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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AKRURA PTE. LTD., a Singapore
company,

Plaintiff,

v.

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

Defendants.

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

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

DATE: January 5, 2024

TIME: 10:30 a.m.

COURTROOM: 8A, 8th Floor

JUDGE: Hon. Josephine L. Staton

Magistrate Judge: Hon Karen L. Stevenson

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1 COMES NOW, Plaintiff Akrura PTE LTD (“Plaintiff”), by and through its
2 counsel of record, hereby refiles its Rule 55(b) Motion for Default Judgment as to
3 Defendants Begamob Global (“Begamob”) and Trusted Tools & Utilities Apps
4 (“Tools”) (together, “Defendants”),¹ pursuant to the Court’s Order, dated October
5 25, 2023 (Dkt. 37).

6 **I. INTRODUCTION**

7 Begamob and Tools stole Plaintiff’s copyrighted blood pressure mobile
8 application available on Google Play and started offering infringing counterfeits on
9 the same platform and targeting the same consumers. Plaintiff filed with Google
10 individual DMCA Takedown Requests against Defendants, and Google
11 temporarily removed the infringing content, pending this lawsuit. Plaintiff also
12 filed this case to permanently stop Defendants’ infringing and damaging actions.

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

18 **II. BACKGROUND**

19 Plaintiff is the creator and copyright owner of the Blood Pressure mobile
20 application (“Plaintiff’s BP App”) and offers it on Google Play through the QR
21 Code Scanner developer account. Compl. ¶ 2.

22 Defendant Begamob is a mobile application developer that offers mobile
23 applications on Google Play. Begamob has a website at
24

25
26 ¹ Plaintiff’s initial motion for default judgment was filed against Defendants
27 Begamob, Tools, and Apero Technologies Group (“Apero”). However, Apero
28 recently made an appearance in this case, and the Court issued an Order Granting
Stipulation to Set Aside Entry of Default and for Extension of Time to Respond to
the Complaint on October 11, 2023. Dkt. 34.

1 http://www.begamob.com and uses the email address info@begamob.com.
2 Compl. ¶ 8.

3 Defendant Tools is a mobile application developer that offers mobile
4 applications on Google Play. Defendant Tools & Utilities Apps does not appear
5 to have a website but uses the email address liveroyalstudio.inc@gmail.com.
6 Compl. ¶ 9.

7 On September 20, 2022, Tools launched on Google Play its infringing
8 application, Blood Pressure App: BP Monitor (Tools' BP Monitor App"). Compl.
9 ¶ 33.

10 A side-by-side comparison of Plaintiff's BP App and Tools' BP Monitor
11 App confirmed that defendant Tools had literally copied Plaintiff's content. as
12 certain significant language used in the two products appeared identical. Compl. ¶
13 34.

14 On October 25, 2022, Plaintiff filed with Google Play a DMCA Takedown
15 Request. *Id.* Plaintiff attached a side-by-side comparison of the two apps and
16 explained: "I'm writing to report that an infringing app [] 100% Copied our
17 original In-app Texts and UI Design WITHOUT any change. This high degree of
18 coincidence is by no means an accident. We created all In-app Text by ourselves,
19 we can provide all source evidence if needed." Ex. A.²

20 On September 26, 2022, Begamob launched on Google Play its infringing
21 application, Blood Pressure Tracker App ("Begamob's BP Tracker App").
22 Compl. ¶ 33.

23 A side-by-side comparison of Plaintiff's Blood Pressure App and
24 Begamob's BP Tracker App confirmed that defendant Begamob Global had
25 literally copied Plaintiff's content as significant language used in the two products
26 was identical. Compl. ¶ 35.

27
28 ² "Ex. __" refers to the Exhibits to the Declaration of Shelley Ivan, submitted in
support of Plaintiff's Rule 55(b) Renewed Motion for Default Judgment.

1 On December 1, 2022, Plaintiff filed with Google Play a DMCA Takedown
2 Request against Begamob. *Id.* Plaintiff attached to the DMCA Takedown
3 Request a side-by-side comparison of the two apps and explained: “Begamob []
4 maliciously copied our string text on source code and in-app articles & UI design
5 WITHOUT any changes. We created all source code and articles by ourselves, we
6 can provide all of the source evidence if needed.” Ex. B.

7 Begamob’s and Tools’ offers of the infringing applications have thus
8 caused mistake, confusion, and deception among consumers and is irreparably
9 harming Plaintiff. Compl. ¶ 36.

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

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

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

15 Despite being properly served pursuant to the Court’s Alternative Service
16 Order, Begamob and Tools never filed a response to the Complaint with the
17 Court.

18 However, on March 22, 2023, Begamob responded to the email of
19 Plaintiff’s counsel regarding the Complaint, admitting that Begamob copied
20 Plaintiff’s mobile application. Ex. C (“[W]e inadvertently included components
21 derived from your content with regard to certain features in-app. We have
22 identified and removed the plagiarized content from our app immediately after
23 receiving the report from your team.”). *Id.*

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

27 Also, on August 14, 2023, Plaintiff served its Default Motion on Begamob
28 and Tools in accordance with the Alternative Service Order. Ex. D.

1 Faced with the Motion for Entry of Default, Tools wrote to Google to
2 dispute the removal of its infringing application from Google Play. Ex. E.

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

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

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

12 On September 1, 2023, Plaintiff filed a motion for default judgement
13 against all Defendants. Dkt. 31.

14 On October 11, 2023, after Defendant Apero appear in the case, the Court
15 issued an Order Granting Stipulation to Set Aside Entry of Default and for
16 Extension of Time to Respond to the Complaint on October 11, 2023. Dkt. 34.

17 On October 25, 2023, the Court entered an order striking Plaintiff's motion
18 for default judgment and instructing Plaintiff to file a Rule 55-1 declaration and a
19 supplemented proposed order, incorporating Plaintiff's analysis of the Eitel factors
20 and citing to evidence. Dkt. 37.

21 Plaintiff is hereby refiling its motion for default judgment and respectfully
22 requesting that the Court issue final default judgment against Begamob and Tools.

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

24 Pursuant to Fed.R.Civ.P. 55(b), "a court may order default judgment
25 following the entry of default by the Clerk of the Court." *PepsiCo, Inc. v. Cal.*
26 *Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002). Entry of default
27 judgment is thus a two-step process. *See* Fed. R. Civ. P. 55(a)-(b). First, the
28 plaintiff must request and obtain an entry of default from the court's clerk. *See*

1 Fed. R. Civ. P. 55(a) (“When a party against whom a judgment for affirmative
2 relief is sought has failed to plead or otherwise defend, and that failure is shown by
3 affidavit or otherwise, the clerk must enter the party’s default.”). Second, Plaintiff
4 must apply to the Court for entry of default judgment. Fed. R. Civ. P. 55(b)(2).
5 Here, Defendants’ default was entered by the Clerk pursuant to FRCP 55(a) on
6 August 24, 2023. Dkt. 29. Plaintiff can thus move the Court for default judgment
7 pursuant to FRCP 55(b)(2).

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

15 A. The *Eitel* Factors Favor Default Judgment

16 The balancing of the *Eitel* factors here favors entry of a default judgment
17 under the Ninth Circuit’s *Eitel* analysis.

18 The first *Eitel* factor favors default judgment because, absent a default
19 judgment, Plaintiff will be prejudiced by Defendants’ failure to appear in this
20 action (Dkt. 29) since it will be left without a remedy.

21 The second and third *Eitel* factors similarly favor default judgment. The
22 Ninth Circuit has held that these “merits” and “sufficiency of the complaint”
23 factors require that Plaintiff “state a claim on which the [plaintiff] may recover.”
24 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Here, Plaintiff has
25 asserted, *inter alia*, a claim for copyright infringement in violation of 17 U.S.C §
26 501, *et seq.* that is demonstrated by the side-by-side comparison between
27 Plaintiff’s original application and Defendants’ counterfeits, showing that those
28 counterfeits are substantially similar. Exs. A-B. The admitted allegations in the

1 Complaint explain that: (i) Plaintiff is the creator and copyright owner of a blood
2 pressure mobile application (Compl. ¶ 38); (ii) Defendants' infringing applications
3 use identical language excerpts and interface layout as Plaintiff's application (*id.*
4 ¶¶ 41, 43-44); (iii) Plaintiff did not authorize Defendants to copy its original work
5 (*id.* ¶ 45); (iv) Defendants' infringing conduct violates 17 U.S.C. §§ 106(1)-(3), (5)
6 and 17 U.S.C. § 501(a); (v) Defendants damaged Plaintiff by intentionally copying
7 Plaintiff's valuable content and using counterfeits to target the same consumers
8 and tap into Plaintiff's previously generated user traffic and related advertising
9 income (*id.* ¶ 47); (vi) Defendants damaged Plaintiff by offering their inferior
10 counterfeit apps to Plaintiff's consumer base and causing a current and long-term
11 reputational damage to Plaintiff (*id.* ¶ 48); and (vii) unless enjoined and restrained
12 by the Court, Defendants' conduct is causing and will continue to cause Plaintiff
13 irreparable injury that cannot be compensated by monetary damages (*id.* ¶ 51).

14 Given Defendants' default entered by the Clerk, the above factual
15 allegations should be taken as true and are thus sufficient to support Plaintiff's
16 copyright infringement claim. *See Gucci Am. Inc. v. Wang Huoqing*, No. C-09-
17 05969 JCS, 2011 WL 31191, at *8 (N.D. Cal. Jan. 3, 2011) ("Once a party's
18 default has been entered, the factual allegations of the complaint, except those
19 concerning damages, are deemed to have been admitted by the non-responding
20 party.").

21 The fourth *Eitel* factor, addressing the amount of money at stake, favors
22 default judgment because Plaintiff has decided to forego damages in favor of
23 permanent injunctive relief. *See PepsiCo*, 238 F. Supp.2d at 1177 ("[Plaintiffs]
24 seek only injunctive relief from the continued use of their trademarks on
25 Defendant's counterfeit products. Accordingly, this factor favors granting default
26 judgment.").

27 The fifth *Eitel* factor, addressing the possibility of a dispute concerning
28 material facts, is neutral at best because, as a result of Defendants' default and

1 failure to appear in this litigation, the Court is unable to determine if there are any
2 disputed material facts. *See Gucci Am. Inc.*, 2011 WL 31191, at *11.

3 The sixth *Eitel* factor, addressing whether Defendant's default was the
4 product of excusable neglect, favors default judgment because Plaintiff served
5 Defendants pursuant to the Court's alternative service order, directing Plaintiff to
6 use valid and active email addresses and Defendants received notice of this lawsuit
7 but decided not to appear. In fact, Defendants Begamob responded by admitting
8 infringement, but never appeared in this case. Ex. C ("We have identified and
9 removed the plagiarized content from our app immediately after receiving the
10 report from your team."). Similarly, after being served, Defendant Tools wrote to
11 Google to complain about the removal of its infringing application but never
12 appeared in this case. Ex. E.

13 The seventh and final *Eitel* factor, involving the strong public policy
14 favoring decision on the merits, is neutral because Defendants' own failure to
15 respond to the Complaint prevents a decision on the merits. Defendants should not
16 be rewarded for their failure to participate in this action. *See Gucci Am. Inc.*, 2011
17 WL 31191, at *12.

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

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

21 **B. Permanent Injunction**

22 It is well established that courts can issue injunctions as part of default
23 judgments. *See China Cent. Television v. Create New Tech. (HK) Ltd.*, No. CV
24 15-01869, 2015 WL 12732432, at *19 (C.D. Cal. Dec. 7, 2015); *Priority Records,*
25 *LLC v. Tabora*, No. C 07-1023 PJH, 2007 WL 2517312, *2 (N.D. Cal. Aug. 31,
26 2007) (granting permanent injunctive relief in a copyright case as part of a default
27 judgment).

1 A permanent injunction may be granted where Plaintiff demonstrates: “(1) that
2 it has suffered an irreparable injury; (2) that remedies available at law, such as
3 monetary damages, are inadequate to compensate for that injury; (3) that,
4 considering the balance of hardships between the plaintiff and defendant, a remedy
5 in equity is warranted; and (4) that the public interest would not be disserved by a
6 permanent injunction.” *EBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391
7 (2006). The decision whether to grant or deny injunctive relief “rests within the
8 equitable discretion of the district courts.” *Id.* at 394. When “the infringing use is
9 for a similar service, a broad injunction is especially appropriate.”
10 *Perfumebay.com Inc. v. eBay Inc.*, 506 F.3d 1165, 1177 (9th Cir. 2007).

11 Here, with respect to elements 1 and 2, Plaintiff’s Complaint specifically
12 alleges that Defendants’ infringing actions have caused and, unless permanently
13 enjoined, will continue to cause irreparable harm to Plaintiff’s reputation and
14 goodwill and that such injury cannot be compensated by monetary damages.
15 Compl. ¶¶ 48, 51.

16 Further, with respect to element 3, because the damage here is
17 unquestionable but Plaintiff has decided to nevertheless forego all damages in
18 favor of permanent injunction, the relief of permanent injunction enjoining
19 Defendants from using Plaintiff’s application is appropriate and well within the
20 equitable discretion of the Court. *See Simple Design Ltd. v. Workshopplace 2021*,
21 No. 2:22-cv-02776-GW-KSx (S.D. Cal. Aug. 1, 2022) (ordering injunctive relief to
22 enjoin defendant from using infringing images, logos, icons and marks where
23 plaintiff agreed to forego all damages).

24 Finally, with respect to element 4, the public interest would not be disserved
25 by a permanent injunction because enjoining Defendants from copying Plaintiff’s
26 work will undoubtedly protect the copyright owner and advance the objective of
27 the Copyright Act by incentivizing the creation of original work. *See Fogerty v.*
28 *Fantasy, Inc.*, 510 U.S. 517, 524 (1994) (“The primary objective of the Copyright

1 Act is to encourage the production of original literary, artistic, and musical
2 expression for the good of the public.”).

3 Accordingly, the Court should grant Plaintiff permanent injunction against
4 Defendants.

5 **IV. CONCLUSION**

6 For all of the foregoing reasons, Plaintiff’s Rule 55(b) Renewed Motion for
7 Default Judgment against Defendants Begamob Global and Trusted Tools &
8 Utilities Apps should be granted.

9
10 Dated: November 7, 2023

RIMON, P.C.

11 By: /s/ Mark Lee
12 Mark S. Lee (SBN: 94103)
13 Zheng Liu (SBN: 229311)
14 Shelley Ivan (*pro hac vice*)
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Attorneys for Plaintiff
AKRURA PTE. LTD.

CERTIFICATE OF SERVICE

I, Shelley Ivan, hereby certify that on November 7, 2023, a true and correct copy of the foregoing **PLAINTIFF'S RULE 55(b) RENEWED MOTION FOR DEFAULT JUDGMENT** and supporting papers were served upon Defendants, in accordance with the Court's April 7, 2023 Order Granting Plaintiff's Ex Parte Motion for Alternative Service (Dkt. No. 24) as follows:

(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;

(2) Defendant Begamob Global – by emailing the Service Papers to info@begamob.com and mailing the Service Papers to (i) 11 Beach Rd., #03-01, Crasco Building, Singapore, and (ii) 34 Hoang Cau, Dong Da, Hanoi, Vietnam, via FedEx; and

(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