

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BMADDOX ENTERPRISES LLC,

Plaintiff,

v.

MILAD OSKOUIE, OSKO M LTD, and
PLATINUM AVENUE HOLDINGS PTY, LTD,

Defendants.

Case No. 17-cv-1889-RA-SLC

MILAD OSKOUIE and PLATINUM AVENUE
HOLDINGS PTY, LTD,

Counterclaim Plaintiffs,

v.

BMADDOX ENTERPRISES LLC and
BRANDON MADDOX,

Counterclaim Defendants.

**PLAINTIFF AND COUNTERCLAIM DEFENDANT’S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR DEFAULT JUDGMENT AND A PERMANENT INJUNCTION
AGAINST DEFENDANTS AND COUNTERCLAIM PLAINTIFFS PLATINUM
AVENUE HOLDINGS PTY, LTD AND OSKO M LTD**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	III
PRELIMINARY STATEMENT	1
FACTUAL BACKGROUND	2
I. PLAINTIFF’S INTELLECTUAL PROPERTY AND BUSINESS.....	2
II. ENTITY DEFENDANTS’ UNLAWFUL ACTS	3
ARGUMENT	8
I. THIS COURT HAS PERSONAL JURISDICTION OVER THE ENTITY DEFENDANTS	8
II. PLAINTIFF IS ENTITLED TO A DEFAULT JUDGMENT AGAINST THE ENTITY DEFENDANTS	10
A. <i>Entity Defendants’ Liability for Copyright Infringement</i>	12
B. <i>Entity Defendants’ Liability for Violation of 17 U.S.C. § 512(f)</i>	13
C. <i>Entity Defendants’ Liability Under the Lanham Act</i>	14
D. <i>Entity Defendants’ Liability Under the Computer Fraud and Abuse Act</i>	17
E. <i>Entity Defendants’ Liability for Theft of Trade Secrets</i>	18
F. <i>Entity Defendants’ Liability Under New York Gen. Bus. Law § 349</i>	20
III. ONLY A PERMANENT INJUNCTION WILL PROTECT PLAINTIFF FROM ENTITY DEFENDANTS	21
CONCLUSION	25

TABLE OF AUTHORITIES

CASES

Avon 16
Avon, 984 F.Supp. at 795 15
Citigroup Global Markets, Inc. v. JWS 1999 Holding B.V., No. 08 Civ. 5362(RJS), 2009 WL 2981912 (S.D.N.Y. Sept. 11, 2009) 10
City of New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114 (2d Cir. 2011) 11
Defiance Button Mach. Co. v. C & C Metal Prods. Corp., 759 F.2d 1053, 1063 (2d Cir.), *cert. denied*, 474 U.S. 844 (1985) 19
Diesel S.P.A. v. John Does, 14-CV-4592 (KMW), 2016 WL 96171 (S.D.N.Y. Jan. 8, 2016) 23
eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006) 22
Elsevier Inc. v. Siew Yee Chew, 17 Civ. 6225 (JGK) (GWG), 2019 WL 74606 (S.D.N.Y. Jan. 2, 2019) 11, 21, 22, 23
Enigma Software Group USA, LLC v. Bleeping Computer LLC, 194 F.Supp.3d 263, 279-80 (S.D.N.Y. 2016) 15
Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991) 12
Gordon & Breach Science Publishers v. A.I.P., 859 F.Supp. 1521, 1535-36 (S.D.N.Y. 1994) 15
Hamil Am. Inc. v. GFI, 193 F.3d 92, 99 (2d Cir. 1999) 12
Hamilton v. Atlas Turner, Inc., 197 F.3d 58 (2d Cir. 1999) 10
Int’l Shoe Co. v. Washington, 326 U.S. 310 (1945) 10
*Johnson & Johnson * Merck Consumer Pharmaceuticals Co. v. Smithkline Beecham Corp.*, 960 F.2d 294, 297 (2d Cir. 1992) 16
Knitwaves, Inc. v. Lollytogs Ltd. (Inc.), 71 F.3d 996, 1002 (2d Cir. 1995) 12
Laboratorios Rivas, SRL v. Ugly & Beauty, Inc., No. 11 CIV. 5980 RA JLC, 2013 WL 5977440 (S.D.N.Y. Nov. 12, 2013), *report and recommendation adopted*, No. 11 CIV. 5980 RA JLC, 2014 WL 112397 (S.D.N.Y. Jan. 8, 2014) 11
Lifeguard Licensing Corp. v. Ann Arbor T-Shirt Co., LLC, No. 15 CIV. 8459 (LGS), 2016 WL 3748480 (S.D.N.Y. July 8, 2016) 9, 10
Lipton v. Nature Co., 71 F.3d 464, 471 (2d Cir. 1995) 12
N. Atl. Instruments, Inc. v. Haber, 188 F.3d 38, 43-44 (2d Cir. 1999) 18, 19
Philip Morris USA, Inc. v. Otamedia, Ltd., 331 F. Supp. 2d 228 (S.D.N.Y. 2004) 12, 24
Reis, Inc. v. Spring11 LLC, 2016 WL 5390896, *8 (S.D.N.Y. 2016) 17
Salinger v. Colting, 607 F.3d 68 (2d Cir. 2010) 22
Sara Designs, Inc. v. A Classic Time Watch Co. Inc., 2017 WL 627461, *5 (S.D.N.Y. 2017) 20
Sarkissian 18, 20
Tiffany (NJ) LLC v. Dong, No. 11 CIV. 2183 GBD FM, 2013 WL 4046380 (S.D.N.Y. Aug. 9, 2013) 25
United States v. Long, 654 F.2d 911 (3d Cir. 1981) 24
United States v. Regan, 858 F.2d 115 (2d Cir. 1988) 24
United States v. United Liquors Corp., 77 S. Ct. 208, 210 (1956) 24

STATUTES

12 U.S.C. § 1331 8
 12 U.S.C. § 1338 8
 15 U.S.C. § 1116 22
 15 U.S.C. § 115(a)(1)(B) 15
 17 U.S.C. § 106 12
 17 U.S.C. § 502(a) 22
 17 U.S.C. § 512(f) ii, 13, 14
 18 U.S.C. § 1030(a)(4) 17
 18 U.S.C. § 1030(c)(4)(A)(i)(IV) 17
 18 U.S.C. § 1030(e)(11) 18
 18 U.S.C. § 1030(e)(2)(B) 17
 28 U.S.C. § 1367 8

N.Y. C.P.L.R. § 302(a)(1) 9
N.Y. C.P.L.R. § 302(a)(3) 9
N.Y. C.P.L.R. § 5224 25
N.Y. C.P.L.R. § 5225 25
New York General Business Law § 349 ii, 8, 20

RULES

Fed. R. Civ. P. 55(b) 1
Fed. R. Civ. P. 65(d) 24
Local Civil Rule 55.2(b) 1

TREATISES

5 McCarthy on Trademarks and Unfair Competition § 27:2 (4th ed. 2017) 14

Plaintiff and Counterclaim Defendant BMaddox Enterprises, LLC (“BMaddox” or “Plaintiff”) respectfully submits this Memorandum of Law in Support of Its Motion for Default Judgment and a Permanent Injunction against Defendants and Counterclaim Plaintiffs Okso M Ltd. (“Osko”) and Platinum Avenue Holdings Pty., Ltd. (“Platinum”) (Osko and Platinum are referred to herein collectively as the “Entity Defendants”) pursuant to Rule 55(b) of the Federal Rules of Civil Procedure and Local Civil Rule 55.2(b) and states as follows:

PRELIMINARY STATEMENT

Entity Defendants, controlled by their primary officer, Defendant Milad Oskouie (“Oskouie”), have spent the previous three years engaged in the illegal copying, distribution, and sale of counterfeit copies of BMaddox’s educational guide that they marketed through a website copied from BMaddox’s website and located at a domain that is confusingly similar to the domain used by BMaddox. Entity Defendants were able to copy BMaddox’s website and educational guides after unlawfully gaining access to several of BMaddox’s accounts with online service providers. Entity Defendants not only copied BMaddox’s content, they stole Plaintiff’s email list of over one hundred thousand (100,000) prospective customers and began emailing out a regular newsletter that mimicked Plaintiff’s email newsletter and arrived in inboxes from an email address almost identical to Plaintiff’s. Entity Defendants failed to obtain legal counsel for more than a year and a half after the Court granted their last attorney’s motion to withdraw. (Aug. 30, 2018 Order, ECF No. 169.) Magistrate Judge Cave issued an Order stating that if the Entity Defendants remained unrepresented on May 4, 2020, “Plaintiff may seek a certificate of default from the Clerk of the Court.” (Mar. 3, 2020 Order 1, ECF No. 188.) No appearances were filed on their behalf, and Plaintiff obtained a Certificate of Default as to the Entity Defendants. (Certificate of Default, ECF No. 197.) In light of Entity Defendants’ default, their repeated

attempts to frustrate this proceeding, and the ongoing harm they cause BMaddox, Plaintiff now seeks entry of a default judgment and permanent injunction against Entity Defendants.

FACTUAL BACKGROUND

I. Plaintiff's Intellectual Property and Business

Brandon Maddox is a controlling member of Plaintiff, BMaddox, and is a licensed pharmacist who earned an MBA from Duke University. Compl. ¶ 22, ECF No. 6. Brandon Maddox owns and operates one of the largest Class 3 FFL dealers in the country, serves as the President Elect of the Dakota Territory Gun Collectors Association and the President of the South Dakota Firearms Industry Association, and is invited to speak at national firearm regulation conferences. *Id.* at ¶¶ 25-26. He created and runs BMaddox to provide educational materials and guidance relating to the complex Gun Control Act of 1968, which regulates manufacturers and dealers of firearms. *Id.* at ¶¶ 27-29. BMaddox makes its educational materials and other guidance available through its website <ffl123.com>. *Id.* at ¶¶ 24-29. On April 19, 2011, Brandon Maddox obtained federal copyright Registration No. TX-7-288-901 (the “901 Registration”) for an educational text he authored, *Federal Firearms License Guide & Class 3 License Guide* (“Plaintiff’s Guidebook”). *Id.* at ¶ 30. Brandon Maddox subsequently assigned all rights in this copyright registration to BMaddox. *Id.* at ¶ 31. On February 28, 2017, Plaintiff submitted an application to the Copyright Office for registration of BMaddox’s website located at <ffl123.com>. *Id.* at ¶ 32. This copyright application for the look and feel as well as the content of Plaintiff’s website matured into federal copyright Registration No. TX0008400540 (the “540 Registration”). On March 1, 2017, Plaintiff submitted an application to the Copyright Office for registration of the HTML code associated with its website at <ffl123.com>. Compl. ¶ 33, ECF No. 6. This application matured into federal copyright Registration No. TX0008400000 (the “000 Registration”). BMaddox also owns federal trademark Registration No. 4,357,455 for

FFL123 for “[l]icensing information services, namely, providing on-line information in the fields of firearms dealer licensure; and licensing consulting services in the field of firearms dealer licensure” and has used this trademark for such services since at least as early as March 2009. Compl. ¶ 38, ECF No. 6. In late 2013, Plaintiff hired a freelance web developer to increase traffic to <ffl123.com>. *Id.* at ¶ 40. The freelancer that BMaddox hired introduced Plaintiff to Defendant Oskouie as a collaborator working out of Australia, and asked Brandon if he would participate in a testimonial describing the benefits of working with them. *Id.* at ¶¶ 41-42. Without Plaintiff’s consent, the pair displayed Plaintiff’s confidential sales figures in the testimonial they created. *Id.* at 43. On December 23, 2013, Plaintiff asked that the case study featuring confidential sales figures be removed from their website. *Id.* at ¶ 44. Defendant Oskouie initially removed the testimonial but re-published it in July 2015 without Plaintiff’s consent and left it up despite multiple requests from Plaintiff that the testimonial be removed. *Id.* at 45-46.

II. Entity Defendants’ Unlawful Acts

Less than six months after Defendant Oskouie’s repeated refusals to remove Plaintiff’s confidential financial information from the internet, Plaintiff received a message from Microsoft stating that someone from Sydney, Australia had accessed Plaintiff’s Microsoft account. *Id.* at ¶ 47. On December 30, 2015, Plaintiff received a message that someone from Sydney, Australia had accessed his Google Chrome account. *Id.* at 49. Defendants conspired to unlawfully access Plaintiff’s accounts. *Id.* at ¶¶ 48, 50. Several of the IP addresses used to access Defendants’ PayPal accounts were used to access several of Plaintiff’s online accounts at least once and some were accessed dozens of times from those IP addresses. Maddox Decl. ¶¶ 32, 33; Duff Decl. ¶ 70 Defendant Oskouie is the sole shareholder of Osko. Compl. ¶ 9. Oskouie was the sole shareholder of Platinum. *Id.* at ¶ 11. In a declaration filed by Oskouie, he stated that he is “a Director of Defendant Platinum . . . , which until June 2017, operated a website at

<FFLTrust.com>.” (June 28, 2017 Oskouie Decl. ¶ 3, ECF No. 27.) Less than two months later, in another declaration, Oskouie admitted that Platinum was continuing to operate the website at <FFLTrust.com>. (Aug. 16, 2017 Oskouie Decl. ¶ 3, ECF No. 48.) On March 15, 2018, Oskouie submitted a declaration stating that he was “the primary officer for the [Entity Defendants]” and had recently been diagnosed with and started treatment for leukemia, so all three Defendants needed a six-month stay of the proceedings. Mar. 15, 2018 Oskouie Decl. ¶¶ 1-3, ECF No. 118. A few days later, after he was caught submitting fraudulent documents to the Court claiming they were test results from his doctor, Oskouie again stated in a declaration that he was “the primary officer for the [Entity Defendants].” Mar. 27, 2018 Oskouie Decl. ¶ 1, ECF No. 125-1. Oskouie repeated the claim in at least two more declarations. Mar. 29, 2018 Oskouie Decl. ¶ 1, ECF No. 130; Apr. 13, 2018 Oskouie Decl. ¶ 1, ECF No. 139. Once Entity Defendants obtained unauthorized access to Plaintiff’s Google Chrome account as described above, they accessed Plaintiff’s saved passwords and logged into a number of online services Plaintiff used in connection with its e-commerce business at <ffl123.com>, including Plaintiff’s email marketing account at Benchmark, and copied an email list of more than 100,000 prospective customers. Compl. ¶¶ 51-52. On January 16, 2016, Dropbox, a cloud-based file storage system, MailChimp, an email marketing system, and Rackspace, a website hosting service, all notified Plaintiff that Plaintiff’s accounts with each, which were used in connection with <ffl123.com>, had either been accessed by someone in Sydney, Australia or someone from Sydney had attempted to access the accounts. *Id.* at ¶ 53. Entity Defendants also obtained access to the Wordpress account that Plaintiff used to operate the backend of Plaintiff’s e-commerce website at <ffl123.com>. *Id.* at ¶ 55. Entity Defendants altered Plaintiff’s <ffl123.com> website in such a way that it was no

longer indexed by search engines, effectively removing Plaintiff's e-commerce business from search results and causing significant damage to Plaintiff's business. *Id.* at ¶ 56.

On or about December 26, 2015, Defendant Oskouie registered the domain <ffltrust.com> to conspire with the Entity Defendants to create a copy of Plaintiff's Guidebook and website from <ffl123.com> and compete with Plaintiff's e-commerce business by selling educational materials stolen from Plaintiff to Plaintiff's own customers. *Id.* at 58. According to Defendant Oskouie, he created and ran the website at <ffltrust.com> on Platinum's behalf. (June 28, 2017 Oskouie Decl. ¶ 3, ECF No. 27; Defs.' Answer ¶ 26, ECF No. 32; Aug. 16, 2017 Oskouie Decl. ¶ 3, ECF No. 48.) On June 28, 2017, however the infringing website appearing at <ffltrust.com> contained a copyright notice that read "Copyright © 2016 – Osko m Ltd. All Rights Reserved" and the statement "Osco M Ltd a NRA Business Alliance Partner" at the bottom of every page. Duff Decl. ¶ 71; Reply Defs.' Mem. Opp'n Pl.'s Appl. Prelim. Inj. Ex. A, ECF No. 28-1.) The website created and operated by the Entity Defendants at <ffltrust.com> (the "Infringing Website") contained "practically identical content ripped from <ffl123.com>." Compl. ¶ 59. The Entity Defendants also copied the look and feel of Plaintiff's website, which is protected by the '540 Registration, on their Infringing Website. *Id.* at ¶ 60b; Maddox Decl. ¶¶ 8-13, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6. The Entity Defendants copied the HTML code from Plaintiff's website and used it to create their Infringing Website. Compl. ¶¶ 60c, 95; Maddox Decl. ¶¶ 14, 15, Ex. E-1, Ex. E-2. The Entity Defendants copied Plaintiff's email marketing messages and sent confusingly similar email newsletters to Plaintiff's email list of prospective customers, which includes many New York state residents, from the domain <ffltrust.com>. Compl. ¶ 60d; Maddox Decl. ¶¶ 16, 17, Ex. F-1, F-2. There is no doubt that the Entity Defendants misappropriated Plaintiff's email list, because Brandon Maddox's in-law, who

did not sign up for any such email newsletter, receives the infringing emails from them. (Maddox Decl. ¶ 17.) The only way the Entity Defendants could have obtained her personal email address is through unlawful access to Plaintiff's accounts. The Entity Defendants created a fictitious person and used a stock photo to claim that a man named "Henry Jackson" was the "President" of the company that operated the Infringing Website and intentionally mislead consumers about the parties running the Infringing Website. Compl. ¶ 60e; Maddox Decl. ¶ 17, Ex. F-2. At least one online discussion forum for the Parties' consumers shows a discussion and consumer confusion related to the Entity Defendants' creation and use of the Henry Jackson persona. (Duff Decl. ¶ 72.) The Entity Defendants also altered digital images of Plaintiff's federal firearms license to mislead consumers by making them believe that the persons operating the Infringing Website had the experience necessary to sell educational materials related to federal firearms licensing. Id. at ¶ 60g; Maddox Decl. ¶ 23, Ex. H-2.) When altering the federal firearms licenses that the Entity Defendants presented as their own on the Infringing Website, they did not notice that each license they fraudulently presented as their own clearly read "BMaddox Enterprises, LLC" along the bottom edge. Id. at ¶¶ 110-14 Ex. H-1, H-2; Maddox Decl. ¶¶ 22, 23, Ex. H-1, H-2. Other federal firearms licenses published by the Entity Defendants were altered. Maddox Decl. ¶ 25; Reply Defs.' Mem. Opp'n Pl.'s Appl. Prelim. Inj. Ex. C, ECF No. 28-3. Page three of the Entity Defendants' publication titled The FFL Insider Report 2016 shows the image of a federal firearms license with the prefix "3-45," which references a specific geographic region that does not overlap with the address shown in the same image. Maddox Decl. ¶ 25. The Entity Defendants copied Plaintiff's genuine customer reviews, changing only the first names, city names, and insignificant text. Compl. ¶ 84; Maddox Decl. ¶ 13, Ex. D-6.) As of June 28, 2017, at least two of the customer reviews appearing on the Infringing Website mentioned Brandon

Maddox by name. Maddox Decl. ¶ 26; Reply Defs.’ Mem. Opp’n Pl.’s Appl. Prelim. Inj. Ex. D, ECF No. 28-4. Entity Defendants also copied Plaintiff’s Frequently Asked Questions page, blog articles, privacy policy, glossary, and terms of use. *Id.* at ¶ 83; Maddox Decl. ¶¶ 9-12, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5. As of June 28, 2017, page four of the terms of use appearing on the Infringing Website required a litigant to file a claim arising out of the terms of use in “the state or federal courts located in Minnehaha County, Luxembourg.” Duff Decl. ¶ 73; Reply Defs.’ Mem. Opp’n Pl.’s Appl. Prelim. Inj. Ex. E, ECF No. 28-5.) Minnehaha County is located in South Dakota, where Plaintiff is located, and was copied directly from Plaintiff’s website. Maddox Decl. ¶ 27. There is no Minnehaha County in Luxembourg. *Id.* ¶ 27.

Through the Infringing Website, the Entity Defendants created and sold a slavish copy of Plaintiff’s Guidebook. Compl. ¶ 60a; Maddox Decl. ¶¶ 4-7, Ex. C-1, Ex. C-2, Ex. C-3, Ex. C-4. They have sold their infringing guidebook since at least as early as February 2016. *Id.* at ¶ 66. The infringing guidebook copies long sections of text from Plaintiff’s Guidebook almost verbatim and copies the chapter structure and tone of Plaintiff’s Guidebook. *Id.* at 67. The infringing guidebook sold by the Entity Defendants also copies the layout, arrangement and selection of facts, and the overall creative expression found in Plaintiff’s Guidebook, copying not only chapter numbers but also the placement of promotion code offers, titles, pictures, text blocks, “contact us” calls to action, “most popular sections” areas, and ad placement. *Id.* at ¶¶ 68-70. To ensure they could continue infringing upon Plaintiff’s rights, the Entity Defendants knowingly false counter-notices to Plaintiff’s takedown requests under the Digital Millennium Copyright Act (“DMCA”). *Id.* at ¶ 60f; Maddox Decl. ¶¶ 19, 21, Ex. G-2, Ex. G-4. On June 15, 2015, Plaintiff filed a DMCA takedown notice with Amazon Web Services (“AWS”) requesting removal of the Entity Defendants’ email marketing messages. *Id.* at ¶ 102; Maddox Decl. ¶¶ 16,

17, Ex. F-1, Ex. F-2. The same day, Plaintiff also submitted a DMCA takedown request to MailChimp. *Id.* at 102; Maddox Decl. ¶ 18, Ex. G-1. Defendant Oskouie filed a counternotice with MailChimp on behalf of Platinum on June 20, 2016 stating that the Entity Defendants had “a good faith belief that [Plaintiff’s] complaint of copyright violation is based on mistaken information, misidentification of the material in question, or deliberate misreading of the law.” *Id.* at 103; Maddox Decl. ¶ 19, Ex. G-2. The Entity Defendants have received money through their Infringing Website via their online payment processors such as Stripe, PayPal, eWay, Visa, Mastercard, and American Express by selling infringing counterfeit versions of Plaintiff’s Guide. *Id.* at ¶ 73. The Entity Defendants continue to infringe upon Plaintiff’s rights after being notified of such rights. *Id.* at ¶ 72. All of the Entity Defendants’ unlawful actions have been willful, and they continue to willfully infringe upon Plaintiff’s rights. *Id.* at ¶ 62.

ARGUMENT

I. This Court Has Personal Jurisdiction Over the Entity Defendants¹

This is a civil action arising from Entity Defendants’ willful and intentional copying of Plaintiff’s copyrighted works, false advertising, misappropriation of Plaintiff’s trade secrets, and knowing misrepresentation of a material fact concerning the existence of their use of infringing content in response to a DMCA takedown notice. Plaintiff’s causes of action arise under the Copyright Act, Lanham Act, Computer Fraud and Abuse Act, New York common law, and New York General Business Law § 349. The Entity Defendants market, advertise, and sell their counterfeit educational materials online and within this judicial district. Compl. ¶ 15. Plaintiff

¹ Because Plaintiff has alleged and supported claims under the Copyright Act and the Lanham Act, this Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338. The Court has pendant, ancillary, and supplemental jurisdiction according to 28 U.S.C. § 1367 over Plaintiff’s asserted New York state claims because they are so closely related that they form the same case or controversy.

has alleged facts supporting specific personal jurisdiction under New York’s long-arm statute, C.P.L.R. § 302(a)(1), namely, that the Entity Defendants “purposefully direct their business activities toward consumers in the State of New York, including within this judicial district, derive a commercial benefit from their contacts within the State of New York, and are causing injury to Plaintiff within the State of New York” and that the Entity Defendants’ business activities in New York comprise selling counterfeit educational materials that have been “sold to New York residents within this judicial district.” Compl. ¶¶ 16, 20. Section 302(a)(1) states that for “a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent: (1) transacts any business within the state or contracts anywhere to supply goods or services in the state” N.Y.C.P.L.R. § 302(a)(1). “A website that does more than provide information about a product and allows customers to purchase goods online, is a ‘highly interactive website,’ which may provide a basis for personal jurisdiction under CPLR § 302(a).” *Lifeguard Licensing Corp. v. Ann Arbor T-Shirt Co., LLC*, No. 15 CIV. 8459 (LGS), 2016 WL 3748480, at *3 (S.D.N.Y. July 8, 2016) (citation omitted). Plaintiff’s well-pleaded allegations state that Entity Defendants not only operating a highly interactive e-commerce website that sold counterfeit goods to consumers in New York, they describe a concerted effort to reach out to potential consumers throughout the United States, including New York state, through the frequent and continuing use of Plaintiff’s stolen email list. Plaintiff has also pled allegations establishing personal jurisdiction over the Entity Defendants pursuant to C.P.L.R. § 302(a)(3), which provides for specific personal jurisdiction over a defendant who commits a tortious act outside of New York “causing injury to person or property within the state . . . if he: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial

revenue from goods used or consumed or services rendered, in the state” N.Y.C.P.L.R. § 302(a)(3). Plaintiff has alleged and the Entity Defendants have admitted to marketing and selling counterfeit educational materials concerning federal firearms licensing to New York residents and deriving commercial benefit from their contacts with New York state. Compl. ¶¶ 14-16, 20. This Court also has personal jurisdiction over the Entity Defendants because of their direct involvement with the Infringing Website and the counternotification filed under the DMCA in response to a takedown notice sent to AWS by Plaintiff. *Id.* at ¶¶ 104, 105; Maddox Decl. ¶¶ 20, 21, Ex. G-3, Ex. G-4. By filing this DMCA counternotification with AWS, the Entity Defendants’ primary officer consented to any judicial district in which AWS was present, and AWS is located within this judicial district. *Id.* ¶¶ 18-19. Like the foreign defendants in *Lifeguard Licensing*, the Court has personal jurisdiction over Entity Defendants. Their admitted and well-pleaded contacts with New York also demonstrate that asserting personal jurisdiction over the Entity Defendants comports with due process requirements. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Moreover, the Entity Defendants have waived any personal jurisdiction defense through years of litigation on the merits during which neither Entity Defendant challenged the Court’s exercise of personal jurisdiction over them in relation to Plaintiff’s claims. *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60 (2d Cir. 1999).

II. Plaintiff is Entitled to a Default Judgment Against the Entity Defendants

Plaintiff is entitled to a default judgment against Entity Defendants pursuant to the Federal Rules of Civil Procedure because the Entity Defendants were properly served, indeed they filed sixteen counterclaims against Plaintiff and Brandon Maddox, before missing several deadlines and becoming essentially unresponsive to any attempts at moving the case forward. *See* Certificate Default, ECF No. 197; *Citigroup Global Markets, Inc. v. JWS 1999 Holding B.V.*, No. 08 Civ. 5362(RJS), 2009 WL 2981912, *1 (S.D.N.Y. Sept. 11, 2009) (“Entry of a default

judgment is appropriate when the adversary process has been halted because of an essentially unresponsive party.”) (quotation omitted). In view of Entity Defendants’ default, Plaintiff’s well-pleaded allegations should be accepted as true as to liability. *Elsevier Inc. v. Siew Yee Chew*, 17 Civ. 6225 (JGK) (GWG), 2019 WL 74606, at *2 (S.D.N.Y. Jan. 2, 2019) (citing *e.g.*, *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011) (“It is an ‘ancient common law axiom’ that a defendant who defaults thereby admits all ‘well-pleaded’ factual allegations contained in the complaint.”) A court considering a motion for default judgment may also rely on facts taken from the record to the extent they are supported by evidence that the party has submitted. *Laboratorios Rivas, SRL v. Ugly & Beauty, Inc.*, No. 11 CIV. 5980 RA JLC, 2013 WL 5977440, at *6 (S.D.N.Y. Nov. 12, 2013), *report and recommendation adopted*, No. 11 CIV. 5980 RA JLC, 2014 WL 112397 (S.D.N.Y. Jan. 8, 2014) (citations omitted). In *Elsevier*, the Southern District of New York considered a default judgment against “individuals or corporate entities who, through online storefronts on eBay.com (“eBay”), sell and distribute counterfeit copies of plaintiffs’ works throughout the United States, including New York.” 2019 WL 74606, at *3. All but three of the defendants in that case operated their online storefronts from China or Malaysia. *Id.* In considering the plaintiff’s request for damages under the Copyright Act and the Lanham Act, the court held that “[w]here a defendant has defaulted, a complaint’s allegations of willfulness may be taken as true.” *Id.* at *6 (citations omitted). As summarized above and alleged in Plaintiff’s Verified Complaint, “Defendants continue to willfully infringe Plaintiff’s rights.” Compl. ¶ 62. Plaintiff’s detailed allegations describe unlawful actions that could only be done willfully, intentionally, and in bad faith. Defendant Platinum admits to operating the Infringing Website at <ffltrust.com> but refused to participate in the discovery process or litigate in good faith. Defendant Osko publicly claimed the copyright

for material appearing on the Infringing Website *and* falsely claimed to be an NRA Business Alliance Partner in its footer. The removal of Osko's name from the Infringing Website well into this proceeding is itself evidence of a bad faith. In *Philip Morris USA, Inc. v. Otamedia, Ltd.*, 331 F. Supp. 2d 228, 246 (S.D.N.Y. 2004), a defendant who sold unauthorized, infringing goods on the internet first retained counsel, who sought an extension of time to answer and appeared on defendant's behalf at a status conference but advised the court a few months later that the defendant would take no further action in the case. *Id.* at 229. The Southern District of New York granted plaintiff's request for a default judgment and ordered a third-party registrar to transfer two domains to the plaintiff. *Id.* at 247. In this case, BMaddox has properly pleaded and supported with documentary evidence causes of action that warrant an award of damages and injunctive relief, Plaintiff respectfully asks for similar relief.

A. Entity Defendants' Liability for Copyright Infringement

To prove a claim of copyright infringement, a plaintiff must show that it owns a valid copyright and that the defendant violated one or more of the exclusive rights in 17 U.S.C. § 106 *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *see also Hamil Am. Inc. v. GFI*, 193 F.3d 92, 99 (2d Cir. 1999) (quoting *Knitwaves, Inc. v. Lollytogs Ltd. (Inc.)*, 71 F.3d 996, 1002 (2d Cir. 1995)). "Actual copying may be shown by direct or indirect evidence; indirect evidence of copying includes proof that the defendants had access to the copyrighted work and the similarities that are probative of copying between the works." *Hamil*, 193 F.3d at 99 (citation omitted). A court may infer copying when a plaintiff establishes that the defendant had access to the copyrighted work and the protectable material in the two works are substantially similar. *Lipton v. Nature Co.*, 71 F.3d 464, 471 (2d Cir. 1995). Plaintiff's well-pleaded allegations and documentary evidence establish that Entity Defendants obtained access to Plaintiff's Guidebook and website code and content by illegally accessing Plaintiff's online

accounts and stealing Plaintiff's materials and website design. Compl. ¶¶ 47-57. Even if BMaddox did not have overwhelming evidence of Defendants' access to its Works, there is direct evidence of copying that precludes the possibility of independent creation. Compl. ¶¶ 67-69, 71, 82-84, 95, 114; Maddox Decl. ¶¶ 2, 4-17, Ex. A, Ex. C-1, Ex. C-2, Ex. C-3, Ex. C-4, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6, Ex. E, Ex. F-1, Ex. F-2. Entity Defendants' use of a doctored federal firearm license from which they neglected to remove the name of Plaintiff's business is indisputable evidence of copying. Compl. ¶ 114; Maddox Decl. ¶ 23, Ex. H-2. Through its Verified Complaint and documentary evidence, Plaintiff has established and Entity Defendants have admitted through their default that Plaintiff is the owner of valid copyright registrations attaching to Plaintiff's Guidebook, the content appearing on Plaintiff's website at <ffl123.com>, and the HTML code for Plaintiff's website at <ffl123.com> (all three works together are referred to herein as "Plaintiff's Works"). *Id.* at ¶¶ 30-33, Ex. A; Duff Decl. ¶ 74, Ex. E. Plaintiff has also established that Entity Defendants infringed each of Plaintiff's Works by reproducing, copying, distributing, displaying, and creating derivative works thereof without authorization from Plaintiff in violation of 17 U.S.C. §§ 106(1)–(3), (5) and 501. Compl. ¶¶ 63-100; Maddox Decl. ¶¶ 2, 4-17, Ex. A, Ex. C-1, Ex. C-2, Ex. C-3, Ex. C-4, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6, Ex. E, Ex. F-1, Ex. F-2. Plaintiff has sufficiently established that Entity Defendants' infringing acts were willful, which caused and continues to cause Plaintiff irreparable damage in violation of the Copyright Act as alleged in Counts 1 through 3 of Plaintiff's Verified Complaint. Compl. ¶¶ 47-100; Maddox Decl. ¶¶ 2, 4-24, Ex. A, Ex. C-1, Ex. C-2, Ex. C-3, Ex. C-4, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6, Ex. E, Ex. F-1, F-2, Ex. G-1, Ex. G-2, Ex. G-3, Ex. G-4, Ex. H, Ex. I.

B. Entity Defendants' Liability for Violation of 17 U.S.C. § 512(f)

Plaintiff's Verified Complaint shows that Entity Defendants made multiple material misrepresentations in response to DMCA takedown notices issued by the Plaintiff. Section 512(f) of the DMCA states that a party who "knowingly materially misrepresents under [§ 512] . . . (2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees" of any copyright owner injured by such misrepresentation. 17 U.S.C. § 512(f). Plaintiff has sufficiently well-pleaded and Entity Defendants have agreed through their default that Entity Defendants' actions intentionally misappropriated Plaintiff's Works and trade secrets while engaging in a campaign to divert Plaintiff's consumers to the Infringing Website, which was designed to confuse consumers. In the DMCA takedown notices and counter-notices filed by Entity Defendants, they knowingly and materially misrepresented that material was removed or disabled by mistake or misidentification. Compl. ¶¶ 101-108,; Maddox Decl. ¶¶ 16-21, Ex. F-1, Ex. F-2, Ex. G-1, Ex. G-2, Ex. G-3, Ex. G-4. Entity Defendants are liable to Plaintiff under § 512(f).

C. Entity Defendants' Liability Under the Lanham Act

"[T]he statutory false advertising prohibitions of Lanham Act § 43(a)(1)(B) . . . are viewed as allowing a commercial plaintiff to act as a vicarious avenger of the consumer interest in not being deceived by false advertising." 5 McCarthy on Trademarks and Unfair Competition § 27:2 (4th ed. 2017) (citation omitted). The Lanham Act states that:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any . . . false or misleading description of fact, or false or misleading representation of fact, which . . . (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, *shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.*

15 U.S.C. § 1115(a)(1)(B) (emphasis added). False advertising claims under § 43(a) of the Lanham Act apply “to those deceptive business practices which, like trademark infringement, attempt to induce consumers to purchase an advertiser’s goods by falsely passing them off as the same as, or better than[,] those of a competitor.” *Enigma Software Group USA, LLC v. Bleeping Computer LLC*, 194 F.Supp.3d 263, 279-80 (S.D.N.Y. 2016) (citation omitted). To be liable, a defendant must be engaged in “proactive, not merely reactive, communication” that “usually involves initiating notice to consumers” *Id.* (citation omitted). Here, the Entity Defendants used stolen trade secrets, namely, Plaintiff’s client email list, to launch a massive, ongoing email campaign to poach and mislead Plaintiff’s hard earned, loyal customers. Compl. ¶ 60; Maddox Decl. ¶¶ 16, 17, Ex. F-1, Ex. F-2. Engaging in a large-scale email advertising campaign is proactive, initiated notice to consumers, and could not be characterized as reactive. Such commercial advertisements or promotions “must be disseminated sufficiently to the relevant purchasing public to constitute ‘advertising’ or ‘promotion’ within that industry.” *Avon Products, Inc. v. S.C. Johnson & Son, Inc.*, 984 F.Supp. 768, 795 (S.D.N.Y. 1997) (citing *Gordon & Breach Science Publishers v. A.I.P.*, 859 F.Supp. 1521, 1535-36 (S.D.N.Y. 1994)). “[W]here the relevant purchasing public is very small, misrepresentations, though few in number, which reach a significant portion of the purchasing public are actionable.” *Id.* at 795.

In this case, Plaintiff is a recognized leader in its highly complex and specialized industry, having assisted more than 75,000 customers. Compl. ¶ 37. Entity Defendants maliciously stole Plaintiff’s trade secrets, including a list of email addresses for more than 100,000 subscribers to Plaintiff’s regular newsletters and marketing messages. Compl. ¶ 52. There is no question that the Entity Defendants’ misappropriation of Plaintiff’s subscriber list and subsequent dissemination of intentionally confusing email marketing including material

misrepresentations as to the qualifications of the Entity Defendants constitutes a sufficient dissemination in the relevant industry on which to base liability. Furthermore, the Infringing Website is itself a qualifying dissemination within Plaintiff's industry. "Finally, to recover damages or obtain equitable relief under the Lanham Act, a plaintiff must also show that either: (1) the challenged advertisement is literally false, or (2) while the advertisement is literally true it is nevertheless likely to mislead or confuse consumers." *Avon*, 984 F.Supp. at 796 (citing *Johnson & Johnson * Merck Consumer Pharmaceuticals Co. v. Smithkline Beecham Corp.*, 960 F.2d 294, 297 (2d Cir. 1992)). Here, Entity Defendants statements were literally false and made with intent to confuse the relevant consumers. First, Entity Defendants created the Infringing Website at <ffltrust.com> that intentionally and maliciously copies the look and feel, sequence and structure, as well almost all of the content of the website at Plaintiff's <ffl123.com>. Compl. ¶¶ 67, 68, 71, 82-84, 95; Maddox Decl. ¶¶ 8-13, 23, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6, Ex. H-2. This obvious copying included even the consumer reviews from Plaintiff's Website. Compl. ¶ 84; Maddox Decl. ¶ 13, Ex. D-6. Second, Entity Defendants use a doctored version of Plaintiff's federal firearm license on the Infringing Website in an effort to lead consumers to believe that Entity Defendants own a valid federal firearm license when they do not. Compl. ¶ 114; Maddox Decl. ¶ 23, Ex. H-2. The doctored license used by the Entity Defendants still includes "BMaddox Enterprises LLC" and Plaintiff's address in small type at the bottom of the doctored certificate. *Id.* Entity Defendants, continuing their efforts to mislead consumers, also created a fictitious character, Henry Jackson, whom they list on their counterfeit federal firearms license. *Id.* The picture used for Henry Jackson was pulled from a stock photo website. Compl. ¶ 113; Maddox Decl. ¶ 4, Ex. I. These literally false representations are designed to convince consumers that they are visiting a credible educational website run by

experts in Plaintiff's highly regulated, complex field. Because Entity Defendants' used misappropriated information to contact all of Plaintiff's subscribers and customers with a large-scale email marketing campaign to drive traffic to the Infringing Website, which makes material and demonstrably false representations regarding their qualifications, Entity Defendants' are liable to Plaintiff under the Lanham Act. Entity Defendants' brazen misrepresentations are even more problematic given the nature of Plaintiff's industry, namely, educational goods and services relating to federal firearms licensing. Entity Defendants' intentional misrepresentations regarding their qualifications and experience are dangerous and made with a callous disregard for public safety. Their literal false statements in marketing sent to at least 100,000 of Plaintiff's consumers in this highly regulated and complex niche market caused and continues to cause irreparable harm to consumers as well as Plaintiff. Entity Defendants are liable for false advertising under the Lanham Act.

D. Entity Defendants' Liability Under the Computer Fraud and Abuse Act

The Computer Fraud and Abuse Act ("CFAA") authorizes a private right of action for "[a]ny person who suffers damage or loss by reason of a violation [of the CFAA] may maintain a civil action against the violator" seeking, *inter alia*, "injunction relief or other equitable relief." *Reis, Inc. v. Spring11 LLC*, 2016 WL 5390896, *8 (S.D.N.Y. 2016) (citing 18 U.S.C. § 1030(g)). The relevant subsection states that equitable relief for a violation of the CFAA is available if the injury caused "a threat to public health or safety." 18 U.S.C. § 1030(c)(4)(A)(i)(IV). A violation of the CFAA occurs when a party "knowingly and with the intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value" 18 U.S.C. § 1030(a)(4). A "protected computer" is one that "is used in or affecting interstate or foreign commerce or communication" 18 U.S.C. § 1030(e)(2)(B). "Loss" is defined in the CFAA as "any

reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.” 18 U.S.C. § 1030(e)(11). Plaintiff’s Verified Complaint details the many times that the Entity Defendants knowingly and with an intent to defraud accessed Plaintiff’s protected computer and related B2B accounts without authorization or exceeding the scope of any limited authorization that may have existed during the Parties’ brief working relationship. Compl. at ¶¶ 47-57. Once the Entity Defendants obtained unauthorized access to Plaintiff’s website, <ffl123.com>, they not only stole trade secrets and all of the information on Plaintiff’s website, even such information that existed behind a paywall, they altered the settings of Plaintiff’s website in such a manner that search engines no longer indexed it. *Id.* at ¶ 56. Plaintiff’s Verified Complaint describes the substantial interference with its business caused by the Entity Defendants’ violation of the CFAA with intent to disrupt Plaintiff’s business and immediately thereafter take advantage of such disruption to launch a directly competing online business using Plaintiff’s own copyright protected works and trade secrets. Plaintiff’s Verified Complaint demonstrates, and the Entity Defendants admit through their default, that the Entity Defendants are liable to Plaintiff under the CFAA.

E. Entity Defendants’ Liability for Theft of Trade Secrets

New York common law requires a party asserting a trade secret claim to show: “(1) that it possessed a trade secret, and (2) that the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means.” *Sarkissian Mason, Inc. v. Enter. Holdings, Inc.*, 955 F.Supp.2d 247, 253 (S.D.N.Y. 2013) (citing *N. Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 43-44 (2d Cir. 1999)). The following factors are considered by New York courts to determine the existence of a valid trade secret: (1) the degree

to which information claimed as a trade secret is known outside of the business; (2) whether and to what extent the claimed trade secret is known by a plaintiff's employees and business associates; (3) any measures taken to protect the secrecy of a claimed trade secret; (4) the value of the claimed trade secret in the relevant industry; (5) the investment of time and energy by plaintiff developing a claimed trade secret; and (6) whether the claimed trade secret could be easily obtained or duplicated by others. *N. Atl. Instruments*, 188 F.3d at 44 (citation omitted). "A customer list developed by a business through substantial effort and kept in confidence may be treated as a trade secret and protected at the owner's instance against disclosure to a competitor, provided the information it contains is not otherwise readily ascertainable." *N. Atl. Instruments, Inc.*, 188 F.3d at 44 (citing *Defiance Button Mach. Co. v. C & C Metal Prods. Corp.*, 759 F.2d 1053, 1063 (2d Cir.), *cert. denied*, 474 U.S. 844 (1985)). Plaintiff's Verified Complaint demonstrates that it has developed highly sensitive information, specifically a list of more than 100,000 subscribers to its educational newsletter and that such information was: (1) not known outside Plaintiff's business as it was collected by Plaintiff over the course of many years; (2) not known to Plaintiff's employees except as necessary for third-party vendors to do their jobs; (3) kept secret and protected by virtue of Plaintiff's use of several B2B services with password protected accounts; (4) incredibly valuable because of Plaintiff's reputation and the highly specialized nature of the relevant industry; (5) developed over many years at no small expense to Plaintiff; and (6) completely unavailable to anyone but Plaintiff, which gathered the trade secret information itself and was only able to do so because of Plaintiff's well-respected brand and reputation in its field. Compl. ¶¶ 37, 39, 131-137. At least some of the trade secret information claimed by Plaintiff here comprises customer lists developed by Plaintiff through substantial expenditures of effort and money. Such information was not readily accessible to the Entity

Defendants’ who violated the CFAA to obtain access to Plaintiff’s trade secrets. *Id.* at ¶¶ 47-57. The second prong of a trade secret claim under New York common law asks whether the defendant “used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means.” *Sarkissian*, 955 F.Supp.2d at 253. Because Plaintiff has shown and Entity Defendants have admitted through default that they violated the CFAA by obtaining unauthorized access to Plaintiff’s online accounts, there can be no doubt that Entity Defendants breached a duty to Plaintiff when they began using the illegally obtained client list to send deceptive and misleading marketing emails to Plaintiff’s consumers or email subscribers. Compl. ¶¶ 47-57, 60, 109-129; Maddox Decl. ¶¶ 4-21, Ex. C-1, Ex. C-2, Ex. C-3, Ex. C-4, Ex. D-1, Ex. D-2, Ex. D-3, Ex. D-4, Ex. D-5, Ex. D-6, Ex. E-1, Ex. E-2, Ex. F-1, Ex. F-2, Ex. G-1, Ex. G-2, Ex. G-3, Ex. G-4. Because Plaintiff has shown the existence of a trade secret under New York law and the misappropriation and misuse of its trade secret information by Entity Defendants, they are liable to Plaintiff for theft of Plaintiff’s trade secret information.

F. Entity Defendants’ Liability Under New York Gen. Bus. Law § 349

“A plaintiff bringing a claim for deceptive practices under Section 349 must prove: (1) the challenged act or practice was consumer oriented; (2) that it was misleading in a material way; and (3) that the plaintiff suffered injury as a result of the deceptive act.” *Sara Designs, Inc. v. A Classic Time Watch Co. Inc.*, 2017 WL 627461, *5 (S.D.N.Y. 2017) (citation omitted). Competitors have standing to bring a § 349 claim if “the gravamen of the complaint [is] consumer injury or harm to the public interest.” *Id.* (citation omitted). Plaintiff’s Verified Complaint demonstrates repeatedly that Entity Defendants’ illegal acts were consumer oriented. Even the disruption of Plaintiff’s business by Entity Defendants’ violation of the CFAA was meant to give Entity Defendants an unfair advantage in diverting consumers from Plaintiff. Compl. ¶¶ 47-57, 60, 109-129; Maddox Decl. ¶¶ 16, 17, Ex. F-1, Ex. F-2. Entity Defendants’

illegal acts were and continue to be designed to mislead consumers in a material manner and do mislead consumers in a material fashion. Entity Defendants copied the look and feel of

Plaintiff's website; use a mark, , designed to look like Plaintiff's trademark as it

appears on Plaintiff's website, ; falsely claim a fictional president, Henry

Jackson, to make their Infringing Website appear legitimate; utilize a doctored image of

Plaintiff's actual federal firearms license to convince consumers that they are qualified; and use

Plaintiff's trade secret information to send emails to Plaintiff's clients using emails that are

substantially similar to those sent by Plaintiff. Plaintiff has suffered and continues to suffer

damage to its reputation and is forced to deal significant disruptions caused by Entity

Defendants' illegal acts. Because Plaintiff's business is educating parties seeking federal firearm

licenses, this is a matter of public concern. Given Entity Defendants' use of a fraudulent firearms

license, a fake president to appear legitimate, and their lack of qualifications in this highly

regulated field, the public has a strong interest in putting an end to their deceptive trade practices.

Plaintiff has shown that Entity Defendants are liable under § 349.

III. Only a Permanent Injunction Will Protect Plaintiff from Entity Defendants

Plaintiff seeks a permanent injunction enjoining Entity Defendants and any of their agents, officers, or partners from further infringing upon or otherwise violating Plaintiff's copyrights, trademark rights, trade secrets, or other rights protected by the claims asserted above.

“A court may issue an injunction on a motion for default judgment provided that the moving party shows that (1) it is entitled to injunctive relief under the applicable statute and (2) it meets the prerequisites for the issuance of an injunction.” *Elsevier*, 2019 WL 74606 at *11 (citations omitted). “To obtain a permanent injunction, a plaintiff must show: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate

to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.* (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (citations omitted); *see also Salinger v. Colting*, 607 F.3d 68, 77-78 (2d Cir. 2010)). The Copyright Act authorizes a court to “grant . . . final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” *Id.* at *12 (citing 17 U.S.C. § 502(a)). The Lanham Act also provides federal courts with the power to issue permanent injunctive relief. 15 U.S.C. § 1116. Under the first *eBay* factor, courts considering Lanham Act claims typically find that “irreparable injury is established where there is any likelihood that an appreciable number of ordinarily prudent purchasers are likely to be misled, or indeed simply confused, as to the source of the goods in question.” *Elsevier*, 2019 WL 74606, at *12. Courts also regularly find the harm suffered by plaintiffs in copyright cases is “irreparable” on the theory that lost sales or diminished reputation can be difficult if not impossible to measure.” *Id.* (citation omitted). Because Entity Defendants’ willful false advertising targeted Plaintiff’s clients with confusingly similar marketing emails to sell counterfeit goods based on Plaintiff’s educational materials, Plaintiff has shown “irreparable injury” for both its claims under the Copyright Act and Lanham Act. The first factor weighs in favor of a permanent injunction. The second *eBay* factor, in this instance, is best addressed by considering whether Entity Defendants “might continue to engage in infringing activity and counterfeiting unless enjoined by the Court” *Id.* (quotation omitted). If Entity Defendants will continue spamming Plaintiff’s clients with emails from a confusingly similar email address, <ffltrust.com>, that are designed to look like Plaintiff’s emails and advertise counterfeit versions of Plaintiff’s goods, nothing short of a permanent injunction will help Plaintiff. Entity

Defendants have not stopped emailing Plaintiff's clients with confusing advertisements during the several year pendency of this lawsuit. Maddox Decl. ¶ 17. They have repeatedly demonstrated a disrespect for Plaintiff's rights and the authority of this Court, and nothing about their behavior suggests that they would obey an order that inconveniences them as long as they believe they can get away with the disobedience. This factor strongly favors the imposition of a permanent injunction to protect Plaintiff's rights. "As to the balance of hardships, it is axiomatic that an infringer . . . cannot complain about the loss of ability to offer its infringing product." *Elsevier*, 2019 WL 74606, at *12 (citation omitted). The final factor, whether the public interest is served, also weighs in favor of permanently enjoining the Entity Defendants from interfering with Plaintiff's rights because "the public has an interest in not being deceived . . ." *Id.* That is especially true when it comes to firearm safety education. All four of the *eBay* factors demonstrate the importance of a permanent injunction in this case. In *Diesel S.P.A. v. John Does*, the Southern District of New York considered a similar case where defendants who defaulted were using domain names similar to the plaintiff's trademark to sell counterfeit products. 14-CV-4592 (KMW), 2016 WL 96171 at *9-10 (S.D.N.Y. Jan. 8, 2016). In the injunction issued by the court in that case, the court stated not only that "Defendants are ordered to take all actions necessary to transfer to Plaintiff or cancel, at Plaintiff's election, all domain names of the Infringing Websites and any other domain names used by Defendants to engage in counterfeit activities that infringe Plaintiff's trademarks," the court also ordered "all internet service providers and internet registries [to] take any actions necessary to effectuate either the transfer or disabling of the Infringing Websites." *Id.* at 13. Since 2004, when the Southern District of New York revisited a permanent injunction requiring a similar defendant transfer a domain used to sell unauthorized goods refused to transfer the domain to the plaintiff, courts in the Second

Circuit have recognized that courts have “authority to enjoin actions otherwise lawful when such action is deemed . . . necessary to correct the evil effects of unlawful conduct.” *Otamedia*, 331 F. Supp. 2d at 246 (quoting *United States v. United Liquors Corp.*, 77 S. Ct. 208, 210 (1956)). In the context of a persistent defendant using a particular Infringing Website to impinge upon the plaintiff’s rights and hurt consumers, the court in *Otamedia* recognized that “a modification that incidentally proscribes certain lawful conduct is ‘necessary and appropriate in the public interest.’” 331 F. Supp. 2d at 246 (citation omitted). The Second Circuit has long recognized a significant difference between an injunction issued under Fed. R. Civ. P. 65(d), which is typically designed to affect the conduct of a party based upon a determination of that party’s legal rights, and an injunction issued under Section 1963(d)(1)(A), which is typically “designed only to preserve property for forfeiture after a RICO conviction.” *United States v. Regan*, 858 F.2d 115, 120 (2d Cir. 1988). In that case, the Second Circuit favorably cited to the Third Circuit, which had just upheld an order under a provision of the Continuing Criminal Enterprise Statute “preventing the defendant’s attorneys from disposing of an airplane to the alleged by the government to be forfeitable.” *Id.* (quoting *United States v. Long*, 654 F.2d 911 (3d Cir. 1981)). “The defendant had transferred the airplane to the attorneys, and the court held that the effective implementation of the statute required the availability of orders directed at third parties, even though the CCE forfeiture provisions as then drafted did not expressly apply to transferees with knowledge.” *Id.* The Third Circuit held that “without orders directed at third parties, the statute’s ‘punitive purposes [would be] frustrated by allowing a defendant to transfer the illegal proceeds to a knowing third party.’” *Id.* (quoting *Long*, 654 F.2d at 916.) In 1988, the Second Circuit extended that logic to potentially forfeitable property held by third parties. *Id.*

In 2013, the Southern District of New York looked to “Section 5225 of the New York Civil Practice Law and Rules (“CPLR”), which authorizes a court to compel a nonparty to surrender a judgment debtor’s property.” *Tiffany (NJ) LLC v. Dong*, No. 11 CIV. 2183 GBD FM, 2013 WL 4046380, at *10 (S.D.N.Y. Aug. 9, 2013). In *Tiffany*, the court discussed a questioned certified by the Second Circuit to the New York Court of Appeals, namely, “whether a court sitting in New York has the authority under CPLR 5225(b) to order a defendant, other than a judgment debtor, . . . to deliver assets into New York, when the court has personal jurisdiction over the [garnishee] defendant but the assets are not located in New York.” *Id.* at *11 (citations omitted). The New York Court of Appeals answered in the affirmative, and in 2006, the New York legislature amended CPLR 5224 to allow a judgment creditor to serve a subpoena in New York State seeking information about assets of the judgment debtor held out of state. *Id.* (citation omitted). Applying this idea to circumstances like those faced in the present case, the court in *Tiffany* found that the plaintiff was “entitled to an injunction permanently enjoining the Defendants from further infringing its trademarks, as well as an order directing that the domain names of the infringing websites be transferred to [plaintiff].” *Id.* at *15. Plaintiff requests an equally effective injunction in this case to direct the Entity Defendants, their agents, servants, employees, successors, and assigns, and all those acting in concert or participation with them, or alternatively, the domain name registries acting on their behalf, to transfer to a person or entity of Plaintiff’s choosing the <ffltrust.com> domain and any other domain used by the Entity Defendants to continue infringing upon Plaintiff’s rights.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant the relief described in the attached declaration and sign Plaintiff’s Proposed Default Judgment.

Dated: New York, New York
July 17, 2020

Respectfully submitted,

Hogan Duff, LLLP

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