

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMEGA SA,

Plaintiff,

v.

XIE ZHENMIN, *et al.*,

Defendants.

Civil Action No.: 12-cv-9338 (SAS)

DEFAULT JUDGMENT, PERMANENT INJUNCTION
AND ORDER COMPELLING DAMAGES DISCOVERY AND ASSET FREEZE

THIS MATTER is before the Court upon Plaintiff's Motion for Default Judgment as to liability against all Defendants, for a Permanent Injunction, for damages discovery, and an asset freeze.

Plaintiff Omega SA ("Omega" or "Plaintiff") commenced this action on December 21, 2012 and simultaneously moved *ex parte* for a Temporary Restraining Order, and Order to Show Cause for a Preliminary Injunction ("TRO"), which this Court granted on December 21, 2012. On March 15, 2013, the Plaintiff filed an Affidavit of Service attesting to service on all the Defendants.




The Defendants, having been served with the Complaint, TRO, and related papers, did not appear or oppose the Plaintiff's application for a Preliminary Injunction. On January 18, 2013 this Court granted the Plaintiff's application for, and entered a Preliminary Injunction against all of the Defendants.

No Defendant appeared following this Court's entry of the Preliminary Injunction. No Defendant has answered the Complaint, and the time for answering the Complaint has expired.

On March 22, 2013, the Plaintiff sought entry of default against all Defendants. The Clerk entered default on May 3, 2013. Plaintiff now moves for entry of default judgment as to liability and for a permanent injunction.

Now, the Court, having reviewed the Complaint, Motion for Default Judgment and all documents of record in this matter, finds that:

1. Omega is the owner of numerous valid and enforceable federally registered trademarks (the "Omega Marks"), including:

Trademark	Registration No.	Registration Date	Class(es)/Goods
 OMEGA	25,036	May 23, 1894	IC 014: Watch movements and watch cases
OMEGA	566,370	November 4, 1952	IC 014: Watches and parts thereof
	734,891	July 14, 1962	IC 014: Timepieces and parts thereof
	3,757,932	March 9, 2010	IC 014: jewelry and precious stones; horological and chronometric instruments.
SEAMASTER	556,602	March 25, 1952	IC 014: Watches, watch parts and watch movements
SPEEDMASTER	672,487	January 13, 1959	IC 014: Watches and clocks
CONSTELLATION	1,223,349	January 11, 1983	IC 014: Watches and parts thereof
DE VILLE	1,309,929	December 18, 1984	IC 014: Watches, Wrist Watches, Portfolio Watches, Pendant Watches, and Miniature Clocks; and Parts Thereof
HOUR VISION	3,681,927	September 15, 2009	IC 014: Horological and chronometric instruments
PLANET OCEAN	3,085,659	April 25, 2006	IC 014: Watches and watch parts
BROAD ARROW	3,418,186	April 29, 2008	IC 014: Watches, watch straps, watch bracelets and parts thereof; chronometers, chronographs, watches

			made of precious metals, watches partly or entirely set with precious stones
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2. Plaintiff has demonstrated that the Defendants are entities and individuals that operate the following 29 Internet websites ("Counterfeit Websites"), to offer for sale and/or sell, without authorization, products bearing counterfeits of the Omega Marks:

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| (1) http://www.watches-vogue.com | (16) http://www.sinohorloge.com |
| (2) http://www.watchdear.com | (17) http://www.salesswiss.com |
| (3) http://www.queenofwatches.com | (18) http://watchesyes.net |
| (4) http://www.replicaup.com | (19) http://replicavip.org |
| (5) http://www.watchmimic.com | (20) http://www.watchc.com |
| (6) http://www.watchkind.com | (21) http://www.watchespay.net |
| (7) http://www.myfavomega.com | (22) http://www.replicabuy.net |
| (8) http://www.omegaonlineoutlet.com | (23) http://www.watch7750.com |
| (9) http://www.omegaonlineoutlet.biz | (24) http://www.swissale.net |
| (10) http://www.omegaonlineoutlet.net | (25) http://www.replicafind.net |
| (11) http://www.qualityreplica.biz | (26) http://www.salesreplicas.com |
| (12) http://www.qualityreplica.info | (27) http://www.replicawalker.com |
| (13) http://www.qualityreplica.us | (28) http://replicaprice.com |
| (14) http://www.bestreplicawatchesok.com | (29) http://www.watchesfull.com |
| (15) http://www.swisskiss.net | |

3. The Defendants have disregarded the TRO and Preliminary Injunction issued by this Court and have defaulted in this action; and so the Court:

HEREBY FINDS that Defendants are liable for federal trademark counterfeiting and infringement under 15 U.S.C. § 1114, and for false designation of origin, false advertising and unfair competition under 15 U.S.C. § 1125(a), and so it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Default Judgment against Defendants is **GRANTED**. Judgment is hereby entered in favor of Plaintiff and against all Defendants on all Counts of the Complaint as follows:

1. Defendants and their respective officers, agents, servants, employees and attorneys, and all persons acting in concert and participation with them are hereby permanently restrained and enjoined from:

a. manufacturing or causing to be manufactured, importing, advertising, or promoting, distributing, selling or offering to sell counterfeit and infringing goods using Plaintiff's Marks;

b. using Plaintiff's Marks in connection with the sale of any unauthorized goods;

c. using any logo, and/or layout which may be calculated to falsely advertise the services or products of Defendants offered for sale or sold via the Counterfeit Websites and/or any other website or business, as being sponsored by, authorized by, endorsed by, or in any way associated with Plaintiff;

d. falsely representing themselves as being connected with Plaintiff, through sponsorship or association;

e. engaging in any act which is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of Defendants offered for sale or sold are in any way endorsed by, approved by, and/or associated with Plaintiff;

f. using any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Marks in connection with the publicity, promotion, sale, or advertising of any goods sold by Defendants, including, without limitation, watches;

g. affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent goods offered for sale or sold by Defendants as being those of Plaintiff or in any way endorsed by Plaintiff;

h. otherwise unfairly competing with Plaintiff;

i. 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 above; and

j. using Plaintiff's Marks, or any confusingly similar trademarks, within domain name extensions, metatags or other markers within website source code, for use on any webpage (including as the title of any web page), any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered by, owned, or operated by Defendants.

2. Plaintiff is additionally entitled to the following equitable relief:

Transfer of Infringing Domain Names

a. In order to give practical effect to the Permanent Injunction, the domain names for each of the Counterfeit Websites ("Subject Domain Names") are hereby ordered to be

immediately transferred by Defendants, their assignees and/or successors in interest or title, and the Registrars to Plaintiff's control. To the extent the current Registrars do not facilitate the transfer of the domain names to Plaintiff's control within five (5) days of receipt of this judgment, the Registries shall, within thirty (30) days, change the Registrar of Record for the Subject Domain Names to a United States based Registrar of Plaintiff's choosing, and that Registrar shall transfer the Subject Domain Names to Plaintiff;

b. Upon Plaintiff's request, the top level domain (TLD) Registry for each of the Subject Domain Names, within thirty (30) days of receipt of this Order, shall place the Subject Domain Names on Registry Hold status for the life of the current registration, thus removing them from the TLD zone files maintained by the Registries which link the Subject Domain Names to the IP addresses where the associated websites are hosted;

c. Upon Plaintiff's request, the Internet Corporation for Assigned Names and Numbers ("ICANN") shall ensure that the top level domain Registries responsible for the Subject Domain Names transfer, change the Registrar of Record, and/or disable the Subject Domain Names;

Asset Freeze

d. Within twenty-one (21) days of receipt of this Order, Industrial and Commercial Bank of China, China Construction Bank and China Merchants Bank shall locate the following accounts ("Bank Accounts") and perform the necessary steps to ensure the accounts are temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets, not allowing such funds to be transferred or withdrawn, and not allowing any

refunds, charge-backs, or other diminutions to be made from such accounts pending further order from this Court:

Bank	Account No.
Industrial and Commercial Bank of China	#*****7462
Industrial and Commercial Bank of China	#*****1636
Industrial and Commercial Bank of China	#*****0228
Industrial and Commercial Bank of China	#*****0205
Industrial and Commercial Bank of China	#*****7936
Industrial and Commercial Bank of China	#*****1886
Industrial and Commercial Bank of China	#*****3418
Industrial and Commercial Bank of China	#*****3121
Industrial and Commercial Bank of China	#*****6729
Industrial and Commercial Bank of China	#*****6721
China Construction Bank	#*****0014
China Construction Bank	#*****5908
China Construction Bank	#*****0622
China Construction Bank	#*****0978
China Construction Bank	#*****9639
China Construction Bank	#*****5164
China Construction Bank	#*****1172
China Construction Bank	#*****1570
China Construction Bank	#*****2693
China Construction Bank	#*****6937

China Merchants Bank	#*****1236
China Merchants Bank	#*****8821
China Merchants Bank	#*****6199
China Merchants Bank	#*****3927
China Merchants Bank	#*****4121
China Merchants Bank	#*****1888
China Merchants Bank	#*****7146

e. Within twenty-one (21) days of receipt of this Order, Bank of Communications, Ltd. shall locate all accounts under the Merchant Name “BTF E COMMERCE INC BESTPL” and “WUHAN NORTH POLE WORLD TR”, and perform the necessary steps to ensure the accounts are temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants’ assets, not allowing such funds to be transferred or withdrawn, and not allowing any refunds, charge-backs, or other diminutions to be made from such accounts pending further order form this Court.

f. Within twenty-one (21) days of receipt of this Order, Agricultural Bank of China, Ltd. shall locate all accounts under the Merchant Name “PES*17074001035UNITECH,” and perform the necessary steps to ensure the accounts are temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants’ assets, not allowing such funds to be transferred or withdrawn, and not allowing any refunds, charge-backs, or other diminutions to be made from such accounts pending further order form this Court;

g. Within twenty-one (21) days of receipt of this Order, Industrial and Commercial Bank of China, China Construction Bank, China Merchants Bank, Bank of Communications and Agricultural Bank of China shall provide a report to Plaintiff’s counsel identifying the status of

each of the accounts subject to this Order, and include in such report whether any funds in the accounts have been restrained, and the amount of such restrained funds.

Damages Discovery

h. Within twenty-one (21) days of receipt of this Order, Industrial and Commercial Bank of China, China Construction Bank and China Merchant's Bank shall produce to Plaintiff's counsel:

i. documents and records sufficient to identify the names, addresses and other identifying and/or contact information of the owners or authorized users of the Bank Accounts;

ii. documents and records sufficient to identify any other domain names or websites or accounts linked to the Bank Accounts;

iii. documents and records sufficient to identify any other financial accounts owned or controlled by the owners of the accounts identified in this Order, including such accounts residing with or under the control of any banks, payment processors or other financial institutions;

iv. all transactional records for the Bank accounts, including all records showing any deposits or withdrawals from these accounts and showing the current balance of any funds in these accounts;

v. all communications, or records showing transactions, with any other banks, or payment processors, including Visa, MasterCard, American Express, PayPal, regarding the Bank accounts;

i. Within twenty-one (21) days of receipt of this Order, Bank of Communications shall produce to Plaintiff's counsel the following documents related to any accounts held under the Merchant Name "BTF E COMMERCE INC BESTPL" or "WUHAN NORTH POLE WORLD TR":

i. documents and records sufficient to identify the names, addresses and other identifying and/or contact information of the owners or authorized users of these accounts;

ii. documents and records sufficient to identify any other domain names or websites or accounts linked to these accounts;

iii. documents and records sufficient to identify any other financial accounts owned or controlled by "BTF E COMMERCE INC BESTPL" or "WUHAN NORTH POLE WORLD TR", or any other entities determined to be the owners of the "BTF E COMMERCE INC BESTPL" or "WUHAN NORTH POLE WORLD TR" accounts, including such accounts residing with or under the control of any banks, payment processors or other financial institutions;

iv. all transactional records for these accounts, including all records showing any deposits or withdrawals from these accounts and showing the current balance of any funds in these accounts.

v. all communications, or records showing transactions, with any other banks or payment processors, including Visa, MasterCard, American Express, PayPal, regarding these accounts;

j. Within twenty-one (21) days of receipt of this Order, Agricultural Bank of China shall produce to Plaintiff's counsel the following documents related to any accounts held under the Merchant Name "PES*17074001035UNITECH":

i. documents and records sufficient to identify the names, addresses and other identifying and/or contact information of the owners or authorized users of these accounts;

ii. documents and records sufficient to identify any other domain names or websites or accounts linked to these accounts;

iii. documents and records sufficient to identify any other financial accounts owned or controlled by "PES*17074001035UNITECH", or any other entity determined to be the owner of the "PES*17074001035UNITECH" account, including such accounts residing with or under the control of any banks, payment processors or other financial institutions;

iv. all transactional records for these accounts, including all records showing any deposits or withdrawals from these accounts and showing the current balance of any funds in these accounts;

v. all communications, or records showing transactions, with any other banks or payment processors, including Visa, MasterCard, American Express, PayPal, regarding these accounts;

Objections

3. Any objection to Paragraphs 2(d) – 2(j) shall be filed **within twenty-one (21) days** after receipt of this Order, and Plaintiff shall then have **fourteen (14) days** to respond to the objections.

4. This Order does not compel production of Suspicious Transaction Reports (“STRs”), Large-value Transaction Reports (“LTRs”), communications between the Banks and the Chinese government that are specifically prohibited under anti-money laundering laws, or documents created by the Banks and provided to the Chinese government in the course of regulatory reviews.

Request for Entry of Final Judgment

5. Following completion of Plaintiff’s discovery on damages, Plaintiff shall submit to the Court a request for entry of Final Judgment, which shall include any demand by Plaintiff for damages and attorney’s fees.

Miscellaneous

6. Plaintiff shall maintain its security in the amount of \$10,000 until entry of the Final Judgment, or until further Order of the Court.

7. When serving this Order on Industrial and Commercial Bank of China, China Construction Bank and China Merchants Bank, Plaintiff shall provide each bank with a list of the unredacted bank account numbers for the Bank Accounts identified in this Order, and said list shall be incorporated into and become a part of this Order.

8. Plaintiff may complete service of this Order on Defendants by electronic mail to the email addresses attached to Plaintiff's motion for default judgment which will provide adequate notice to Defendants pursuant to Fed. R. Civ. P. 4(f)(3). Plaintiff will also publish a copy of this Order by posting it on the website www.notice-lawsuit.com.

SO ORDERED

SHIRA A. SCHEINDLIN
UNITED STATES DISTRICT JUDGE

Dated: _____, 2013