

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

DAVID YURMAN ENTERPRISES LLC and
DAVID YURMAN IP LLC,

Plaintiffs,

v.

JOHN DOES 1-31,

Defendants.

Civil Action No.: 18-cv-7331 (JPO)

**DEFAULT JUDGMENT AND
PERMANENT INJUNCTION**

Plaintiffs David Yurman Enterprises LLC and David Yurman IP LLC (together “David Yurman,” “Yurman,” or “Plaintiffs”) commenced this action on August 14, 2018, and simultaneously moved *ex parte* for a Temporary Restraining Order, Seizure Order, Order to Disable Certain Websites, Asset Restraining Order, Order Permitting Service by Electronic Mail, and Order to Show Cause for Preliminary Injunction (“TRO”), which the Court granted on August 14, 2018. (Dkt. No. 10.) The Defendants are 31 unknown individuals or entities that operate networks of internet websites (the “Counterfeit Websites”), set forth in

Exhibit A, many of which incorporate the Yurman Marks (as defined below) in the websites' domain names (the "Infringing Domain Names"), and which offer for sale merchandise bearing counterfeits of Plaintiffs' Yurman Marks ("Counterfeit Products") to consumers in the United States.

Pursuant to the TRO, Plaintiffs arranged for Defendants to be served with the Complaint, TRO, and all supporting and accompanying papers via electronic mail on August 20, 2018. *See* Proof of Service (Dkt. No. 14).

The Defendants, having been served with the Complaint, TRO, and related papers, did not appear or oppose the Plaintiffs' application for a Preliminary Injunction. On August 29, 2018, the Court granted Plaintiffs' application for, and entered a Preliminary Injunction against the Defendants. (Dkt. No. 15.)

Defendants did not appear following the entry of the Preliminary Injunction. Defendants have not answered the Complaint, and the time for answering the Complaint has expired. On September 14, 2018, the Clerk of the Court entered a Certificate of Default. (Dkt. No. 18.) On December 5, 2018, Plaintiffs moved for an entry of default against Defendants. Defendants have not opposed the Plaintiffs' motion for entry of default.

Now, the Court, having reviewed the Complaint, memorandum of law, supporting affidavit, and exhibits submitted therewith, finds that:

1. Plaintiffs properly served Defendants with a copy of the Summons and Complaint on August 20, 2018;
2. Defendants have failed to appear or otherwise defend in this action;
3. To the best of Plaintiffs' knowledge, Defendants are not infants, incompetent, or in military service in the United States;

4. The Plaintiffs own all right, title, and interest in and to numerous valid and enforceable federally registered trademarks (the “Yurman Marks”), including the following registrations:

U.S. Registration Number	Trademark	Registration Date	International Classes
1725487	DAVID YURMAN	Oct. 20, 1992	14
2014167	DAVID YURMAN	Nov. 05, 1996	14
2460107	DAVID YURMAN	Jun. 12, 2001	35
3924043	DY	Feb. 22, 2011	14

5. Defendants have used various email addresses to establish the domain names used to sell counterfeit goods, which are set forth in Exhibit B;

6. Plaintiffs have shown that (a) it will succeed on the merits, (b) it is suffering irreparable injury in the absence of a permanent injunction, (c) remedies available at law are inadequate to compensate for that injury, (d) the balance of hardships tips in Plaintiffs’ favor, and (e) the public interest would not be disserved by the issuance of injunctive relief;

7. Plaintiffs have pled and Defendants have not disputed that:

- a. Defendants, without any authorization or license from Yurman, knowingly and willfully used the Yurman Marks to operate the Counterfeit Websites, including at the Infringing Domain Names, on which Defendants offered for sale Counterfeit Products to consumers in the United States;
- b. Defendants, without any authorization or license from Yurman, have used the Yurman Marks to create, design, and operate counterfeit advertisements (the

“Counterfeit Ads”), including on Instagram and Facebook, that direct consumers to the Counterfeit Websites; and

- c. The operation of the Counterfeit Websites and the offering for sale of the Counterfeit Products has caused, is causing, and will continue to cause Plaintiffs irreparable injury if permanent injunctive relief is not granted.

Accordingly, **THE COURT HEREBY FINDS** that the Defendants are willfully liable on the claims asserted in the Complaint arising under Sections 32, 43(a), 43(c), and 43(d) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), (c), and (d); Sections 349 and 360-1 of the New York General Business Law; and New York State common law.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs’ application for a Default Judgment and Permanent Injunction is granted and that this Final Judgment is entered against Defendants.

IT IS FURTHER ORDERED THAT Defendants, their officers, agents, servants and employees and any persons in active concert or participation with them, are hereby permanently enjoined and restrained from:

- a. Using any reproduction, counterfeit, copy, or colorable imitation of the Yurman Marks (as defined herein) for and in connection with any goods or services not authorized by Yurman;
- b. Engaging in any course of conduct likely to cause confusion, deception or mistake, or to injure Plaintiffs’ business reputations or dilute the distinctive quality of the Yurman Marks;
- c. Using any false description or representation, including words or other symbols tending falsely to describe or represent Defendants’ unauthorized goods or

services as Plaintiffs' goods or services, or sponsored by or associated with Plaintiffs, and from offering such goods or services into commerce;

- d. Manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, renting, displaying, or otherwise disposing of any products or packaging not authorized by Plaintiffs that bear any simulation, reproduction, counterfeit, copy, or colorable imitation of the Yurman Marks;
- e. Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which is or may be likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed, or sold by Defendants are in any manner associated or connected with Plaintiffs, or are sold, manufactured, licensed, sponsored, approved, or authorized by Plaintiffs;
- f. Secreting, destroying, altering, removing, or otherwise disposing of the Counterfeit Products, or any books or records that contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, renting, or displaying of all Counterfeit Products;
- g. Effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in this Order, or any subsequent order or final judgment in this action;
- h. Using, linking, transferring, selling, exercising control over, or otherwise owning the Infringing Domain Names, or any other domain name that incorporates, in

whole or in part, any of the Yurman Marks, or any domain name that is used in connection with any Counterfeit Website;

- i. Creating, operating, owning, overseeing, or otherwise exercising control over any Counterfeit Websites selling, offering to sell, promoting, advertising, or otherwise depicting any Counterfeit Products;
- j. Creating, operating, owning, overseeing, or otherwise exercising control over any Counterfeit Websites embedding, incorporating, including, or otherwise displaying any of the Yurman Marks, or any of Plaintiffs' promotional and advertising campaign images;
- k. Creating, operating, owning, overseeing, or otherwise exercising control over any Counterfeit Ads embedding, incorporating, including, or otherwise displaying any of the Yurman Marks, or any of Plaintiffs' promotional and advertising campaign images;
- l. Processing any payments for or otherwise providing any online services related to the sale of Counterfeit Products; and
- m. Utilizing any third party, including without limitation Internet Service Providers ("ISP"), back-end service providers, web designers, sponsored search engine or ad-word providers, merchant account providers, third party processors and other payment processing services, shippers, domain name registrars, and Internet registries, or any Internet search engine, including without limitation Google, Baidu, Bing, and Yahoo, or any social media website, including without limitation Facebook, Instagram, Snapchat, WeChat, and Twitter, to engage in any of the actions prohibited by subparagraphs (a) through (l), above.

IT IS FURTHER ORDERED THAT that the Internet registry for each of the domain names listed in Exhibit A attached hereto permanently transfer the domain names to a domain name registrar of Plaintiffs' choice.

IT IS FURTHER ORDERED THAT on notice to any Internet registry or domain name registrar of any Defendant creating, registering, using, linking, transferring, selling, exercising control over, or otherwise owning any domain name that incorporates, in whole or in part, any of the Yurman Marks or any domain names associated with any additional websites that display the Yurman Marks or sell or offer for sale Counterfeit Products (collectively, the "Additional Domain Names") in contempt of this Court's Order, such Internet registry or domain name registrar shall, subject to an order of this Court finding the Defendant in contempt and listing the Additional Domain Names associated with the Defendant, place any such Additional Domain Names on registry lock, making them non-transferable by the Defendant-registrant, and on hold, preventing websites associated with the Additional Domain Names from resolving when queried by a browser, and shall transfer such Additional Domain Names to Plaintiffs.

IT IS FURTHER ORDERED THAT, pursuant to 15 U.S.C. § 1117, Plaintiffs are awarded statutory damages in the liquidated amount of **\$50,000** from each defendant, not to be assessed jointly and severally, due to Defendants' willful use of the Yurman Marks in connection with the Counterfeit Websites and Counterfeit Products offered for sale on the Counterfeit Websites and in the Infringing Domain Names.

IT IS FURTHER ORDERED THAT in accordance with this Court's inherent equitable powers and its power to coerce compliance with its lawful orders, until Plaintiffs have recovered full payment of any money owed to it by any Defendant under this Order, in the event that Plaintiffs discover monies or accounts belonging to or controlled by Defendants, Plaintiffs shall

have the ongoing authority to serve this Order on any party controlling or otherwise holding such monies or accounts, including but not limited to any banks, savings and loan associations, merchant account providers, payment processors or providers, credit card associations, or other financial institutions (collectively, “Financial Service Providers”). Upon receipt of this Order, the Financial Service Providers shall within two (2) business days:

- a. Locate all accounts connected to Defendants, the Counterfeit Websites, or the Infringing Domain Names;
- b. Restrain and enjoin such accounts from receiving, transferring or disposing of any money or other of Defendants’ assets; and
- c. Release all monies restrained Defendants’ financial accounts to Plaintiffs as partial payment of the above-identified damages within ten (10) business days of receipt of this Order.

IT IS FURTHER ORDERED THAT in the event Plaintiffs identify any Additional Domain Names owned by Defendants, Plaintiffs may send notice of any supplemental proceeding to Defendants by email at the email addresses identified in the Proof of Service, (Dkt. No. 14).

IT IS FINALLY ORDERED that pursuant to Fed. R. Civ. P. 4(f)(3), Plaintiffs are permitted to complete service of this Order on each Defendant by sending notice to Defendants by email at the email addresses identified in the Proof of Service, (Dkt. No. 14). Defendants are hereby given further notice that Defendants shall be deemed to have actual notice of the issuance and terms of such Permanent Injunction and any act by any Defendant in violation of any of the terms thereof may be considered and prosecuted as contempt of this Court.

The Court shall retain jurisdiction over the parties and subject matter of this litigation for the purpose of interpretation and enforcement of this Order.

The Clerk of Court is directed to close the motion at Docket Number 20 and to close this case.

SO ORDERED: _____ **January 2, 2019**



J. PAUL OETKEN
United States District Judge