

ENTERED

January 08, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ABS-CBN CORPORATION, *et al.*,

Plaintiffs,

VS.

ANTHONY BROWN; aka TONY
BROWN; aka ANN ONG; dba 1700
CUTS TECHNOLOGY; aka LIFE FOR
GREATNESS,

Defendants.

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CIVIL ACTION NO. 3:19-CV-397

PERMANENT INJUNCTION

Before the court is a motion for default judgment filed by plaintiffs ABS–CBN Corporation, ABS–CBN Film Productions, Inc., and ABS–CBN International (collectively, ABS–CBN) against defendant Anthony Brown. Dkt. 19. In their motion, the plaintiffs request that the court (1) permanently enjoin the defendant from further engaging in various alleged violations of the Communications Act and Lanham Act and (2) award a total of \$2,100,000.00 in statutory damages. To date, the defendant has not filed anything in response to the plaintiffs’ complaint,¹ which was filed over a year ago. On February 25, 2020, the clerk of this court entered a default against the defendant. As a result, the plaintiffs’ allegations against the defendant are deemed admitted.

¹ The defendant did, however, participate *pro se* in the telephonic hearing convened by the court on January 6, 2021, concerning the plaintiffs’ default-judgment motion. The defendant denied the plaintiffs’ allegations and indicated he would be hiring counsel to represent him.

During the default-judgment hearing held on January 6, 2021, however, the plaintiffs, in response to questions posed by the court, stated that they would decrease their requested statutory damages under the Lanham Act by \$500,000.00, making their total statutory-damage request \$1,600,000.00. In support of this lower figure, the plaintiffs alleged that the defendant was infringing on their two trademarks in two distinct services: cable services and online-streaming services. Yet in the plaintiffs' complaint, default-judgment motion, and evidence in support of that motion, there is no distinction made between these two services. The only distinction made is between the defendant's "Smart" TV boxes, on the one hand, and the cable services these boxes facilitate, on the other. *See* Dkt. 19 at 11; *see also id.* at 28 (alleging that the defendant was using two counterfeit trademarks "in promotion and sale of two (2) types of goods or services (Pirate Boxes and Pirate Services).").

In light of the uncertainty about the amount of damages the plaintiffs request, and the relationship these damages have to the defendant's sale of goods or services, the court invites the plaintiffs to file supplemental briefing to clarify this issue. Nevertheless, though the court is unwilling to make a damages award at this time, the plaintiffs have made the required showings for permanent injunctive relief. *See Environment Texas Citizen Lobby, Inc. v. ExxonMobile Corp.*, 824 F.3d 507, 533 (5th Cir. 2016).

The plaintiffs allege that the defendant is engaged in a widespread "piracy" scheme in which he is illegally promoting and selling "Smart" TV boxes that have

been designed or modified to circumvent the plaintiffs’ encryption technology to enable his customers to unlawfully intercept and access ABS–CBN’s copyrighted programming. *See, e.g.*, Dkt. 1 at ¶¶ 1–2, and 23–54; Dkt. 19 at 11; Dkt. 19-3. These illegal devices and the unauthorized use or publication of ABS–CBN’s programming are referred to as and “pirate equipment” and “pirate services,” respectively.

The plaintiffs also allege that in carrying out this piracy scheme, the defendant has infringed on the plaintiffs’ federally registered trademarks “ABS–CBN” (Registration No. 2,334,131) and “TFC” (Registration No. 3,733,072). Specifically, the defendant has been using counterfeits of these marks in order to promote and sell his pirate equipment. *See* Dkt. 1 at ¶¶ 23, 25, 27, 28; *see also* Dkt. 1-2. The plaintiffs use these marks to identify and distinguish their services, including their television-broadcasting services. They have also used the following common-law trademark in interstate commerce to identify and distinguish its products and services:



While plaintiff ABS–CBN International is the registered owner of the ABS–CBN Registered Marks and the owner of the ABS–CBN common-law trademark (collectively, the “ABS–CBN Marks”), plaintiffs ABS–CBN Corporation, ABS–CBN

Film Productions, Inc., and ABS–CBN International all share exclusive rights in, and are all licensed to use, the ABS–CBN Marks. The defendant has never been licensed or otherwise authorized to use the ABS–CBN Marks in any way.

* * *

Injunctive relief is a proper remedy for violations of both the Communications Act and the Lanham Act. 47 U.S.C. §605(e)(3)(B)(i) (providing that courts may grant final injunctions to prevent violations of the Communications Act); *Wescosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1083 (C.D. Cal. 2012) (permanent injunctive relief is the remedy of choice for trademark infringement cases). As such, the plaintiffs are entitled to an injunction prohibiting the defendant from (1) promoting and selling his so-called pirate equipment and pirate services, and (2) counterfeiting and infringing the plaintiffs' ABS–CBN Marks. The plaintiffs have no adequate remedy at law and have suffered, and will continue to suffer, irreparable harm unless the defendant is enjoined from such activity. The plaintiffs' requested injunctive relief will serve the public interest, and the defendant will not be harmed by being prohibited from engaging in such illegal acts.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

The defendant and his agents, servants, employees, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this injunction by personal service or otherwise, are hereby restrained and enjoined from engaging in any of the following acts or omissions:

1. Manufacturing, assembling, modifying, possessing, importing, exporting, advertising, promoting, distributing, selling, or offering to sell any equipment or device that is primarily of assistance in the unauthorized decryption of, or is intended for any other activity prohibited by 47 U.S.C. § 605(a) with respect to ABS–CBN’s entertainment content or programming;
2. Manufacturing, intercepting, receiving, divulging, publishing, or displaying ABS–CBN’s entertainment content or programming without prior written consent of ABS–CBN, or assisting any other person in doing so;
3. Infringing, counterfeiting, or diluting the ABS–CBN Marks;
4. Using the ABS–CBN Marks, or any mark or trade dress similar thereto, in connection with the sale of pirate equipment, pirate services, or any other unauthorized goods or services;
5. Using any logo, trade name, trademark, or trade dress that may be calculated to falsely advertise the pirate services, pirate equipment, or any other devices, equipment, goods, or services of the defendant as being sponsored by, authorized by, endorsed by, or in any way associated with ABS–CBN;
6. Falsely representing themselves as being connected with ABS–CBN, through sponsorship or association, or engaging in any act that is likely to falsely cause members of the trade or purchasing public to

believe any devices, equipment, goods, or services of the defendant, are in any way endorsed by, approved by, or associated with ABS–CBN;

7. Using any reproduction, counterfeit, infringement, copy, or colorable imitation of the ABS–CBN Marks in connection with the publicity, promotion, sale, or advertising of any devices, equipment, goods, or services sold by the defendant;
8. Affixing, applying, annexing, or using in connection with the sale of any devices, equipment, goods, or services, a false description or representation, including words or other symbols tending to falsely describe or represent the defendant’s devices, equipment, goods, or services as being those of ABS–CBN, or as being endorsed in any way by ABS–CBN, and from offering such devices, equipment, goods, or services in commerce; or
9. Otherwise unfairly competing with ABS–CBN or interfering with ABS–CBN’s proprietary rights.

It is so ORDERED.

Signed on Galveston Island on this, the 8th day of January, 2021.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE