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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 AKRURA PTE. LTD., a Singapore
24 company,

25 Plaintiff,

26 v.

27 APERO TECHNOLOGIES GROUP, a
28 Vietnam company, BEGAMOB
GLOBAL, and TRUSTED TOOLS &
UTILITIES APPS,

Defendants.

Case No.: 2:23-cv-000102-JLS-KS

**PLAINTIFF'S RULE 55(b) MOTION
FOR DEFAULT JUDGMENT**

Dist. Judge: Hon. Josephine L. Staton

Mag. Judge: Hon. Karen L. Stevenson

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COMES NOW, Plaintiff Akrura PTE LTD (“Plaintiff”), by and through its attorneys of record, files this Rule 55(b) Motion for Default Judgment against Defendants Apero Technologies Group (“Apero”), Begamob Global (“Begamob”), and Trusted Tools & Utilities Apps (“Tools”) (collectively, “Defendants”).

I. INTRODUCTION

Defendant Apero stole Plaintiff’s copyrighted blood pressure mobile application available on Google Play and started offering an infringing counterfeit on the same platform and targeting the same consumers. After Plaintiff filed with Google a DMCA Takedown Request to remove the infringing content, Apero started offering substantially the same infringing counterfeits through the other two defendants, Begamob and Tools. Plaintiff filed this case to stop Defendants’ infringing and damaging actions.

However, Defendants did not respond to Plaintiff’s Complaint, effectively admitting the complaint’s allegations, and the Court’s Clerk entered default against Defendants. As demonstrated below, Plaintiff is entitled to default judgment and permanent injunction against Defendants pursuant to Rule 55(b) of the Federal Rules of Civil Procedure (“FRCP”).

II. BACKGROUND

Plaintiff is the creator and copyright owner of the Blood Pressure mobile application and offers it on Google Play through the QR Code Scanner developer account. Compl. ¶ 2.¹

Defendant Apero is a mobile application developer that stole Plaintiff’s copyright and started offering an infringing counterfeit titled Blood Pressure

¹ The Clerk has entered Defendants’ default (Dkt. 29), and the factual allegations in the Complaint are therefore taken as true. *See Gucci Am. Inc. v. Wang Huoqing*, No. C-09- 05969 JCS, 2011 WL 31191, at *8 (N.D. Cal. Jan. 3, 2011) (“Once a party’s default has been entered, the factual allegations of the complaint, except those concerning damages, are deemed to have been admitted by the non-responding party.”).

1 Tracker on the same internet platform (Google Play) eight month after the launch
2 of Plaintiff's application. Compl. ¶¶ 6-7, 19-20. Apero owns or is related to
3 defendants Begamob and Tools. Compl. ¶ 7. When Plaintiff notified Google
4 about Apero's infringement, Apero started to offer substantially the same
5 infringing mobile applications through Begamob (Blood Pressure Tracker App)
6 and through Tools (Blood Pressure App: BP Monitor). Compl. ¶¶ 33-34.

7 On November 17, 2021, Plaintiff released Plaintiff's Blood Pressure
8 application on Google Play and quickly started generating considerable user
9 traffic and resulting advertising income. Compl. ¶ 19.

10 On July 24, 2022, to tap into Plaintiff's user traffic and related income,
11 Apero surreptitiously launched the Blood Pressure Tracker using the same content
12 as Plaintiff's application and targeting the same customers. Compl. ¶ 20. After
13 comparing the two mobile applications, Plaintiff determined that the infringing
14 Apero application had copied the language and interface layout of Plaintiff's
15 application. Compl. ¶ 21.

16 On August 17, 2022, Plaintiff submitted to Google a DMCA Takedown
17 Request, which was assigned Case No. 1-5031000033050. Compl. ¶ 22; Ex. A.²
18 In the DMCA Takedown Request, Plaintiff explained that Apero had copied
19 Plaintiff's language word for word. In support of its statement, Plaintiff submitted
20 a side-by-side comparison of the two mobile applications clearly showing that
21 Apero was using Plaintiff's original and valuable content, including the language
22 and the interface layout. Ex. A. Google responded the same day stating that
23 Plaintiff should attempt to resolve this issue with Apero. Compl. ¶ 23.

24 On August 29, 2022, Plaintiff's attorney emailed Apero, advising them that
25 Apero's application infringed Plaintiff's Blood Pressure application and asked
26 them to change the infringing content. Apero did not respond. Compl. ¶ 24; Ex.

27
28 ² "Ex. ___" refers to the Exhibits to the Declaration of Shelley Ivan, submitted in support of this motion.

1 B. On August 30, 2022, Plaintiff's attorney resent the August 29, 2022 email.
2 Apero did not respond. Compl. ¶ 25; Ex. B.

3 On September 23, 2022, after Plaintiff advised Google about its
4 unsuccessful attempts to contact Apero, Google responded that it could not find
5 the infringing application and later requested additional evidence. Compl. ¶ 26.
6 Plaintiff provided additional evidence, but Google asked Plaintiff to submit a new
7 DMCA Takedown Request. Compl. ¶ 27.

8 On October 18, 2022, Plaintiff filed a second DMCA Takedown Request,
9 which was assigned Case No. 9-1815000033310. Compl. ¶ 29; Ex. C. In that
10 request, Plaintiff explained that Apero's application was still infringing Plaintiff's
11 application, including the language and user interface layout. To support its
12 statement, Plaintiff submitted a side-by-side comparison of the two mobile
13 applications clearly showing that Apero was using Plaintiff's content. *Id.*

14 On December 13, 2022, Google removed Apero's application. Compl. ¶
15 30. On December 23, 2022, Google notified Plaintiff that Apero had submitted a
16 counter notification, as described in 17 U.S.C. § 512(g). Compl. ¶ 31. Google
17 also advised Plaintiff that Google would reinstate Apero's application unless
18 Plaintiff filed a lawsuit or a claim of infringement against Apero with the U.S.
19 Copyright Office Copyright Claims Board in 10 business days from the December
20 23, 2022 notice. *Id.*; Ex. D.

21 Around the time when Google was unable to locate Apero's infringing
22 application, Apero launched the infringing Tool and Begamob applications from
23 the other defendants' developer accounts. Compl. ¶ 33. Plaintiff later performed a
24 side-by-side comparison for those mobile applications (Exs. E-F) and determined
25 that they had largely the same infringing content as reported in Plaintiff's DMCA
26 Takedown Request regarding Apero's application. Compl. ¶¶ 34-35. As such,
27 Plaintiff filed DMCA Takedown Requests for the Tool and Begamob applications
28 on October 25, 2022 (Case No. 5-3967000033498), December 1, 2022 (Case

No. 2-7084000033674), and December 13, 2022 (Case No. 9-3832000033281), respectively. *Id.*; Exs. E-F.

The side-by-side comparison files submitted with the aforementioned DMCA Takedown Requests for Defendants’ three infringing products speak for themselves and clearly indicate that Defendants copied the Plaintiff App’s language and interface layout. Exs. C, E-F. Defendants’ offer of the infringing applications has thus caused mistake, confusion, and deception among consumers and is irreparably harming Plaintiff. Compl. ¶ 36.

In fact, Defendant Begamob responded to the email of Plaintiff’s counsel regarding the Complaint, admitting copying Plaintiff’s mobile application. Ex. G (“[W]e inadvertently included components derived from your content with regard to certain features in-app. We have identified and removed the plagiarized content from our app immediately after receiving the report from your team.”). *Id.*

On January 6, 2023, Plaintiff filed the instant lawsuit. Dkt. 1.

On April 7, 2023, the Court issued an Order Granting Plaintiff’s Ex Parte Motion for Alternative Service (“Alternative Service Order”). Dkt. 24.

Pursuant to the Alternative Service Order, Plaintiff served all Defendants and filed a Proof of Service on May 18, 2023. Dkt. 25.

Despite being properly served pursuant to the Court’s Alternative Service Order, Defendants never filed with the Court a response to the Complaint.

On August 14, 2023, Plaintiff filed its Motion for Entry of Default by the Clerk Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure (“Default Motion”). Dkt. 26.

Also, on August 14, 2023, Plaintiff served its Default Motion on each Defendants in accordance with the Alternative Service Order. Ex. H.

Faced with the Default Motion, Defendant Tools wrote to Google to dispute the removal of its infringing application from Google Play. Ex. I.

1 On August 22, 2023, Google notified Plaintiff that Defendant Tools had
2 submitted a counter notification, disputing the removal of its application. *Id.*
3 Google also advised Plaintiff that Google would reinstate Tools' application
4 unless Plaintiff filed a lawsuit against Tools regarding its infringement. *Id.*

5 Critically, Tools provided to Google the same email address, which
6 Plaintiff here used to serve Tools, confirming that Tools had received Plaintiff's
7 service emails. *Id.*

8 Plaintiff immediately responded to Google's notification, attaching the
9 Complaint in this action and explaining that Plaintiff had already had filed a
10 lawsuit against Tools. *Id.*

11 On August 24, 2023, the Clerk entered default against all Defendants (Dkt.
12 29) pursuant to the Court's order regarding the same (Dkt. 28).

13 On August 31, 2023, the Court filed on the case docket a notice to Plaintiff
14 that Defendant Apero had emailed the Court and asked to respond regarding the
15 entry of Default by the Clerk. Dkt. 30. In response, the court held that: "*Ex parte*
16 communications with the Court are not permitted, and the Court will take no
17 action based on this email." *Id.*

18 Plaintiff is hereby requesting that the Court issue a Default Judgment
19 against all Defendants.

20 **III. MEMORANDUM OF POINTS AND AUTHORITY**

21 Pursuant to Fed.R.Civ.P. 55(b), "a court may order default judgment
22 following the entry of default by the Clerk of the Court." *PepsiCo, Inc. v. Cal. Sec.*
23 *Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002). Entry of default judgment is
24 thus a two-step process. *See* Fed. R. Civ. P. 55(a)-(b). First, the plaintiff must
25 request and obtain an entry of default from the court's clerk. *See* Fed. R. Civ. P.
26 55(a) ("When a party against whom a judgment for affirmative relief is sought has
27 failed to plead or otherwise defend, and that failure is shown by affidavit or
28 otherwise, the clerk must enter the party's default."). Second, Plaintiff must apply

1 to the Court for entry of default judgment. Fed. R. Civ. P. 55(b)(2). Here,
2 Defendants' default was entered by the Clerk pursuant to FRCP 55(a) on August
3 24, 2023. Dkt. 29. Plaintiff can thus move the Court for default judgment
4 pursuant to FRCP 55(b)(2).

5 In the Ninth Circuit, Courts may consider the following factors in determining
6 whether to enter default judgment: "(1) the possibility of prejudice to the plaintiff,
7 (2) the merits of the case, (3) the sufficiency of the complaint, (4) the sum of
8 money at stake in the action, (5) the possibility of a dispute concerning the material
9 facts, (6) whether defendant's default was the product of excusable neglect, and (7)
10 the strong public policy favoring decision on the merits." *Eitel v. McCool*, 782
11 F.2d 1470, 1471-72 (9th Cir. 1986).

12 **A. The *Eitel* Factors Favor Default Judgment**

13 The first *Eitel* factor (addressing the possibility of prejudice to Plaintiff)
14 favors default judgment because, given Defendants' failure to appear in this
15 action, Plaintiff would be left without remedy in the absence of default judgment.

16 The second and third *Eitel* factors (addressing the merits of Plaintiff's case
17 and the sufficiency of the Complaint) similarly favor default judgment. The Ninth
18 Circuit has held that these two factors require that Plaintiff "state a claim on which
19 the [plaintiff] may recover." *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir.
20 1978). Here, Plaintiff has asserted, *inter alia*, a claim for Federal Copyright
21 Infringement in violation of 17 U.S.C § 501, *et seq.* based on the side-by-side
22 comparison between Plaintiff's original application and Defendants' counterfeits,
23 showing that those applications are substantially the same. These admitted
24 allegations of the Complaint explain that: (i) Plaintiff is the creator and copyright
25 owner of a blood pressure mobile application; (ii) Defendants infringed Plaintiff's
26 copyright by offering for sale counterfeits of Plaintiff's application; (iii)
27 Defendants' infringing applications use identical language excerpts and interface
28 layout and are substantially similar to Plaintiff's application; (iv) Defendants

1 damaged Plaintiff by offering the same service to the same customers in the same
2 Google Play channel; (v) Defendants damaged Plaintiff's reputation by selling
3 inferior counterfeits; (vi) Defendants have caused and will continue to cause
4 irreparable harm to Plaintiff and should be permanently enjoined from doing so.
5 *See* Compl. ¶¶ 37-51. These facts (taken as true) are sufficient to find copyright
6 infringement.

7 The fourth *Eitel* factor (addressing the amount of money at stake) favors
8 default judgment because Plaintiff has decided to forego damages in favor of
9 seeking permanent injunctive relief. *See PepsiCo*, 238 F. Supp.2d at 1176. *Id.* at
10 1177 (“[Plaintiffs] seek [] injunctive relief Accordingly, this factor favors
11 granting default judgment”).

12 The fifth *Eitel* factor (addressing the possibility of a dispute concerning
13 material facts) is neutral at best because, as a result of Defendants' default, the
14 Court is unable to determine if there are any disputed material facts. *See Gucci*
15 *Am. Inc.*, 2011 WL 31191, at *11.

16 The sixth *Eitel* factor (addressing whether Defendant's default was the
17 product of excusable neglect) favors default judgment because Plaintiff served
18 Defendants pursuant to the Court's alternative service order directing Plaintiff to
19 use valid and active email addresses and Defendants received notice of this lawsuit
20 but decided not to appear. In fact, Defendants Begamob responded by admitting
21 its infringing activities but never appeared in this case. *See* Ex. G (“We have
22 identified and removed the plagiarized content from our app immediately after
23 receiving the report from your team.”). Similarly, after being served, Defendant
24 Tools wrote to Google to complain about the removal of its infringing application
25 but never appeared in this case. *See* Ex. I. Finally, despite being served,
26 Defendant Apero did not file an appearance and did not respond to the complaint,
27 but instead chose to wait (until the entry of default) to send an *ex parte*
28 communication to the Court. *See* Dkt. 30.

1 The seventh and final *Eitel* factor (addressing the strong public policy
2 favoring decision on the merits) is neutral because Defendants’ failure to respond
3 to the Complaint prevents a decision on the merits. *See Gucci Am. Inc.*, 2011 WL
4 31191, at *12.

5 As demonstrated above, *Eitel* factors 1, 2, 3, 4, and 6 favor default judgment
6 and *Eitel* factors 5 and 7 are neutral.

7 Accordingly, when balancing the *Eitel* factors, default judgment is proper.

8 **B. Permanent Injunction**

9 It is well established that courts can issue injunctions as part of default
10 judgments. *See China Cent. Television v. Create New Tech. (HK) Ltd.*, No. CV
11 15–01869, 2015 WL 12732432, at *19 (C.D. Cal. Dec. 7, 2015); *Priority Records,*
12 *LLC v. Tabora*, No. C 07–1023 PJH, 2007 WL 2517312, *2 (N.D. Cal. Aug. 31,
13 2007) (granting permanent injunctive relief in a copyright case as part of a default
14 judgment).

15 A permanent junction may be granted where Plaintiff demonstrates: “(1) that
16 it has suffered an irreparable injury; (2) that remedies available at law, such as
17 monetary damages, are inadequate to compensate for that injury; (3) that,
18 considering the balance of hardships between the plaintiff and defendant, a remedy
19 in equity is warranted; and (4) that the public interest would not be disserved.”
20 *EBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The decision
21 whether to grant or deny injunctive relief “rests within the equitable discretion of
22 the district courts.” *Id.* at 394. “When the infringing use is for a similar service, a
23 broad injunction is especially appropriate.” *Perfumebay.com Inc. v. eBay Inc.*, 506
24 F.3d 1165, 1177 (9th Cir. 2007).

25 Here, Plaintiff’s Complaint specifically alleges that Defendants’ infringing
26 actions have caused and, unless permanently enjoined, will continue to cause
27 irreparable harm to Plaintiff’s reputation and goodwill. Compl., ¶ 51. As
28 demonstrated above, because the Clerk entered default against Defendants,

1 Plaintiff's allegations in the Complaint, including the irreparable harm allegations
2 should be taken as true. *See Gucci*, 2011 WL 31191, at *8. Further, because the
3 damage here is unquestionable but Plaintiff has decided to nevertheless forego all
4 damages in favor of permanent injunction, the relief of permanent injunction
5 enjoining Defendants from using Plaintiff's application is appropriate and well
6 within the equitable discretion of the Court. *See Simple Design Ltd. v.*
7 *Workshopplace 2021*, No. 2:22-cv-02776-GW-KSx (S.D. Cal. Aug. 1, 2022)
8 (ordering injunctive relieve to enjoin defendant from using infringing images,
9 logos, icons and marks where plaintiff agreed to forego all damages).

10 **IV. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff's Rule 55(b) Motion for Default
12 Judgment should be granted.

13
14 Dated: September 1, 2023

RIMON, P.C.

15 By: /s/ Mark Lee

16 Mark S. Lee (SBN: 94103)

17 Zheng Liu (SBN: 229311)

18 Shelley Ivan (*pro hac vice*)

19 *Attorneys for Plaintiff*

20 AKRURA PTE. LTD.
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(1) Defendant Apero Technologies Group – by emailing the Service Papers to trustedapp.help@gmail.com, haudt@apero.vn and admin@apero.vn, and mailing the Service Papers via FedEx to 2 Le Van Thiem, Thanh Xuan, Hanoi, Vietnam;

(3) Defendant Trusted Tools & Utilities Apps – by emailing the Service Papers to liveroyalstudio.inc@gmail.com and electronically publishing a link to the Service Papers.

By: /s/ Shelley Ivan
Shelley Ivan