

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

AKRURA PTE. LTD, a Singapore company,

Plaintiff,

vs.

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

Defendants.

Case No.: 2:23-cv-000102

**[PROPOSED] ORDER ENTERING
FINAL DEFAULT JUDGMENT
AGAINST DEFENDANTS
BEGAMOB GLOBAL AND
TRUSTED TOOLS & UTILITIES
APPS**

DATE: January 5, 2024

TIME: 10:30 a.m.

COURTROOM: 8A, 8th Floor

JUDGE: Hon. Josephine L. Staton

Magistrate Judge: Hon Karen L.
Stevenson

1 Before the Court is Plaintiff Akrura PTE LTD (“Plaintiff”)’s Rule 55(b)
2 renewed motion for the entry of final default judgment against Defendants
3 Begamob Global (“Begamob”) and Trusted Tools & Utilities Apps (“Tools”)
4 (together, “Defendants”).¹

5 **I. FACTUAL BACKGROUND**

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

9 Defendant Begamob is a mobile application developer that offers mobile
10 applications on Google Play. Begamob has a website at
11 <http://www.begamob.com> and uses the email address info@begamob.com.
12 Compl. ¶ 8.

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

17 On September 20, 2022, Tools launched on Google Play its infringing
18 application, Blood Pressure App: BP Monitor (Tools’ BP Monitor App”). Compl.
19 ¶ 33.

20 A side-by-side comparison of Plaintiff’s BP App and Tools’ BP Monitor
21 App confirmed that defendant Tools had literally copied Plaintiff’s content as
22 certain significant language used in the two products appeared identical. Compl. ¶
23 34.

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

1 On October 25, 2022, Plaintiff filed with Google Play a DMCA Takedown
2 Request. *Id.* Plaintiff attached a side-by-side comparison of the two apps and
3 explained: “I’m writing to report that an infringing app … 100% Copied our
4 original In-app Texts and UI Design WITHOUT any change. This high degree of
5 coincidence is by no means an accident. We created all In-app Text by ourselves,
6 we can provide all source evidence if needed.” Ex. A.²

7 On September 26, 2022, Begamob launched on Google Play its infringing
8 application, Blood Pressure Tracker App (“Begamob’s BP Tracker App”).
9 Compl. ¶ 33.

10 A side-by-side comparison of Plaintiff’s Blood Pressure App and
11 Begamob’s BP Tracker App confirmed that defendant Begamob Global had
12 literally copied Plaintiff’s content as significant language used in the two products
13 was identical. Compl. ¶ 35.

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

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

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

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

27 ² “Ex. __” refers to the Exhibits to the Declaration of Shelley Ivan, submitted in
28 support of this Motion.

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

3 Despite being properly served pursuant to the Court's Alternative Service
4 Order, Begamob and Tools never filed a response to the Complaint with the
5 Court.

6 However, on March 22, 2023, Begamob responded to the email of
7 Plaintiff's counsel regarding the Complaint, admitting that Begamob copied
8 Plaintiff's mobile application. Ex. C ("[W]e inadvertently included components
9 derived from your content with regard to certain features in-app. We have
10 identified and removed the plagiarized content from our app immediately after
11 receiving the report from your team."). *Id.*

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

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

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

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

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

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

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

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

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

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

12 **II. LEGAL STANDARD**

13 Pursuant to Fed.R.Civ.P. 55(b), “a court may order default judgment
14 following the entry of default by the Clerk of the Court.” *PepsiCo, Inc. v. Cal.*
15 *Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002). Entry of default
16 judgment is thus a two-step process. *See* Fed. R. Civ. P. 55(a)-(b). First, the
17 plaintiff must request and obtain an entry of default from the court’s clerk. *See*
18 Fed. R. Civ. P. 55(a) (“When a party against whom a judgment for affirmative
19 relief is sought has failed to plead or otherwise defend, and that failure is shown by
20 affidavit or otherwise, the clerk must enter the party’s default.”). Second, Plaintiff
21 must apply to the Court for entry of default judgment. Fed. R. Civ. P. 55(b)(2).
22 Here, Defendants’ default was entered by the Clerk pursuant to FRCP 55(a) on
23 August 24, 2023. Dkt. 29. Plaintiff can thus move the Court for default judgment
24 pursuant to FRCP 55(b)(2).

25 In the Ninth Circuit, Courts may consider the following factors in
26 determining whether to enter default judgment: “(1) the possibility of prejudice to
27 the plaintiff, (2) the merits of the case, (3) the sufficiency of the complaint, (4) the
28 sum of money at stake in the action, (5) the possibility of a dispute concerning the

1 material facts, (6) whether defendant's default was the product of excusable
2 neglect, and (7) the strong public policy favoring decision on the merits." *Eitel v.*
3 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

4 **III. ANALYSIS OF THE EITEL FACTORS**

5 The balancing of the *Eitel* factors here favors entry of a default judgment under
6 the Ninth Circuit's *Eitel* analysis.

7 The first *Eitel* factor favors default judgment because, absent such judgment,
8 Plaintiff will be prejudiced by Defendants' failure to appear in this action (Dkt. 29)
9 since it will be left without a remedy.

10 The second and third *Eitel* factors similarly favor default judgment. The
11 Ninth Circuit has held that these "merits" and "sufficiency of the complaint"
12 factors require that Plaintiff "state a claim on which the [plaintiff] may recover."
13 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). Here, Plaintiff has
14 asserted, *inter alia*, a claim for copyright infringement in violation of 17 U.S.C. §
15 501, *et seq.* that is demonstrated by the side-by-side comparison between
16 Plaintiff's original application and Defendants' counterfeits, showing that those
17 counterfeits are substantially similar. Exs. A-B. The admitted allegations in the
18 Complaint explain that: (i) Plaintiff is the creator and copyright owner of a blood
19 pressure mobile application (Compl. ¶ 38); (ii) Defendants' infringing applications
20 use identical language excerpts and interface layout as Plaintiff's application (*id.*
21 ¶¶ 41, 43-44); (iii) Plaintiff did not authorize Defendants to copy its original work
22 (*id.* ¶ 45); (iv) Defendants' infringing conduct violates 17 U.S.C. §§ 106(1)-(3), (5)
23 and 17 U.S.C. § 501(a); (v) Defendants damaged Plaintiff by intentionally copying
24 Plaintiff's valuable content and using counterfeits to target the same consumers
25 and tap into Plaintiff's previously generated user traffic and related advertising
26 income (*id.* ¶ 47); (vi) Defendants damaged Plaintiff by offering their inferior
27 counterfeit apps to Plaintiff's consumer base and causing a current and long-term
28 reputational damage to Plaintiff (*id.* ¶ 48); and (vii) unless enjoined and restrained

1 by the Court, Defendants' conduct is causing and will continue to cause Plaintiff
2 irreparable injury that cannot be compensated by monetary damages (*id.* ¶ 51).

3 Given Defendants' default entered by the Clerk, the above factual
4 allegations should be taken as true and are thus sufficient to support Plaintiff's
5 copyright infringement claim. *See Gucci Am. Inc. v. Wang Huoqing*, No. C-09-
6 05969 JCS, 2011 WL 31191, at *8 (N.D. Cal. Jan. 3, 2011) ("Once a party's
7 default has been entered, the factual allegations of the complaint, except those
8 concerning damages, are deemed to have been admitted by the non-responding
9 party.").

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

16 The fifth *Eitel* factor, addressing the possibility of a dispute concerning
17 material facts, is neutral at best because, as a result of Defendants' default and
18 failure to appear in this litigation, the Court is unable to determine if there are any
19 disputed material facts. *See Gucci Am. Inc.*, 2011 WL 31191, at *11.

20 The sixth *Eitel* factor, addressing whether Defendant's default was the
21 product of excusable neglect, favors default judgment because Plaintiff served
22 Defendants pursuant to the Court's alternative service order, directing Plaintiff to
23 use valid and active email addresses and Defendants received notice of this lawsuit
24 but decided not to appear. In fact, Defendants Begamob responded by admitting
25 infringement, but never appeared in this case. Ex. C ("We have identified and
26 removed the plagiarized content from our app immediately after receiving the
27 report from your team."). Similarly, after being served, Defendant Tools wrote to

1 Google to complain about the removal of its infringing application but never
2 appeared in this case. Ex. E.

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

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

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

11 **IV. PERMANENT INJUNCTION**

12 It is well established that courts can issue injunctions as part of default
13 judgments. *See China Cent. Television v. Create New Tech. (HK) Ltd.*, No. CV
14 15-01869, 2015 WL 12732432, at *19 (C.D. Cal. Dec. 7, 2015); *Priority Records,*
15 *LLC v. Tabora*, No. C 07-1023 PJH, 2007 WL 2517312, *2 (N.D. Cal. Aug. 31,
16 2007) (granting permanent injunctive relief in a copyright case as part of a default
17 judgment).

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

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

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

14 Finally, with respect to element 4, the public interest would not be disserved
15 by a permanent injunction because enjoining Defendants from copying Plaintiff's
16 unique work will undoubtedly protect the copyright owner and advance the
17 objective of the Copyright Act by incentivizing the creation of original work. *See*
18 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 (1994) ("The primary objective of the
19 Copyright Act is to encourage the production of original literary, artistic, and
20 musical expression for the good of the public.").

21 Accordingly, the Court finds that permanent injunction against Defendants is
22 warranted.

23 For all of the foregoing reasons, Plaintiff's Rule 55(b) Renewed Motion for
24 Default Judgment against Defendants Begamob Global and Trusted Tools &
25 Utilities Apps is granted.

26 The Court hereby orders that:

27 (1) Defendants and all of their agents and representatives, and any other

1 persons and entities acting on Defendants' behalf or with them, be permanently
2 enjoined and restrained from:

- 3 (i) using Plaintiff's Blood Pressure mobile application or any of
4 the infringing images, language and interface layouts, as
5 described in Plaintiff's Complaint and attached exhibits;
- 6 (ii) using mobile applications, images, language or interface
7 layouts, which are substantially similar to Plaintiff's Blood
8 Pressure mobile application or its images, language and
9 interface layout, as described in Plaintiff's Complaint and
10 attached exhibits;
- 11 (iii) committing any acts intended to cause consumers to believe
12 that Defendants' mobile application(s) are offered for download
13 or sold under Plaintiff's control, authorization, or approval; and
- 14 (iv) creating, providing or offering for download or sale any mobile
15 applications substantially similar to Plaintiff's Blood Pressure
16 mobile application.

17 (2) Defendants shall, within ten (10) business days after receipt of this
18 Order, remove all of its infringing mobile applications and other infringing content
19 from any online platform;

20 (3) Should Defendants' infringing mobile applications remain active on any
21 online platforms of third-party providers after ten (10) business days following
22 Defendants' receipt of this Order, and upon Plaintiff's request to such third-party
23 providers, those third-party providers shall, within ten (10) business days after
24 receipt of this Order, remove Defendants' infringing mobile applications.

25 Entered this ____ day of _____, 2023

26 _____
27 Hon. Josephine L. Staton
28 U.S. District Judge

CERTIFICATE OF SERVICE

I, Shelley Ivan, hereby certify that on November 7, 2023, a true and correct copy of the foregoing **[PROPOSED] ORDER ENTERING FINAL DEFAULT JUDGMENT AGAINST DEFENDANTS BEGAMOB GLOBAL AND TRUSTED TOOLS & UTILITIES APPS** was 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