

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRYAN FLETCHER AND GARRETT
FLETCHER,

Plaintiffs,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”,

Defendants.

No. 24-cv-00717

Judge John F. Kness

ORDER

The motion (Dkt. 39) of Defendants HONGXIANG1 and Min1 for an extension of time to answer is denied. Defendants recite the good cause standard under Rule 6 of the Federal Rules of Civil Procedure and further note, because their motion came after the deadline to answer the complaint, that a court can extend a blown deadline “if the party failed to act because of excusable neglect.” (Dkt 39 at 1.) But although Defendants recite the standard, they offer nothing substantive to justify a finding of excusable neglect. There is neglect here, to be sure, but is it excusable? Defendants don’t make an argument to that effect, so the motion must be, and is, denied on that basis alone.

Some further background to this ruling might be illuminating. This is one of the myriad so-called “Schedule A” trademark, copyright, and design patent cases that abound in this District (and apparently nowhere else, or at least nowhere else to this extent). These cases typically involve the joinder of numerous defendants, *ex parte* initial proceedings, the issuance of temporary restraining orders and preliminary injunctions, and, finally, the issuance of default judgments. Most defendants never show up, which may be consistent with the brand-owner plaintiffs’ consistent theme that malign overseas actors, many based in the People’s Republic of China, act in concert willfully to pillage the intellectual property rights of brand owners. Because most defendants never appear, and those who do are almost always dismissed (more on that below), the development of binding precedent in this class of cases has been minimal. Whatever flaws exist in this model—and there may be several, as one commentator has recently noted (*see* Eric Goldman, *A SAD Scheme of Abusive Intellectual Property Litigation*, 123 Colum. L. Rev. F. 183 (2023))—will have to wait to be addressed another day. *See, e.g., United States v. Sineneng-Smith*, 590 U.S. 371,

375 (2020) (reaffirming the party presentation rule and cautioning federal courts about considering arguments and issues not raised by the parties).

Defendants do sometimes appear, as Defendants HONGXIANG1 and Min1 have purported to here. But that leads to a curious phenomenon: the appearances of defendants almost never lead to substantive litigation because the parties settle. We can presume that plaintiffs and most defendants have particularly strong incentives to settle (plaintiffs, because the “Schedule A” model suggests that they may seek a low-cost recovery; defendants, because they want to avoid the risks and costs of overseas litigation). That leads to the possible inference that parties and counsel engage in strategic and tactical game-playing with the process of this brand of litigation. Game-playing isn’t wrong, of course, provided it remains within the bounds of the rules. It can, however, be relevant to a judge’s exercise of discretion involving circumstances like those present here. More specifically, counsel for Defendants HONGXIANG1 and Min1 has, on several recent occasions in “Schedule A” cases before this Court, filed an appearance on behalf of defendants very shortly (often the same or following day) after a plaintiff moves for entry of default and a default judgment. When this Court has set hearings in those cases, however, either the defendants’ counsel has withdrawn or those defendants whom counsel has represented have been dismissed before the hearing—presumably due to settlements. *See, e.g.*, Case Nos. 23-cv-15059 (Dkt. 37); 23-cv-14915 (Dkt. 75); 24-cv-00212 (Dkt. 35); 23-cv-16369 (Dkt. 37).

This pattern begs some unanswered questions. Why don’t these late-appearing defendants appear and seek additional time before a motion for default is filed instead of the day after? Certainly we don’t know, because, as with Defendants HONGXIANG1 and Min1’s motion for an extension here, no explanation has been provided as to timing. The motion says that Defendants “have recently engaged local counsel.” (Dkt. 39 at 1.) That vague statement provides little of substance and doesn’t preclude the possibility that counsel was retained several days ago: plenty early to get a quick motion for an extension on file (the Court makes no finding to that effect). Nor, as explained above, do Defendants HONGXIANG1 and Min1 make any effort to show good cause/excusable neglect for missing the deadline to answer. These circumstances at least suggest the possibility that the filing of an extension motion *after* Plaintiffs sought default in this case was a gambit to exert additional settlement pressure on Plaintiffs.


It must be reiterated that the Court makes no findings or holdings on the considerations discussed above. But this background compels the Court to view the timing of the extension motion (Dkt. 39) with a more skeptical eye than would otherwise be warranted. Applying the excusable neglect standard against this backdrop, and in the light of the absence of any alternative explanation for Defendants’ delay, the motion for an extension must be denied.

Turning to the merits of the case, Plaintiffs have filed a motion (Dkt. 35) for entry of default and default judgment, and no remaining Defendant has responded in a timely way. Accordingly, the motion is granted. Because Defendants directly target their business activities toward consumers in the United States, including Illinois, this Court has personal jurisdiction over Defendants. *Am. Bridal & Prom Indus. Ass'n v. P'ships & Unincorporated Ass'ns Identified on Schedule A*, 192 F. Supp. 3d 924, 934 (N.D. Ill. 2016). Plaintiffs have presented screenshot evidence that each Defendant Internet Store is reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can and do purchase infringing products. *See, e.g.*, Dkt. 12, 13, 14. In addition, based on the evidence previously submitted by Plaintiffs and the admission of liability by virtue of the default, Plaintiffs have established that a permanent injunction is warranted. The infringement of Plaintiffs' trademark and copyrights irreparably harms Plaintiffs and confuses the public.

Defendants' infringement was willful and statutory damages are thus awarded. After considering the nature of the products, the price point, the absence of any concrete evidence of lost profits or high-volume infringement by Defendants (Plaintiffs have not sought an accounting of profits), the value of Plaintiffs' brand and copyrights, and the need to deter infringement that is easily committed and difficult to stop, the Court finds that (1) \$50,000 per distinct Defendant is an appropriate award of statutory damages under 15 U.S.C. § 1117(c)(2) for Defendants' willful use of counterfeit trademarks; and (2) \$50,000 per distinct Defendant is an appropriate award of statutory damages under 17 U.S.C. § 504(c)(2) for Defendants' willful infringement of Plaintiffs' copyrights.¹ Enter separate Final Judgment Order. Any other pending motions are dismissed as moot. Civil case terminated.

SO ORDERED in No. 24-cv-00717.

Date: August 7, 2024



JOHN F. KNESS
United States District Judge

¹ Because statutory damages are awarded, a separate damages hearing is not required. *See United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989) (judgment by default “may not be entered without a hearing on damages unless the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits.”).