CA) INC., KA WAI CHOI, HAVE FASHION, INC., KENNETH KHANG and DOES 1-10,

Defendants.

MEMORANDUM DECISION
AND ORDER
12 Civ. 9190 (GBD)(AJP)

GEORGE B. DANIELS, District Judge:

Plaintiff Lane Crawford LLC brought this action against Defendants[1] for (i) federal trademark counterfeiting, 15 U.S.C. § 1114 (Am. Compl. ¶¶ 46-50); (ii) trademark infringement, 15 U.S.C. § 1125(a) (Am. Compl. ¶¶ 51-66); (iii) injury to business reputation and state anti-dilution, N.Y. Gen. Bus. Law § 360-1 (Am. Compl. ¶¶ 67-73); (iv) deceptive trade practices, N.Y. Gen. Bus. Law § 133 (Am. Compl. ¶¶ 74-80); (v) New York state common law unfair competition (Am. Compl. ¶¶ 81-90.) Plaintiff manufactures and sells clothing, which includes its lines of trademarked outerwear under the trademarks Therapy (United States Patent and Trademark Office Reg. No. 4,066,891) and Kiss Therapy (United States Patent and Trademark Office Reg. No. 4,227,108.) (Am. Compl. ¶¶ 15-16.) Defendant Ka Wai Choi formed Kelex Trading (CA) Inc., a California corporation doing business in New York. (Am. Compl. ¶¶ 7, 17.) Plaintiff alleges that Defendant Kelex Trading (CA) Inc. advertises and sells apparel bearing counterfeits of Plaintiff's trademarks. (Am. Compl. ¶¶ 19-20.) Plaintiff further alleges that Defendants Choi's and Kelex Trading (CA) Inc.'s counterfeiting and infringing activities

[1] Have Fashion, Inc. and Kenneth Khang, to date, have not been served. The Court therefore dismisses the claims against those Defendants without prejudice pursuant to Fed. R. Civ. P. 4(m).

were done "willfully and maliciously" and that this conduct confused and deceived customers. (Am. Compl. ¶¶ 26, 29-31, 34, 38-40, 48, 61, 63, 85.)

On September 4, 2013, this Court granted a default judgment against Defendants Kelex Trading (CA) Inc. and Ka Wai Choi. (ECF No. 14, Order.) This Court referred the matter to Magistrate Judge Andrew J. Peck for an inquest on damages, including attorney's fees.[2] (ECF No. 14, 18.) Magistrate Judge Peck recommended that Plaintiff be awarded $1,011,119.50.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. Id.; see also Rivera v. Barnhart, 432 F.Supp. 2d 271, 273 (S.D.N.Y. 2006). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(c). The Court, however, need not conduct a *de novo* hearing on the matter. See United States v. Raddatz, 447 U.S. 667, 676 (1980). Rather, it is sufficient that the Court "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F. Supp. 1186, 1189-90 (S.D.N.Y.1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir.1983)). When no objections to a Report are made, the Court may adopt the Report if "there is no clear error on the face of the record." Adee Motor Cars, LLC v. Amato, 388 F.Supp. 2d 250, 253 (S.D.N.Y.2005) (citation omitted). In his report, Magistrate Judge Peck advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party objected to the Report. As there is no clear error on the face of the record, this Court adopts the Report in its entirety.

[2] Plaintiff seeks only to enforce the judgment against Defendants Kelex Trading (CA) Inc. and Ka Wai Choi. (ECF No. 16, Dweck Aff. ¶ 5 n.1.)

Magistrate Judge Peck properly determined that Plaintiff is entitled to statutory trademark damages of $1 million pursuant to 15 U.S.C. § 1117(c)(2). Magistrate Judge Peck also correctly found that Defendants, by virtue of their default, are deemed to be willful infringers. See, e.g., Lucerne Textiles, Inc. v. H.C.T. Textiles Co., 12 Civ. 5456, 2013 WL 174226 at *3 (S.D.N.Y. Jan. 17, 2013), report & rec. adopted, 2013 WL 1234911 (S.D.N.Y. Mar. 26, 2013); CJ Prods. LLC v. Your Store Online LLC, 11 Civ. 9513, 2012 WL 2856068 at *3 (S.D.N.Y. July 12, 2012), report & rec. adopted, 2012 WL 4714820 (S.D.N.Y. Oct. 3, 2012); Coach, Inc. v. O'Brien, 10 Civ. 6071, 2012 WL 1255276 at *14 (S.D.N.Y. Apr. 13, 2012); All-Star Mktg. Grp., LLC v. Media Brands Co., 775 F. Supp. 2d 613, 620 n.3 (S.D.N.Y. 2011). Because § 1117(c) does not provide guidance for determining the appropriate award besides setting the maximum award of $2 million per counterfeit mark, and directing that court awards should be "just," Magistrate Judge Peck appropriately looked for guidance in case law under the Copyright Act, 17 U.S.C. § 504(c), which permits an award of statutory damages for willful copyright infringement. Louis Vuitton Malletier v. Carducci Leather Fashions, Inc., 648 F. Supp. 2d 501, 504 (S.D.N.Y. 2009). Magistrate Judge Peck correctly considered the factors for determining damages pursuant to § 1117(c)(2)[3] and properly found that an award of $1 million—half of the statutory maximum—is sufficient and appropriate in this case. Moreover, Magistrate Judge Peck correctly considered the record, including Defendants' willfulness and the lack of any information about profits or lost revenue, and found that an award of $1 million is within the

[3] These factors are: (1) the expenses saved and the profits reaped; (2) the revenues lost by the plaintiff; (3) the value of the [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. Kenneth Jay Lane, Inc. v. Heavenly Apparel, Inc., 03 Civ. 2132, 2006 WL 728407 at *6 (S.D.N.Y. Mar. 21, 2006); accord, e.g., Bryant v. Media Right Prods., Inc., 603 F.3d 135, 144 (2d Cir.), cert. denied, 131 S. Ct. 656 (2010); N.A.S. Imp., Corp. v. Chenson Enters., Inc., 968 F.2d 250, 252 (2d Cir. 1992).

range of recent awards in comparable cases. See, e.g., Tiffany (NJ) LLC v. Dong, 11 Civ. 2183, 2013 WL 4046380 at *6-7 (S.D.N.Y. Aug. 9, 2013); Coach, Inc. v. McMeins, 11 Civ. 3574, 2012 WL 1071269 at *4 (S.D.N.Y. Mar 9, 2012) (finding that an $800,000 award is appropriate where the record was devoid of facts regarding revenue earned by defendant's sale of the counterfeit merchandise or any actual proof that the plaintiff lost revenue and in light of compensatory, punitive and deterrent purposes of 15 U.S.C. § 1117(c)), report & rec. adopted, 2012 WL 1080487 (S.D.N.Y. Mar. 30, 2012); Spice Entm't Inc. v. Spice Entm't, Ltd., 01 Civ. 9705, 2002 WL 34696250 at *1, *3 (S.D.N.Y. Mar. 27, 2002).

Magistrate Judge Peck correctly found that Plaintiff is entitled to $10,769.50 for attorneys' fees. When damages are awarded pursuant to 15 U.S.C. § 1117(c), attorney's fees are recoverable under subsection (a) in "exceptional cases." Louis Vuitton Malletier, S.A. v. LY USA, Inc., 676 F.3d 83, 109 & n.25, 111 (2d Cir. 2012). Magistrate Judge Peck correctly found that the allegations in the complaint, along with Defendants' default, are sufficient to justify the award of attorneys' fees to Plaintiff. See e.g., Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d at 111; Harris v. Fairweather, 11 Civ. 2152, 2012 WL 3956801 at *6 (S.D.N.Y. Sept. 10, 2012), report & rec. adopted, 2012 WL 5199250 (S.D.N.Y. Oct. 19, 2012); Yahoo! Inc. v. XYZ Cos., 872 F. Supp. 2d 300, 309 (S.D.N.Y. 2011); U.S.A. Famous Original Ray's Licensing Corp. v. Tisi's Pizza & Pasta Inc., 09 Civ. 5517, 2009 WL 4351962 at *5 (S.D.N.Y. Sec. 1, 2009), report & rec. adopted, 2009 WL 2956827 at *7 (S.D.N.Y. Sept. 15, 2009). Further, Magistrate Judge Peck correctly found that Plaintiff's requested $12,670 in attorneys' fees should be reduced by fifteen (15) percent for vague billing entries and clerical or paralegal work performed at full attorney rates. See, e.g., Adusumelli v. Steiner, 08 Civ. 6932, 2013 WL 1285260 at *7 (S.D.N.Y. Mar. 28, 2013).

Magistrate Judge Peck correctly found that Plaintiff's request for costs of $350 for the filing fee is appropriate. See, e.g., U.S.A. Famous Original Ray's Licensing Corp. v. Famous Ray's Buffet Inc., 12 Civ. 8753, 2013 WL 5363777 at *8-9 (S.D.N.Y. Sept. 26, 2013), report & rec. adopted, 2013 WL 5664058 (S.D.N.Y. Oct. 17, 2013).

Magsitrate Judge Peck correctly determined that Plaintiff's request for equitable relief should be denied as Plaintiff has failed to provide any briefing or case law to support to imposition of such a broad equitable relief. See, e.g., U.S.A. Famous Original Ray's Licensing Corp. v. Famous Ray's Pizza Buffet Inc., 12 Civ. 8753, 2013 WL 5363777 at *6 n.5 (S.D.N.Y. Sept. 26, 2013) report & rec. adopted, 2013 WL 5664058 (S.D.N.Y. Oct. 17, 2013).

CONCLUSION

Plaintiff is awarded statutory trademark damages of $1 million, attorneys' fees of $10,769.50 and costs of $350, for a total monetary award of $1,011,119.50 against Defendants Kelex Trading (CA) Inc. and Ka Wai Choi. Plaintiff's request for equitable relief including a permanent injunction is DENIED. The claims against the remaining Defendants are DISMISSED for lack of service. The Clerk of the Court is directed to close the outstanding motion (ECF No. 13) and this case.

Dated: New York, New York
April 3, 2014

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge