

No. 25-_____

IN THE
Supreme Court of the United States

TNSG HEALTH CO., LTD., et al.,
Petitioners,

v.

MURRAY COLIN CLARKE, et al.,
Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Lanham Act, any “trademark used in commerce” may be registered. 15 U.S.C. § 1051. That “used in commerce” standard is more lenient than the standard required for trademark *infringement*, which demands that the allegedly infringing mark have been “use[d] in commerce * * * *in connection with the sale, offering for sale, distribution, or advertising* of any goods or services.” 15 U.S.C. § 1114 (emphasis added).

The question presented is whether the Ninth Circuit erred in nevertheless holding, in direct conflict with the unanimous holdings of various other federal courts, that a plaintiff can satisfy the infringement standard by alleging mere registration.

PARTIES TO THE PROCEEDING

Petitioners are TNSG Health Co., Ltd.; Alps Holding Company Limited; Mom's Garden Company, Ltd.; Nature's Prime, LLC; Naturalist, Inc.; Tilis Co., Ltd.; Wild Forest, Inc.; Qidong Lu; Zhijuan Guo; and Mom's Garden GMBH. Petitioners were defendants in the district court and appellants in the court of appeals.

Respondents are Murray Colin Clarke and Biozeal, LLC. Respondents were plaintiffs in the district court and appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner TNSG Health Co., Ltd. is a United Kingdom limited company. No publicly held corporation owns ten percent or more of its stock.

Petitioner Alps Holding Co. Ltd. is a Seychelles limited company. No publicly held corporation owns ten percent or more of its stock.

Petitioner Mom's Garden Co. Ltd. is a Hong Kong corporation. It is wholly owned by The Attractor Company Ltd. No publicly held corporation owns ten percent or more of the stock of The Attractor Company Ltd.

Petitioner Mom's Garden GmbH is a German limited liability company. No publicly held corporation owns ten percent or more of its stock.

Petitioner Nature's Prime LLC is a Colorado limited liability company. No publicly held corporation owns ten percent or more of its stock.

Petitioner Naturalist Inc. is a California corporation. No publicly held corporation owns ten percent or more of its stock.

Petitioner Tilis Co. Ltd. is a Hong Kong corporation. It is wholly owned by Petitioner Alps Holding Co. Ltd.

Petitioner Wild Forest, Inc. is a California corporation. No publicly held corporation owns ten percent or more of its stock.

RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Central District of California:

Clarke v. TNSG Health Co., Ltd., Nos. 24-3411, 24-3414, 24-3417, 24-5440, 24-5441, 24-5442 (9th Cir.) (opinion issued October 9, 2025; order denying appellants' petition for rehearing issued November 12, 2025).

Clarke v. TNSG Health Co., Ltd., No. 21-cv-03463 (C.D. Cal.) (judgment entered May 15, 2024).

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TNSG Health Co., Ltd.; Alps Holding Company Limited; Mom's Garden Company, Ltd.; Nature's Prime, LLC; Naturalist, Inc.; Tilis Co., Ltd.; Wild Forest, Inc.; Qidong Lu; Zhijuan Guo; and Mom's Garden GMBH respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The judgment of the Ninth Circuit is unreported and is reproduced at page 1a of the Appendix to this petition ("App."). The order denying petitioners' request for rehearing is unreported and reproduced at App.45a. The opinion of the District Court for the Central District of California is unreported and reproduced at App.14a.

JURISDICTION

The judgment of the Ninth Circuit was entered on October 9, 2025. App.1a. The Ninth Circuit denied Petitioners' timely petition for rehearing on November 12, 2025. App.45a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

15 U.S.C. § 1051(a)(1) provides: "The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director."

15 U.S.C. § 1114(1) provides that infringement occurs when, without consent, any person shall:

- (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
- (b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely

to cause confusion, or to cause mistake, or to deceive[.]

INTRODUCTION

The Ninth Circuit’s decision departs from what is otherwise a consensus view among federal courts on a frequently recurring, important question of federal law. Under the Lanham Act, trademark infringement cannot occur unless the mark in question is “use[d] in commerce * * * *in connection with the sale, offering for sale, distribution, or advertising* of any goods or services.” 15 U.S.C. § 1114 (emphasis added). As the court of appeals recognized, that is a more demanding standard than applies to trademark registrations, for which *any* “use[] in commerce” of a mark—including mere transportation unconnected to sale, offering for sale, distribution, or advertising—suffices to support an application. 15 U.S.C. § 1051. Based on that unremarkable proposition, courts around the country have routinely held that the mere act of seeking to register a trademark cannot support infringement liability, whether at the pleading stage or later on. *See, e.g., Marshall Tucker Band, Inc. v. M T Indus., Inc.*, 238 F. Supp. 3d 759, 764-65 (D.S.C. 2017); *Unicorn Crowdfunding, Inc. v. New St. Enter., Inc.*, 507 F. Supp. 3d 547, 564-65 (S.D.N.Y. 2020); *Optrics Inc. v. Barracuda Networks Inc.*, 2018 WL 10604751, at *2 (N.D. Cal. Apr. 9, 2018).

The Ninth Circuit’s decision departs from that commonsense, consensus conclusion. Here, the court of appeals held that any time a plaintiff alleges use in commerce sufficient to satisfy the lesser standard—which a plaintiff can do by pointing to virtually any trademark application—their allegations necessarily satisfy the heightened standard, even if there is no allegation going to whether the use was “in connection

with” the conduct the infringement statute requires. In so concluding, the Ninth Circuit not only departed from the unanimously held view of courts around the country, but also contravened this Court’s pellucid teaching that if allegations are “just as much in line with” innocent conduct as with unlawfulness, they are insufficient to state a claim. *E.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007). That instruction should have been dispositive here, because there is no allegation that tends to rule out non-infringing use in commerce—*i.e.*, use not in connection with the activities the infringement statute enumerates.

The Ninth Circuit based its mistaken holding on an assertion, offered without citation, that the “daylight” between the registration standard and the infringement standard is “narrow.” App.8a. But that assertion is both irrelevant and wrong. It is irrelevant because regardless how much purported daylight may exist, the court of appeals itself has recognized that the “in connection with” requirement constitutes a separate, additional element of infringement, *State of Idaho Potato Comm’n v. G & T Terminal Packaging, Inc.*, 425 F.3d 708, 721 (9th Cir. 2005). Under this Court’s clear precedent, there must be *some* allegation tending to satisfy that element in order for a complaint to state a claim. *Twombly*, 550 U.S. at 554. In all events, the ‘narrow daylight’ assertion is wrong: The prospect that a registration could be based on conduct that would not satisfy the infringement statute is not some fanciful hypothetical that fails to meaningfully distinguish the two standards. To the contrary, the PTO’s own guidance observes that—to take just one example of many—a pharmaceutical company’s “shipment to clinical investigators during the Federal approval process” could support a

registration application even though it would not amount to the sale, offering, distribution, or advertising necessary to support infringement. PTO TMEP § 901.02 (May 2024) (citing H.R. Rep. 100-1028, at 15 (1988)).

The decision below effectively eliminates an element of infringement that courts have routinely required to be pleaded and proved. Petitioners respectfully request that the Court grant certiorari and restore uniformity in federal law on the important question this petition presents.

STATEMENT OF THE CASE

A. Proceedings In The District Court.

The judgment on review affirmed a \$9.3 million default judgment and fee award entered on an amended complaint purporting to allege trademark infringement and various other claims, App.24a-25a; 3-ER-567,¹ all of which “depend on the trademark infringement claims,” Dist. Ct. Dkt. 247 at 13 (respondents’ concession).² The complaint asserts that in 2019 and 2020, petitioners TNSG and Alps registered certain trademarks with the United States Patent and Trademark Office (“PTO”) and submitted as specimens³ photographs of goods with product labels that included respondents’ trademarks. 3-ER-579-84, 586-90, ¶¶ 34-36, 39-41, 46-48, 53-55, 59-61,

¹ “1-ER-2,” *e.g.*, refers to page 2 of Volume 1 of the Excerpts of Record filed in the Ninth Circuit.

² “Dist. Ct. Dkt.” refers to entries on the docket of case number 2:21-cv-03463-HDV-RAO in the United States District Court for the Central District of California.

³ Specimens are materials that “show the manner in which the mark is seen by the public.” PTO TMEP § 904 (May 2024).

64-66, 70. In connection with that allegation, the complaint attaches trademark applications filed by TNSG and Alps that certify, under penalty of perjury but without further adornment, that the products bearing the allegedly infringing marks have been “use[d] in commerce.” 4-ER-631, 646, 659, 682, 694. Apart from those applications, the complaint includes no factual allegations pertinent here.⁴

Respondents filed suit in 2021. In 2024, the district court granted respondents’ motions for default judgment and entered judgment against appellants. *See* App.14a; 1-ER-9. The district court’s order—entered after that court erroneously refused to even entertain petitioners’ efforts to lift default and oppose default judgment—concluded that the complaint could support a default judgment because, by alleging that TNSG and Alps had submitted trademark applications “declaring under penalty of perjury to the PTO that they were using in U.S. commerce” the accused items, the complaint adequately pleaded trademark infringement. App.27a (citing 15 U.S.C. § 1114).

B. Proceedings In The Court Of Appeals.

On October 9, 2025, the Ninth Circuit issued an unpublished memorandum recognizing that it was error twice over for the district court to rule essentially *ex parte*, but affirming anyway. Specifically, the Ninth Circuit held that the district

⁴ The complaint alleges “[o]n information and belief” that petitioners “sold in the United States at least one product” of each of five allegedly infringing product types, 3-ER-580-90, ¶¶ 36, 41, 48, 57, 61, 66, but the Ninth Circuit’s decision does not rest on those conclusory, boilerplate allegations, and the only purported factual basis for them is the trademark registrations themselves.

court (i) “erroneously entered default judgment without considering or ruling on [petitioners’] motions to set aside the entry of default”; and (ii) relied on “clearly inapposite” law “for the proposition that [petitioners] were not permitted to oppose [respondents’] motions for default judgment.” App.5a. Nevertheless, the Ninth Circuit affirmed, relying in part—and dispositively—on a conclusion that the complaint’s allegations were sufficient to state a claim against petitioners for trademark infringement. App.8a-9a.

On that issue, the Ninth Circuit relied entirely on the fact that TNSG and Alps “certified], under penalty of perjury, that the products bearing the allegedly infringing marks have been ‘used in commerce.’” App.8a. The Ninth Circuit then reasoned:

The daylight between “use in commerce” and use in commerce “in connection with the sale, offering for sale, distribution, or advertising of any goods or services” is narrow. Appellants identify only one activity—transportation for purposes other than distribution—that it alleges would count as “use in commerce” that is not “in connection with the sale, offering for sale, distribution, or advertising of any goods or services.” It is entirely plausible to infer that the “use in commerce” certified by Appellants during their trademark registrations did not fall within the single transportation exception identified by Appellants.

App.8a-9a. The Ninth Circuit said nothing else on the subject.

Petitioners timely sought rehearing on this issue, which was denied. App.47a.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT'S DECISION DEPARTS FROM THE CONSENSUS VIEW OF OTHER FEDERAL COURTS.

Courts around the country have rejected the notion that pleading or proving mere “use in commerce” sufficient to support registration can support a claim for infringement.

In *Marshall Tucker Band*, 238 F. Supp. 3d at 759, the United States District Court for the District of South Carolina expressly held that a trademark infringement claim cannot be based on a statement of use submitted in support of an application to register a trademark. There, the plaintiffs brought a trademark infringement claim alleging that the defendants had filed “applications to register [a] Mark with the USPTO,” and that those applications had included declarations “stat[ing] [defendants]’ belief the Mark is now in use in commerce.” *Id.* at 764. Taking the alleged facts “in the light most favorable” to the plaintiffs, the court dismissed the infringement claim, reasoning that the “statements made by [d]efendants in their applications” did not amount to “allegations of [d]efendants’ actual use of the Mark in commerce” in a way that could constitute infringement. *Id.* at 765.

In *Unicorn Crowdfunding*, 507 F. Supp. 3d at 547, and *Norris v. Goldner*, 2023 WL 5477229 (S.D.N.Y. Aug. 24, 2023), the United States District Court for the Southern District of New York faced similar claims (both at summary judgment) and applied the same rule. The plaintiff in *Unicorn Crowdfunding* brought a claim for trademark infringement based in part on the defendant’s having filed an application for

a mark. 507 F. Supp. 3d at 558. The court rejected the claim, noting the absence of any authority “countervailing” the conclusion that an application alone cannot establish the use in commerce required for *infringement*. *Id.* at 565. *Norris* reached the same conclusion. 2023 WL 5477229, at *10.

In *Bei Jing Han Tong San Kun Ke Ji You Xian Gong Si v. Atlantic Medical Products, LLC*, 2022 WL 88167 (M.D. Fla. Jan. 7, 2022), the United States District Court for the Middle District of Florida similarly held that trademark applications do not by themselves suffice to establish ‘use in commerce.’ The plaintiff there sought to meet the ‘use in commerce’ requirement by alleging that the defendant had “represent[ed] to the USPTO, in its applications, that the mark had been used in commerce.” *Id.* at *10. The court held that the allegation was “insufficient” and granted defendant’s motion to dismiss. *Id.* The court reasoned that the alleged representation of ‘use in commerce’ was “conclusory,” and that the complaint lacked any “further statement * * * as to the nature of use of the mark.” *Id.*

Numerous other cases have reached similar conclusions on similar facts. *See also, e.g., Optrics Inc.*, 2018 WL 10604751, at *2 (dismissing trademark infringement claim because a plaintiff cannot “rely[] solely on statements made by [a defendant] in its [trademark] applications,” but rather “must include specific factual allegations regarding * * * actual use of the marks”); *Meyer v. Mittal*, 2024 WL 385129, at *32 (D. Or. Feb. 1, 2024) (“[T]he filing of a trademark application is not an infringing use in commerce.”); *Big League Chew Props. LLC v. Ford Gum & Mach. Co. Inc.*, 2025 WL 1744894, at *12 (N.D. Ill. Apr. 10, 2025) (denying preliminary injunction because “on a

plain reading” of the Lanham Act, “the mere act of filing an application * * * does not seem to meet the Lanham Act’s definition of ‘use in commerce’”). Indeed, it has been well-established for decades that a “trademark registration per se cannot be considered as a use in commerce,” and so cannot be used to support a claim for trademark infringement. *Kusek v. Family Circle, Inc.*, 894 F. Supp. 522, 532 (D. Mass. 1995); *see also Macia v. Microsoft Corp.*, 152 F. Supp. 2d 535, 539 (D. Vt. 2001) (similar); *Omega S.A. v. Omega Eng’g, Inc.*, 396 F. Supp. 2d 166, 174 (D. Conn. 2005) (similar). The Ninth Circuit’s decision below stands in stark contrast to those decisions, and it stands there alone.

II. THE NINTH CIRCUIT’S DECISION IS WRONG.

In addition to being an outlier, the Ninth Circuit’s decision is erroneous. Once the court of appeals correctly acknowledged that the standard for trademark registration is distinct from the standard for trademark infringement, its analysis should have been over. It was error to hold that by pleading registration, respondents satisfied the separate standard for infringement.

The Ninth Circuit’s observation that the “daylight” between the two standards is “narrow,” App.8a, is both a non-sequitur and incorrect on its own terms. The applicable law here is uncontroversial: Under *Twombly*, a plausible inference of liability must be based on facts that “tend to rule out the possibility” of an innocent explanation. 550 U.S. at 554. Facts that are “merely consistent with” wrongful conduct, while being “just as much in line with” innocent conduct, do

not suffice. *Id.* at 554, 557.⁵ And application of that black-letter rule here is straightforward. The difference between the two standards is that trademark *infringement* requires an additional element that trademark *registration* does not. See, e.g., *Idaho Potato Comm’n*, 425 F.3d at 721; *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 677 (9th Cir. 2005). So engaging in only the conduct that would support *registration*—and not the further conduct that would support *infringement*—is entirely innocent. And again, the sum total of the relevant allegations here is that TNSG and Alps certified “use in commerce”—*i.e.*, certified that they satisfied the *registration* requirement. That does nothing to rule out that the marks were merely transported—or, to put it differently, that they were used in commerce in

⁵ See also, e.g., *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 998-1000 (9th Cir. 2014) (defendant’s sale of property at a multiple of its alleged true value could not support fraud claim, since it was “consistent with both” alleged fraud and an “innocent alternative, that the recession decreased business viability and property values”); *Prudencio v. Midway Importing, Inc.*, 831 F. App’x 808, 810 (9th Cir. 2020) (pleading that parent company was responsible for “marketing” was merely “consistent with” responsibility for product labeling, and thus could not give rise to infringement liability, because ‘marketing’ is “a vague term that can carry a multitude of meanings depending on the context”); *Cobbler Nevada, LLC v. Gonzales*, 901 F.3d 1142, 1147 (9th Cir. 2018) (pleading that defendant was “registered internet subscriber” for particular IP address used to commit infringement was “merely consistent with” liability, and thus could not support a claim, because it did not tend to rule out that responsible party was someone else with access to same service); *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (purchase of shares at time of “secondary offering” could not support inference shares were “traceable to” that offering, because they could just as easily have “come from the pool of previously issued shares”).

a manner that does not satisfy the infringement statute. *See, e.g., Nike, Inc. v. B&H Customs Servs., Inc.*, 565 F. Supp. 3d 498, 508 (S.D.N.Y. 2021) (transportation alone does not create trademark infringement liability unless it is with intent to distribute).

By refusing to enforce the requirement that respondents plead (and ultimately prove) facts tending to rule out innocent conduct, the Ninth Circuit's decision effectively nullifies the pleading requirement for the "in connection with" element. There is no basis in law to do so. Nor is it some fanciful hypothetical that a mark could be "use[d] in commerce" without satisfying the infringement standard. To the contrary, in addition to the PTO's own guidance cited *supra* (at 4-5), a leading trademark treatise provides additional examples, including a casino owner who transports marked slot machines "for use by the public at one of [its] casinos" (not a distribution because an internal transfer), and a manufacturer who exports marked goods "for sale abroad" (not a sale within the jurisdiction of the Lanham Act). 2 *McCarthy on Trademarks and Unfair Competition* § 19:118 (5th ed.). The "transportation" that can qualify as "use in commerce" is a term of art, and parties routinely litigate whether particular shipments of marked goods qualify. *See id.* (citing cases). Accordingly, to the extent the court of appeals' decision relies on the notion that the difference between the two statutes is some kind of loophole or otherwise insignificant, that notion is flatly mistaken.

Because the complaint fails to allege any fact that tends to rule out mere transportation, the court of appeals erred when it deemed the complaint sufficient to support a claim for infringement. And because

respondents conceded below that every claim in the complaint “depend[s] on the trademark infringement claims,” Dist. Ct. Dkt. 247 at 13, the judgment of the district court should have been reversed with instructions to dismiss.

III. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING A RECURRING, IMPORTANT QUESTION.

As the cases cited above demonstrate, the question presented is recurring and important. Moreover, although the decision below concerned only a challenge to the sufficiency of the complaint, nothing limits its holding to that context. To the contrary, the Ninth Circuit expressly held that because the “daylight” between use in commerce and use in commerce in connection with prohibited conduct is “narrow,” it is reasonable to “infer” trademark infringement from a trademark application. App.8a-9a. If that inference is valid at the motion to dismiss stage, it would likely be equally so at the summary judgment and liability stages. *Compare, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (motion to dismiss must be denied when reasonable inferences from “the pleaded factual content” can support liability) *with, e.g., Scott v. Harris*, 550 U.S. 372, 378 (2007) (summary judgment must be denied when reasonable inferences from “the facts” can support liability). The Ninth Circuit’s rule would thus allow a plaintiff to go to trial (and even prevail there) without *any evidence* of what the Ninth Circuit itself has held is an element of any infringement claim. Further, even if limited to the pleading stage, the Ninth Circuit’s liberal rule would impose “the potentially enormous expense of discovery in cases with no reasonably founded hope that the discovery process will reveal relevant

evidence” under a correct understanding of the statutes. *Twombly*, 550 U.S. at 559. The threat of those discovery expenses “will push cost-conscious defendants to settle even anemic cases before reaching” summary judgment or trial. *Id.*

This case is also an excellent vehicle for reviewing the issue. Indeed, although constantly recurring, the issue is unlikely to arise again in a posture in which the Ninth Circuit’s erroneous rule could be directly addressed. Because it is black-letter law that decisions *denying* motions to dismiss are generally not reviewable on appeal, 28 U.S.C. § 1291, the Ninth Circuit’s liberal pleading rule will typically not manifest itself in any order this Court can review. Indeed, the issue arrives at this Court in this case due solely to the unusual circumstance that the Ninth Circuit blessed the complaint’s supposed adequacy here not in the context of a motion to dismiss, but in the context of affirming a default judgment. That procedural quirk—which does nothing to obscure the issue’s substance—is unlikely to arise again. And the likely dearth of future opportunities to pass directly on the Ninth Circuit’s erroneous pleading rule militates strongly in favor of granting certiorari.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse the judgment.

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

**UNITED STATES COURT OF
APPEAL**

FOR THE NINTH CIRCUIT

FILED

OCT 9 2025

MOLLY C.
DWYER,
CLERK

U.S. COURT
OF APPEALS

MURRAY COLIN CLARKE, an individual; BIOZEAL, LLC, a Delaware limited liability company,

Plaintiffs - Appellees,

v.

TNSG HEALTH CO., LTD., a United Kingdom Limited Company; ALPS HOLDING COMPANY LIMITED, a Seychelles limited company,

Defendants - Appellants,

and

MOM'S GARDEN CO. LTD., a German limited liability company, NATURE'S PRIME, LLC, a Colorado limited liability company, NATURALIST, INC., a California corporation, TILIS CO. LTD., a Hong Kong corporation, WILD FOREST,

No. 24-3411

D.C. No.

2:21-cv-03463-

HDV-RAO

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

INC., a California corporation,
QIDONG LU, ZHIJUAN GUO,
an individual, MOM'S GARDEN
GMBH, a a German limited
liability company,

Defendants.

MURRAY COLIN CLARKE;
BIOZEAL, LLC,

Plaintiffs - Appellees,

v.

QIDONG LU; ZHIJUAN GUO,
an individual,

Defendants - Appellants,

and

TNSG HEALTH CO., LTD.,
ALPS HOLDING COMPANY
LIMITED,

Defendants.

No. 24-3414

D.C. No.

2:21-cv-03463-
HDV-RAO

MURRAY COLIN CLARKE;
BIOZEAL, LLC,

Plaintiffs - Appellees,

v.

MOM'S GARDEN CO. LTD., a
German limited liability
company, MOM'S GARDEN
GMBH, a German limited
liability company, NATURE'S
PRIME, LLC, a Colorado limited

No. 24-3417

D.C. No.

2:21-cv-03463-
HDV-RAO

liability company,
NATURALIST, INC., a
California corporation, TILIS
CO. LTD., a Hong Kong
corporation, WILD FOREST,
INC., a California corporation,
Defendants - Appellants,
and
TNSG HEALTH CO., LTD.,
ALPS HOLDING COMPANY
LIMITED,
Defendants.

MURRAY COLIN CLARKE;
BIOZEAL, LLC,
Plaintiffs - Appellees,
v.
TNSG HEALTH CO., LTD.,
ALPS HOLDING COMPANY
LIMITED,
Defendants - Appellants.

No. 24-5440
D.C. No.
2:21-cv-03463-
HDV-RAO

MURRAY COLIN CLARKE;
BIOZEAL, LLC,
Plaintiffs - Appellees,
v.
QIDONG LU; ZHIJUAN GUO,
Defendants – Appellants.

No. 24-5441
D.C. No.
2:21-cv-03463-
HDV-RAO

MURRAY COLIN CLARKE;
BIOZEAL, LLC,

Plaintiffs - Appellees,

v.

MOM'S GARDEN CO. LTD.;
MOM'S GARDEN GMBH;
NATURE'S PRIME, LLC;
NATURALIST, INC.; TILIS
CO., LTD.; WILD FOREST,
INC.,

Defendants - Appellants.

No. 24-5442

D.C. No.

2:21-cv-03463-
HDV-RAO

Appeal from the United States District Court
for the Central District of California
Herman Diego Vera, District Judge, Presiding

Submitted October 7, 2025**
Pasadena, California

Before: GILMAN, WARDLAW, and KOH, Circuit
Judges.***

TNSG Health Co., Ltd., Alps Holding Co. Ltd.,
Qidong Lu, Zhijuan Guo, Mom's Garden Co. Ltd.,
Mom's Garden GmbH, Nature's Prime LLC,
Naturalist Inc., Tilis Co. Ltd., and Wild Forest, Inc.
(collectively, "Appellants") appeal from the district
court's orders issuing default judgment against
Appellants and awarding attorneys' fees and costs to
Murray Clarke and Biozeal, LLC (collectively,
"Appellees") in this trademark infringement dispute.

** The panel unanimously concludes this case is suitable for
decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Ronald Lee Gilman, United States Circuit
Judge for the Court of Appeals, 6th Circuit, sitting by
designation.

We have jurisdiction under 28 U.S.C. § 1291. Because the parties are familiar with the facts, we recite them only as necessary to explain our decision. We affirm.

1. The district court erroneously entered default judgment without considering or ruling on Appellants' motions to set aside the entry of default. The district court cited *United States v. One 1994 BMW 325, Vehicle Identification No. (VIN) WBABF4323REK13663*, 99 F. App'x 793, 794 (9th Cir. 2004), for the proposition that Appellants were not permitted to oppose Appellees' motions for default judgment after the entry of default. However, *One 1994 BMW* involved an in rem civil forfeiture action, and its application here is clearly inapposite. *See id.*

However, the district court's treatment of the set-aside motions did not prejudice Appellants. Their motions failed to show good cause. See Fed. R. Civ. P. 55(c) (permitting a court to set aside an entry of default for "good cause" shown). A party in default bears the burden of showing good cause. *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). "The good cause analysis considers three factors: (1) whether [Appellants] engaged in culpable conduct that led to the default; (2) whether [Appellants] had [no] meritorious defense; [and] (3) whether reopening the default . . . would prejudice [Appellees]." *Id.* at 925 – 26. "As these factors are disjunctive," a court is "free to deny" a motion to set aside default "if any of the three factors [are] true." *Id.* at 926 (quoting *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000)).

Here, Appellants failed to establish any of the three good cause factors, much less all three.¹

a. First, because “there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond,” Appellants’ conduct is “culpable for purposes of the [good cause] factors.” *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) (alteration in original) (quoting *TCI Grp.*, 244 F.3d at 698). Because Appellants flouted the district court’s order to retain counsel and failed to respond to the amended complaint, the district court properly concluded that Appellants “deliberately abandoned this litigation.” Moreover, Appellants have engaged repeatedly in egregious litigation conduct, including evading Appellees’ discovery efforts.

b. Second, Appellants failed to present the court with “specific facts” that would constitute a meritorious defense. *Franchise Holding*, 375 F.3d at 926. Appellants’ motions to set aside the entry of default raised three defenses: (1) personal jurisdiction, (2) service of process, and (3) the insufficiency of the complaint’s allegations. None is meritorious.

¹ Additionally, Appellants declined the district court’s explicit invitation to file motions to set aside the default judgment under Federal Rule of Civil Procedure 60(b). “The good cause standard that governs vacating an entry of default under Rule 55(c) is the *same* standard that governs vacating a default judgment under Rule 60(b).” *Franchise Holding*, 375 F.3d at 925 (emphasis added); *accord TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001), *as amended* (May 9, 2001). Because the district court would have applied the same good cause standard, Appellants’ failure to file Rule 60(b) motions is another reason Appellants were not unfairly prejudiced.

As to personal jurisdiction, the district court properly found at the motion-to-dismiss stage that TNSG Health Co., Ltd. (“TNSG”) is subject to specific jurisdiction in California. The district court properly found all remaining Appellants to be alter egos of TNSG. There is extensive overlap in ownership, employees, and locations across all Appellants, and Appellees have adequately alleged that “an adherence to the fiction of the separate existence of the [Appellants] would sanction a fraud or promote injustice.” *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003) (cleaned up). Thus, as TNSG is subject to specific jurisdiction in California, personal jurisdiction extends to all alter ego Appellants. *See Ranza v. Nike*, 793 F.3d 1059, 1073 (9th Cir. 2015) (“[T]he alter ego test may be used to extend personal jurisdiction to a foreign parent or subsidiary when, in actuality, the foreign entity is not really separate from its domestic affiliate.” (emphasis omitted)).²

As to service of process, TNSG was properly served with the amended complaint through its then-counsel, Venable. *See* C.D. Cal. L. R. 15-3 (“An amended pleading allowed by order of the Court shall be deemed served upon the parties who have previously appeared on the date the motion to amend is granted.”). Appellants do not dispute that proper service on one Appellant constitutes proper service on all alter egos. *See Certified Bldg. Prods., Inc. v. NLRB*, 528 F.2d 968, 969 (9th Cir. 1976) (concluding

² We note that personal jurisdiction can be exercised over all Appellants for an additional, independent reason: The district court has general jurisdiction over Naturalist, Inc. and Wild Forest, Inc., both of which are alter egos of TNSG that are incorporated in California.

that service on an alter ego corporation constitutes proper service on an individual).³

As to the sufficiency of Appellees' complaint, Appellants argue only that Appellees failed to plausibly allege that the marks at issue were used in commerce "in connection with the sale, offering for sale, distribution, or advertising of any goods or services." 15 U.S.C. § 1114(1)(a). However, the complaint includes "sufficient factual enhancement to cross the line between possibility and plausibility" on this element of its trademark claims. *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014) (cleaned up). The complaint attaches trademark applications filed by TNSG and Alps that certify, under penalty of perjury, that the products bearing the allegedly infringing marks have been "used in commerce." The daylight between "use in commerce" and use in commerce "in connection with the sale, offering for sale, distribution, or advertising of any goods or services" is narrow. Appellants identify only one activity—transportation for purposes other than distribution—that it alleges would count as "use in commerce" that is not "in connection with the sale, offering for sale, distribution, or advertising of any goods or services."

³ We note that service was proper for two additional, independent reasons. First, Alps Holding Co. Ltd. was properly served via its "domestic representative," Sharoni Finkelstein at Venable. See 15 U.S.C. § 1051(e) (permitting a trademark applicant "not domiciled in the United States" to designate "a person resident in the United States on whom may be served notices or process in proceedings affecting the mark"). Second, Naturalist, Inc. and Wild Forest, Inc. (both California corporations) were served by personal delivery to their registered agent authorized to accept service on their behalf. See Fed. R. Civ. P. 4(h)(1); Cal. Code Civ. Proc. § 416.10.

It is entirely plausible to infer that the “use in commerce” certified by Appellants during their trademark registrations did not fall within the single transportation exception identified by Appellants.

c. Third, Appellants have failed to establish that Appellees would not be prejudiced if the default were set aside. If setting aside a default would “result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion,” it is considered prejudicial. *TCI Grp.*, 244 F.3d at 701 (quoting *Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 433-34 (6th Cir. 1996)). Here, setting aside the default could provide Appellants with an opportunity to further collude in their counterfeiting efforts or shift assets between related entities. Such collusion is not entirely speculative. When TNSG was the only Defendant in this action, it “surrendered” disputed trademark registrations, but (unbeknownst to Appellees) a TNSG alter ego then promptly reapplied for the same marks.

Accordingly, because Appellants have failed to show good cause, we conclude that the district court’s failure to consider Appellants’ motions to set aside the entry of default was harmless. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“We may affirm on any ground finding support in the record.”).

2. We conclude that the district court did not abuse its discretion in granting Appellees’ motion for default judgment. *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (“We review the district court’s factual findings for clear error, and review the grant of a default judgment for abuse of discretion.”). Under *Eitel v. McCool*, courts

consider the following factors in considering a motion to enter default judgment:

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

782 F.2d at 1471-72.

On appeal, Appellants challenge the district court's analysis as to four factors: the possibility of prejudice (factor 1), the sufficiency of the complaint (factor 3), excusable neglect (factor 6), and the strong policy favoring decisions on the merits (factor 7). However, as discussed above, Appellees would likely be prejudiced in the absence of the default judgment, Appellants' challenge to the sufficiency of the complaint is unavailing, and the entry of default was not due to excusable neglect, but rather was caused by Appellants' culpable conduct. We identify no clear error in the district court's factual findings and conclude that the district court thus acted within its discretion in determining that *Eitel* factors 1, 3, and 6 favored the entry of default judgment. The district court also acted within its discretion in concluding that the strong policy favoring decision on the merits did not preclude entry of default judgment here given its well-supported finding that Appellants' "conduct to date" did not suggest that Appellants "intend to engage in good faith litigation toward a final decision on the merits."

3. The district court did not abuse its discretion in awarding \$4,000,000 in statutory damages. See *Nintendo of Am., Inc. v. Dragon Pac. Int'l*, 40 F.3d 1007, 1010 (9th Cir. 1994) (“The district court’s award of damages under the Lanham Act is reviewed for abuse of discretion.”). Under the Lanham Act, a trademark plaintiff may recover statutory damages in lieu of actual damages and profits. 15 U.S.C. § 1117(c). “[I]f the court finds that the use of the counterfeit mark was willful,” it may award “not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(2).

Here, the district court properly found that Appellants’ infringement was willful, and its award of \$2,000,000 for each of the two marks at issue fell within the range of statutory damages permitted by Congress. Appellants’ arguments to the contrary are unavailing.

First, Appellants argue that Appellees have failed to demonstrate any actual damages, so the district court should have awarded nothing. However, “[s]tatutory damages may be elected whether or not there is adequate evidence of the actual damages suffered by plaintiff or of the profits reaped by defendant.” *Harris v. Emus Recs. Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (interpreting a similarly worded copyright infringement provision). Indeed, “[s]everal courts have found statutory damages are appropriate in default judgment cases because the information needed to prove actual damages is within the infringers’ control and is not disclosed.” *Otter Prods., LLC v. Berrios*, No. 13-cv-4384, 2013 WL 5575070, at *9 (C.D. Cal. Oct. 10, 2013) (quoting

Microsoft Corp. v. Nop, 549 F. Supp. 2d 1233, 1238 (E.D. Cal. 2008)). Here, information relevant to actual damages (e.g., Appellants' sales, the extent of the marketing of the infringing product) was within Appellants' control. Given Appellants' repeated noncompliance with Appellees' discovery efforts, Appellees' failure to prove actual damages should not preclude their recovery of statutory damages.

Second, Appellants argue that the maximum statutory damages award was unwarranted. However, "when infringement is willful, the statutory damages award may be designed to penalize the infringer and to deter future violations." *Nintendo*, 40 F.3d at 1011 (quoting *Chi-Boy Music v. Charlie Club, Inc.*, 930 F.2d 1224, 1228-29 (7th Cir. 1991)). Given Appellants' conduct throughout the litigation, the district court acted within its discretion in awarding the statutory maximum for deterrence and punitive purposes.

4. The district court did not abuse its discretion in awarding \$5,299,205.88 in attorneys' fees. See *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179, 1181 (9th Cir. 2016) (en banc) (per curiam) ("[O]ur review of the district court's decision on fees awarded under the Lanham Act is for abuse of discretion."). Under the Lanham Act, the district court may award "reasonable attorney fees" in "exceptional cases." 15 U.S.C. § 1117(a).

Here, the district court acted within its discretion in concluding that this is an "exceptional case" given Appellants' willful infringement and its unreasonable litigation conduct. The court also acted within its discretion in calculating the fee award. The district court reviewed Appellees' counsel's billing records and concluded that the hours billed

were reasonable and that the rates sought were consistent with prevailing market rates. See *McElwaine v. U.S. West, Inc.*, 176 F.3d 1167, 1173 (9th Cir. 1999). The district court also permissibly applied an “across-the-board haircut of 5% to eliminate any ‘fat’ in the billing records.” See, e.g., *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

Appellants’ sole argument on this issue is that the district court erred by ignoring its opposition to the Appellees’ fees motion. Appellants offer no basis for this assertion beyond the district court’s failure to explicitly address Appellants’ specific objections in the fees order. We note that the district court was not required to explicitly respond to or rebut Appellants’ arguments. See *Rita v. United States*, 551 U.S. 338, 356 (2007) (“Sometimes a judicial opinion responds to every argument; sometimes it does not . . .”). But even if the district court had improperly ignored Appellants’ opposition, Appellants have failed to demonstrate prejudice. On an independent review, we conclude that Appellants’ objections to the fee award lack merit.

AFFIRMED.

APPENDIX B
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MURRAY COLIN
CLARKE, an individual,
and BIOZEAL, LLC,

Plaintiffs,

v.

TNSG HEALTH CO.,
LTD., a United Kingdom
Limited Company,
MOM'S GARDEN
COMPANY LIMITED, a
Hong Kong corporation,
MOM'S GARDEN
GMBH, a German
limited liability company,
NATURE'S PRIME LLC,
a Colorado limited
liability company, ALPS
HOLDING COMPANY
LIMITED, a Seychelles
limited company,
NATURALIST, INC., a
California corporation,
TILIS COMPANY
LIMITED, a Hong Kong
corporation, WILD
FOREST, INC., a
California corporation,
QIDONG LU, an
individual, and

Case No. 2:21-cv-03463-
HDV-RAO

**ORDER GRANTING
PLAINTIFFS'
MOTION FOR
DEFAULT
JUDGMENT AGAINST
DEFENDANTS TNSG
HEALTH CO., LTD.
AND ALPS HOLDING
COMPANY LIMITED
[247] AND MOTION
FOR ALTER EGO
FINDING AND
DEFAULT
JUDGMENT AGAINST
DEFENDANTS MOM'S
GARDEN CO. LTD.,
MOM'S GARDEN
GMBH, NATURE'S
PRIME LLC,
NATURALIST, INC.,
TILIS CO. LTD, WILD
FOREST, INC.,
QIDONG LU, AND
ZHIJUAN GUO [249]**

ZHIJUAN GUO, an
individual,

Defendants.

TNSG HEALTH CO.,
LTD., a United Kingdom
Limited Company

Counterclaimant,

v.

MURRAY COLIN
CLARKE, an individual,
and BIOZEAL, LLC,

Counter-Defendants.

I. INTRODUCTION

Before the Court are Plaintiffs’ Motions for Default Judgment (the “Motion”) against Defendants TNSG Health Co., Ltd., Alps Holding Company Limited, Mom’s Garden Co. Ltd., Mom’s Garden GmbH, Nature’s Prime LLC, Naturalist, Inc., Tilis Co. Ltd., Wild Forest, Inc, and individuals Qidong Lu and Zhijuan Guo. Plaintiffs brought this case over three years ago to stop Defendant TNSG Health Co., Ltd.’s shockingly brazen counterfeiting scheme, accomplished in part by Defendants’ submission of specimens of use to the United States Patent and Trademark Office that clearly depicted their counterfeit labels. Plaintiffs learned in discovery of several other entities—all owned or controlled by Lu and Guo—that Plaintiffs allege operate as a single enterprise. After the Court granted Plaintiffs’ motion to add these Defendants, TNSG deliberately

abandoned this litigation and the remaining Defendants elected to default.

Plaintiffs now move for default judgment. After careful consideration of the record in its entirety,¹ the Court grants the Motion and enters default judgment in Plaintiffs' favor (and against all Defendants) in the amount of \$4,000,000. Consistent with the findings discussed herein, the Court also orders permanent injunctive relief as specified in its Judgment issued concurrently with this Order.

II. BACKGROUND

Plaintiff Dr. Murray Colin Clarke has been formulating nutritional supplements containing vitamins, minerals, and antioxidants to address health issues among children since 1996. First Amended Complaint ("FAC") [Dkt. No. 192] ¶¶ 10-

¹ Defendants were not entitled to file an opposition brief or otherwise submit argument in opposition to Plaintiffs' Motions. See *United States v. One 1994 BMW 325, Vehicle Identification No. (VIN) WBABF4323REK13663*, 99 F. App'x 793, 794 (9th Cir. 2004) ("[Defendant] does not dispute that he failed to file an answer or claim with the district court. Accordingly, the district court properly rejected [Defendant's] opposition to the government's motion for default judgment because his failure to comply with the applicable filing requirements precluded his standing as a 'party' to the action." (citation omitted)). However, this District's Local Rules provide, "If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit *declarations in opposition*." L.R. 55-2 (emphasis added). Thus, the Court considered Defendants' declarations [Dkt. Nos. 263-65, 267] to the extent they concerned the amount of damages to which Plaintiffs are entitled. The Court, in its discretion, also allowed Defendants' counsel to address damages at the April 26, 2024 hearing. [Dkt. No. 270].

13. In 1997, Clarke formed Plaintiff Biozeal, LLC, which directs and oversees the manufacture and distribution of Clarke's supplements. *Id.* ¶¶ 16-17. In connection with his nutritional and dietary supplements, Clarke owns the CHIDLIFE and CHIDLIFE ESSENTIALS word trademarks (collectively the "ChildLife Marks" or "Plaintiffs' Marks"). FAC ¶¶ 18-22, Exs. A-F.

Plaintiffs' products have been advertised and sold under the ChildLife Marks in grocery stores, pharmacies, websites, and through social media. *Id.* ¶¶ 23-25. Plaintiffs have invested substantial resources in advertising and establishing the ChildLife Marks in the minds of consumers as the source of Plaintiffs' goods, which are made "with only top-quality, pure ingredients that are allergy-free, gluten-free, and GMO-free, and that never use artificial colors, sweeteners, flavors or fillers." *Id.* ¶ 26-27.

Defendant TNSG Health Co., Ltd. ("TNSG") is a limited company of Great Britain. FAC ¶ 6(A). Defendant Zhijuan Guo is TNSG's sole owner, director, and officer. *Id.* Guo's husband Qidong Lu has referred to himself as "the boss" of TNSG. *Id.* Although TNSG claims it has no employees, TNSG has proffered declarations from "outside business manager" Liqin Song, who claimed responsibility for TNSG's trademark filings. *Id.* Many of TNSG's U.S. trademark applications were filed and prosecuted by Timothy Wang of the law firm Ni, Wang & Massand PLLC. *Id.*

Alps Holding Company Limited ("Alps") is a Seychelles company. FAC ¶ 6(B). Alps' Director and President is Guo, and its "Legal Manager" is Song. *Id.* U.S. trademark attorney Timothy Wang also filed

and prosecuted many of Alps' U.S. trademark applications. *Id.*

Mom's Garden Company Limited ("Mom's Garden") is a Hong Kong corporation that claims to be a nutritional supplement company that distributes the brand INNE. FAC ¶ 6(C). Lu owns and controls Mom's Garden. *Id.* Guo was a director of Mom's Garden. *Id.* Song is an employee of Mom's Garden and uses a moms-garden.com email address. *Id.* Mom's Garden GmbH is a German limited liability company that licenses TNSG's trademarks. FAC ¶ 6(D). Guo is a Director of Mom's Garden GmbH. *Id.*

Nature's Prime LLC ("Nature's Prime") is a Colorado limited liability company that claims to own the trademark MOM'S GARDEN (U.S. Registration No. 5762697). FAC ¶ 6(E). Lu is a Director of Nature's Prime. *Id.* Song claims to be the "IP Manager" for Nature's Prime. *Id.* Naturalist, Inc. ("Naturalist") is a California corporation. FAC ¶ 6(F). Guo is Naturalist's sole Director, CEO, CFO, and Secretary. *Id.*

Wild Forest, Inc. ("Wild Forest") is a California corporation. FAC ¶ 6(G). Guo is Wild Forest's sole Director, CEO, CFO, and Secretary. *Id.*

Tilis Company Limited ("Tilis") is a Hong Kong corporation owned by Alps Holding. Guo is Tilis' Director. FAC ¶ 6(H).

In early 2019, TNSG—through Mr. Wang—applied to register the VITASPA (U.S. Serial No. 88/298,398) and IFLEX marks (U.S. Serial No. 88/338,705), and the characters 童年时光 (U.S. Serial No. 88/248,354) ("Chinese Character Mark") for use in connection with nutritional supplements. FAC ¶¶ 34, 39, 46. TNSG also applied to register the Chinese Character

Mark in connection with an online marketplace for pharmaceutical supplies (“TNSG’s Website Application”) (U.S. Serial No. 88/287,905). FAC ¶ 53. These four applications, (together “TNSG Applications”), evince Defendants’ counterfeiting scheme.

For each of the Applications TNSG filed with the PTO, TNSG also filed a Statement of Use declaring under penalty of perjury that the mark was “first used in commerce at least as early as” various dates in 2019 “on or in connection with all of the goods/services” listed in the application. FAC ¶¶ 35, 39, 47, 54, Exs. G-J. For each Application, TNSG also submitted to the PTO specimens displaying the product or screenshots of the website displaying that mark and affirmed that such mark was used in U.S. commerce as shown in the specimen. *Id.* Each of the specimens TNSG submitted bore the ChildLife Marks. *Id.* Specifically, TNSG’s Website Application specimen showed its website prominently displaying ChildLife products and falsely claiming TNSG “cooperates with several well known supplement brands, including ... ChildLife Essentials.” FAC Ex. J.

In August 2019, Alps—through Mr. Wang—applied to register the marks IRONBABY (U.S. Serial No. 88/559,633) and ICAN (U.S. Serial No. 88/571,630) (the “Alps Applications”) for use in connection with nutritional supplements. FAC ¶¶ 59, 64. In February and April 2020, Alps filed Statements of Use averring—again, under penalty of perjury—that those marks were “first used in commerce at least as early as” October 20, 2019 and March 1, 2020, respectively, “on or in connection with all of the goods/services” listed in the Alps Applications. The

specimens both bore the ChildLife Mark. FAC Exs. K-L.

TNSG and Alps use or used Plaintiffs' ChildLife Marks in connection with the sale and marketing of Defendants' infringing products.² FAC ¶ 75. Defendants' infringing products depicted in specimens submitted with their Applications are identical or nearly identical to Plaintiffs' products. FAC ¶ 71. Plaintiffs' Marks appear on counterfeit labels along with the ® symbol reflecting Plaintiff Dr. Clarke's registrations. FAC ¶ 73, Exs. G-L. Plaintiffs never provided Defendants permission to use any of the ChildLife Marks. FAC ¶ 70. TNSG and Alps had actual and constructive knowledge of Plaintiffs' ownership of the ChildLife Marks and intended to confuse consumers and trade off the goodwill of the ChildLife Marks. *Id.* ¶¶ 73-74.

After Plaintiffs discovered TNSG's use of the ChildLife Marks used in the TNSG Applications, TNSG surrendered the VITASPA and IFLEX Registrations. FAC ¶¶ 38, 43, 50, 58. After surrendering these registrations, however, Alps filed

² In a sworn statement supporting TNSG's Motion to Dismiss in July 2021, Song represented that TNSG "currently does not manufacture or sell products in California or the United States" and has not done so for "at least the last 12 months." [Dkt. No. 27-2] ¶¶ 3, 5. In April 2022 in the context of TNSG's Opposition to Plaintiff's Motion for Preliminary Injunction, Song arguably contradicted her prior testimony, stating TNSG "has never manufactured or sold products in the United States" and "has never transported any products into, out of, between, or within the United States." [Dkt. Nos. 56-2] ¶ 6. This later statement from Song also contradicted TNSG's statements to the PTO in its trademark Applications that TNSG was currently using "in commerce on or in connection with all of the goods/services ... listed in the application[s]." FAC Exs. G-J.

applications to register those same marks in the same class. *Id.* ¶¶ 44, 51. Similarly, after TNSG surrendered its trademark registration for WILD FOREST (U.S. Registration No. 5957623), Alps, which is solely owned by Guo, filed a trademark application for WILD FOREST (U.S. Serial No. 97613910). FAC ¶ 6(G).

III. DISCUSSION

A. Procedural Requirements for Default Judgment

Federal Rule of Civil Procedure (“FRCP”) 55(b) authorizes a district court to grant a default judgment after the Clerk enters default under Rule 55(a). Fed. R. Civ. P. 55(b). But first, the plaintiff must satisfy the procedural requirements set forth in FRCP 54(c) and 55, as well as Local Rules (“L.R.”) 55-1 and 55-2. Fed. R. Civ. P. 54(c), 55; L.R. 55-1, 55-2. Local Rule 55-1 requires that the movant submit a declaration establishing: (1) when and against which party default was entered; (2) identification of the pleading to which default was entered; (3) whether the defaulting party is a minor or incompetent person; (4) that the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, does not apply; and that (5) the defaulting party was properly served with notice, if required under Rule 55(b)(2). L.R. 55-1.

Here, the procedural requirements of Local Rule 55-1 have all been met. The Clerk entered default against TNSG on January 3, 2024. [Dkt. No. 233]. The Clerk entered default against Guo, Lu, and the remaining enterprise defendants Alps, Mom’s Garden, Mom’s Garden GmbH, Tilis, Naturalist, Wild Forest, and Nature’s Prime on January 14, 2024. [Dkt. Nos. 245, 246].

Plaintiffs filed a declaration of counsel attesting to the remaining elements of Local Rule 55-1. See Declaration of Seth Gold in Support of Plaintiffs' Motion for Default Judgment Against Defendants TNSG Health Co. Ltd. and Alps Holding Company Limited ("Gold Decl.") [Dkt. No. 247-1]; Declaration of Seth Gold in Support of Plaintiffs' Motion for Default Judgment Against Defendants Mom's Garden Co. Ltd. Mom's Garden GmbH, Nature's Prime LLC, Naturalist, Inc., Tilis Co. Ltd., Wild Forest, Inc, Qidong Lu, and Zhijuan Guo. ("Gold Decl. ISO Alter Egos") [Dkt. No. 249-1]. In particular, the Declarations state that no Defendant is a minor, infant, or otherwise an incompetent person, and that the Servicemembers Civil Relief Act does not apply. Gold Decl. ¶ 10; Gold Decl. ISO Alter Egos ¶ 10.

B. Eitel Factors

Upon finding that these procedural requirements are satisfied, a district court has discretion to enter default judgment where appropriate. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). "A defendant's default does not automatically entitle the plaintiff to a court-ordered judgment." *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal 2002). In exercising discretion, a court must consider several factors (the "Eitel factors"):

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy

underlying the [FRCP] favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Upon consideration of Plaintiffs’ First Amended Complaint and the materials provided by Plaintiffs in support of the application for default judgment, the Court finds that the Eitel factors strongly favor Plaintiffs’ application.

a. The possibility of prejudice to the Plaintiffs

Denial of default leads to prejudice when it leaves a plaintiff with no remedy or recourse for recovery. *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (citation omitted). That concern applies here. Because Defendants failed to appear and participate in this action, Plaintiffs are without recourse if a default judgment is denied. Plaintiffs first filed this action over three years ago. Yet due to TNSG’s conduct in discovery and deliberate abandonment of this litigation, Plaintiffs are still without a remedy. And a default judgment entered solely against TNSG and Alps (but not the remaining Defendants) creates a very real risk that Defendants will—as they have previously done—shift their counterfeiting activities and resources to any commonly controlled entity or entities not subject to the judgment. This factor plainly weighs in favor of default judgment.

b. The merits of Plaintiffs’ substantive claims and sufficiency of the complaint

The second and third Eitel factors “require that a plaintiff state a claim on which the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003).

After the Clerk enters default, the factual allegations in the complaint are accepted as true, except those pertaining to the amount of damages. *TeleVideo Sys. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

Plaintiffs bring claims for trademark counterfeiting and trademark infringement in violation of 15 U.S.C. § 1114; false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); common law trademark infringement and unfair competition; unfair competition in violation of Cal. Bus. & Prof. Code § 17200; and cancellation of trademarks under 15 U.S.C. § 1119. “To show trademark infringement under the Lanham Act, the plaintiff must show that (1) the plaintiff owns a valid trademark; (2) the defendant is using the trademark without the plaintiff’s authorization; and (3) the defendant’s use of the trademark likely confuses consumers.” *2Die4Kourt v. Hillair Cap. Mgmt., LLC*, No. CV-16-01304-JVS-DFMx, 2016 WL 4487895, at *5 (C.D. Cal. Aug. 23, 2016), *aff’d*, 692 F. App’x 366 (9th Cir. 2017) (citing *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007)).

Plaintiffs’ other claims for federal false designation of origin and unfair competition, common law trademark infringement and unfair competition, and California statutory unfair competition are substantially congruent with Plaintiffs’ infringement claim under the Lanham Act. To state all three of these claims, a plaintiff must allege facts to demonstrate that (1) plaintiff has a valid, protectable trademark and (2) that the defendant’s use of that mark is likely to cause confusion. *See Applied Info. Scis. Corp.*, 511 F.3d at 969; *Grupo Gigange S.A. de*

C.V. v. Dallo & Co., 391 F.3d 1088, 1100 (9th Cir. 2004) (“As a general matter, trademark claims under California law are ‘substantially congruent’ with federal claims and thus lend themselves to the same analysis.”); *Cleary v. News Corp.*, 30 F.3d 1255, 1262–63 (9th Cir. 1994) (explaining state common law claims of unfair competition [under California law] are “‘substantially congruent’ to claims made under the Lanham Act”); *Brookfield Comms., Inc. v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999) (“To establish a trademark infringement claim under section 32 of the Lanham Act or an unfair competition claim under section 43(a) of the Lanham Act, [plaintiff] must establish that [defendant] is using a mark confusingly similar to a valid, protectable trademark of [plaintiffs].”). The Court therefore must assess whether Plaintiffs’ FAC states facts that, taken as true, evince trademark infringement. Again, that standard is amply met here.

First, a plaintiff’s federal trademark registration is prima facie evidence that the plaintiff owns a valid trademark. 15 U.S.C. § 1057(b). Here, Plaintiffs produced federal registrations for the CHILDLIFE mark and CHILDLIFE ESSENTIALS mark. See FAC ¶¶ 18, 20, Exs. A, E. Defendants neither contested nor submitted controverting evidence regarding ownership or validity.

Analysis of the third requirement—likelihood of consumer confusion—is similarly straightforward in this context. In a traditional trademark infringement suit, the court determines the likelihood of confusion according to the eight factors established in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979). See *Jada Toys, Inc. v. Mattel, Inc.*, 496

F.3d 974, 979 (9th Cir. 2007). However, the analysis of each of these factors is unnecessary,³ as the Court assumes a likelihood of confusion when the offending mark is counterfeit or virtually identical to a protected mark and there was intent to cause confusion such as when the mark is used on an identical product or service. See *Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 945 (9th Cir. 2011); *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999) (“In light of the virtual identity of marks, if they were used with identical products or services likelihood of confusion would follow as a matter of course.”).

The second element of trademark infringement is unauthorized commercial use of the trademark. Because Plaintiff Clarke never permitted any of the Defendants to use the ChildLife Marks, FAC ¶ 70, Defendants’ use was unauthorized. For use to be “commercial” for trademark infringement purposes, it must be use “in connection with the sale, offering

³ Even were the Court to assess the likelihood of confusion under the *Sleekcraft* factors, the Court would find a likelihood of confusion. In addition to the identical marks and goods, both Plaintiffs and Defendants market products online and are already in direct competition. A consumer of moderately priced nutritional supplements is not likely to exercise an inordinate degree of care. But even for consumers exercising care, they are likely to be confused because the infringing product uses an exact copy of Plaintiffs’ Marks. As discussed *infra* Section III.C.a, Defendants’ infringement was willful. And Plaintiffs’ Marks are, at the very least, suggestive and have achieved a level of commercial strength warranting protection. Failure to show actual confusion does not weigh against likelihood of confusion, but instead is neutral in the analysis. See *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1131 (9th Cir. 2014).

for sale, distribution, or advertising of any goods or services.” 15 U.S.C. § 1114. Here, taking Plaintiffs’ allegations as true, Defendants TNSG and Alps used the ChildLife Marks in this manner. See, e.g., FAC ¶ 71 (“Defendants are using and/or have used in United States commerce marks on products, including TNSG Health’s Infringing Chinese Character Product and products depicted in the VITASPA, iFLEX, and Iron Baby specimens of use and Alps Holdings’ products depicted in the IRON BABY and iCAN specimens of use (collectively, ‘Defendants’ Infringing Products’) that are identical, nearly identical, and/or closely related to Plaintiffs’ CHILDLIFE Products ...”); FAC ¶ 72 (“Defendants sold, distributed, or transported in United States commerce Defendants’ Infringing Products—and potentially other products which incorporate the CHILDLIFE Mark, the NUTRITION FOR KIDS! Mark, and the CHILDLIFE ESSENTIALS Mark, in trade channels that are the same as Plaintiffs’, or that are highly similar thereto, and to classes of consumers that are identical to or that overlap with Plaintiffs’ consumers.”); FAC ¶ 75 (“Defendants’ use of Plaintiffs’ Marks in connection with the sale and marketing or other use in United States commerce of Defendants’ Infringing Products, including in California in this Judicial District, has caused, and is likely to cause, confusion, mistake, and deception among the relevant purchasing public.”).

Moreover, Defendants obtained their registrations by declaring under penalty of perjury to the PTO that they were using in U.S. commerce the supplement products displaying the ChildLife Marks, the ® symbol with the Marks, Plaintiff Biozeal’s business address, and the statement that

the product was “formulated by Dr. Murray C. Clarke.” See FAC Exs. G-I, K-L. Not only was infringing use properly pled, but Plaintiffs submitted testimony from Defendants’ U.S. trademark attorney Timothy Wang supporting those allegations. See Deposition of Timothy Wang (“Wang Depo. Tr.”) [Dkt. No. 275]. Wang testified that (i) his practice was to confirm the specimens he submitted to the PTO accurately reflect the use in U.S. commerce requirement prior to submission, *id.* at Vol. 1, 44:20-45:2, 97:12-19, and (ii) in this particular case, he visited the webpage submitted in the Statement of Use for TNSG’s Website Application prior to filing it with the PTO, *id.* 96:14-97:2; see also *id.* at Vol. 1, 40:10-41:8, 98:24-99:2, 171:1-9; Vol. 2, 50:21-51:1, 109:6-13, 151:22-152:1.

In addition to establishing that Plaintiffs have stated a claim and would be likely to succeed against TNSG and Alps, Plaintiffs have sufficiently alleged that the remaining Defendants are alter egos of each other and operate as a single enterprise.

Federal courts “apply the law of the forum state in determining whether a corporation is an alter ego” of a party. *Towe Antique Ford Foundation v. I.R.S.*, 999 F.2d 1387, 1391 (9th Cir. 1993). Under California law, an alter ego relationship exists where “(1) there is such a unity of interest and ownership that the individuality, or separateness, of the said person and corporation has ceased, and (2) an adherence to the fiction of the separate existence of the corporation would sanction a fraud or promote injustice.” *S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003). While “[t]here is no litmus test” governing the existence of an alter ego relationship, *Mesler v. Bragg Mgmt. Co.*, 39 Cal. 3d 290, 300 (1985), courts consider such

factors as: concentration of ownership in a single individual or family; overlap in the directors and officers of the entities; commingling of assets or failure to segregate funds; confusion of the records of the separate entities; use of the same employees and/or attorneys; concealment or misrepresentation of the identity of the responsible ownership, management, and financial interests; and utilization of the entity as a mere shell, instrumentality, or conduit for a single venture. *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 811-12 (2010). “No one characteristic governs, but the courts must look at all circumstances to determine whether the doctrine should be applied.” *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 539 (Ct. App. 2000). If, under the circumstances of the case, it would be inequitable to treat the individual and the corporation as separate entities, courts should avoid that inequitable result by disregarding the distinction between corporation and individual and impose liability “to reach an equitable result.” *Mesler*, 29 Cal. 2d at 301. “The alter ego doctrine may apply between a parent and a subsidiary or, ‘under the single enterprise rule, ... between sister or affiliated companies.”’ *Wehlage v. EmpRes Healthcare, Inc.*, 791 F. Supp. 2d 774, 782 (N.D. Cal. 2011) (quoting *Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th 1305, 1341 (2009)).

Plaintiffs allege that the entity Defendants are intertwined and operated, directed, and controlled as a single enterprise by Zhijuan Guo and Qidong Lu. And because Plaintiffs were able to obtain some discovery from TNSG prior to their abandonment of this litigation, Plaintiffs submitted fulsome evidence in the record supporting these allegations. To wit:

- TNSG. Guo is TNSG's sole owner, director, and officer. Lu is TNSG's agent and has referred to himself as "the boss." TNSG claims to have no employees and avers that Liqin Song is TNSG's "outside business manager." Song, however, leads or is a key member of TNSG's Legal Department. TNSG's business operations are actively controlled by Guo and Lu through individuals nominally employed by the Mom's Garden Defendants, including Song, who does business using a momsgarden.com domain name and email addresses. TNSG stores its electronic documents on and has access to servers owned, controlled, and in the possession of Mom's Garden. The law firm Venable LLP ("Venable") represented TNSG from around late July or early August 2022 until TNSG abandoned the litigation. Venable represented other Defendants, as discussed below. Timothy Wang of the law firm Ni, Wang & Massand PLLC filed and prosecuted trademark applications for TNSG and other Defendants, as discussed below. FAC ¶ 6(A); [Dkt. No. 129-3] ¶ 22.
- **Alps.** Guo is the Director and President of Alps. Song claims to be the "Legal Manager" for Alps. Wang filed and prosecuted many of Alps' U.S. trademark applications, including those relevant to the infringement in this case. After TNSG represented to the Court that it had abandoned or would soon abandon its trademark registrations, Alps applied to register many of those same

trademarks, including IFLEX and VITASPA. FAC ¶ 6(B).

- **Mom’s Garden.** Mom’s Garden is owned and controlled by Lu. Guo is or was a one of its directors. Song is an employee of Mom’s Garden and uses a moms-garden.com email address. Mom’s Garden is closely intertwined with the German limited liability company Mom’s Garden GmbH, as discussed further below. FAC ¶ 6(C).
- **Mom’s Garden GmbH.** Guo is a director and beneficial owner of Mom’s Garden GmbH. FAC ¶ 6(D); [Dkt. No. 129-3] ¶ 35, Ex. T. The Mom’s Garden entities claim to be “a nutritional supplement company,” and share a single business website www.moms-garden.com through which they distribute the brand INNE. FAC ¶¶ 6(C)-(D). However, the INNE trademark is owned by TNSG. [Dkt. No. 59-5]. TNSG licenses the INNE trademark to Mom’s Garden GmbH. [Dkt. No. 129-3] Ex. A; [Dkt. No. 58-1] ¶ 7. TNSG’s previous counsel, Venable, represented three Scientific Advisory Board Members for Mom’s Garden GmbH in response to subpoenas in this action. Gold Decl. ISO Alter Egos ¶ 12, Ex. B; FAC ¶¶ 6(C). Venable also facilitated TNSG document productions in this action *from a Mom’s Garden server*, confirming that TNSG has access to and stores its electronic documents on servers owned, controlled, and in the possession of Mom’s Garden. FAC ¶ 6(D).

- **Nature’s Prime.** Nature’s Prime claims U.S. and international trademark ownership of the mark MOM’S GARDEN. [Dkt. No. 129-3] ¶ 23. Lu is a Director of Nature’s Prime. Lu provided sworn testimony to the PTO that the trademark MOM’S GARDEN was being used in U.S. commerce. Song is the “IP Manager” of Nature’s Prime. TNSG has access to Nature’s Prime’s documents and produced Nature’s Prime’s documents in this action, including research about Biozeal. FAC ¶ 6(E).
- **Naturalist.** Guo is Naturalist’s sole Director, CEO, CFO, and Secretary. Guo and Lu own and control Naturalist. FAC ¶ 6(F); [Dkt. No. 129-3] ¶¶ 19, 28. Naturalist, through Wang, filed a trademark application for the term “PistachReal” in connection with nutritional supplements. [Dkt. No. 129-3] ¶ 20, Ex. I. Peilin Guo, a contractor for Mom’s Garden, was tasked with working on Naturalist matters including researching pistachio-based supplements. *Id.* ¶ 18, Ex. G.
- **Wild Forest.** Guo serves as Wild Forest’s sole Director, CEO, CFO, and Secretary. Song is Wild Forest’s “IP Manager.” After TNSG surrendered its trademark registration for WILD FOREST, the Wild Forest entity—through Song—filed an application for the trademark registration for WILD FOREST. Additionally, Wild Forest and Naturalist share the exact same principal place of business in Pomona,

California. FAC 6(G); [Dkt. No. 129-3] ¶¶ 29-31.

- **Tilis.** Tilis is owned by Alps. Defendant Guo is Tilis' Director. FAC ¶ 6(H). Tilis was listed as a signatory on contracts with Mom's Garden, whose employees negotiated those contracts and stored them on their server. The same employees who reviewed and revised contracts on behalf of Mom's Garden did so on behalf of Tilis. [Dkt. No. 129-3] ¶ 24, Ex. M.

The Court finds this proffered evidence plausible, admissible, and more than sufficient to establish that Defendants are alter egos of each other and operate together as a single enterprise owned and controlled by spouses Guo and Lu. Thus, the second and third Eitel factors, which consider the merits of Plaintiffs' substantive claim and sufficiency of the complaint, also weigh heavily in favor of default judgment as to all Defendants.

c. The sum of money at stake in the action

“Default judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to defendant's conduct.” *Vogel*, 992 F. Supp. 2d at 1012. Here, the Plaintiffs seek an award of \$16,000,000 in statutory damages. However, as discussed in Section III.C.a., *infra*, the Court finds that this proposed award is incorrectly calculated under applicable law. Plaintiffs are entitled to seek up to \$4,000,000 in statutory damages. In relation to Defendants' willful infringement, the Court determines that Plaintiffs' request for the maximum statutory damages is proper and reasonable. The Court's award of \$4,000,000 in statutory damages is

not excessive because it is (1) authorized by statute, (2) necessary for deterrence, and (3) directly related to Defendants' willful counterfeiting scheme. This factor does not weigh against default judgment.

d. The possibility of a dispute concerning material facts

The fifth Eitel factor considers the possibility that material facts are in dispute. *PepsiCo*, 238 F. Supp. 2d at 1177. The Court recognizes that the Defendants, who have now appeared or re-appeared in this action to challenge default judgment, do contest the underlying material facts. However, Defendants—and TNSG in particular—had every opportunity to engage with this litigation on the merits and declined to do so until after default was entered against them. Thus, the Court finds this factor to be neutral.

e. Whether the default was due to excusable neglect

Where—as here—the defendants “were properly served with the Complaint, the notice of entry of default, as well as the papers in support of the instant motion,” this factor favors entry of default judgment. *Shanghai Automation Instrument Co., Ltd. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001). Almost three years into the case, TNSG abandoned the litigation following this Court's order granting Plaintiffs leave to amend the Complaint. Given the associations between all Defendants, the idea that the default of the remaining Defendants was due to excusable neglect is a fiction the Court refuses to entertain. Defendants' conduct—including TNSG, Guo, and Lu's willful defiance of discovery

orders⁴—precludes any possibility that the default was excusable. This factor weighs strongly in favor of default judgment.

f. The strong policy favoring decisions on the merits

“[D]efault judgments are ordinarily disfavored. Cases should be decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811,

⁴ Throughout the litigation, TNSG has thwarted Plaintiffs’ efforts to obtain relevant discovery. For example, even after a court order compelling TNSG to produce documents responsive to Plaintiffs’ first document request, TNSG provided only an incomplete production of 1,308 pages. Despite insisting the production was complete at the time, TNSG belatedly made six more productions of 3,762 pages shortly before the depositions of TNSG’s witnesses. See [Dkt. No. 95-3], [Dkt. No. 150-3] ¶ 16. Plaintiffs maintain the production is still incomplete. [Dkt. No. 137]. Moreover, TNSG refused to produce—even after the Court’s December 14, 2022 discovery order overruling its objections—documents regarding TNSG’s and its affiliates’ revenues from the supplements at issue, design process for the counterfeits, and corporate structure. [Dkt. No. 113].

Guo and Lu’s litigation conduct has been troubling as well. Following motion practice, the Court ordered Guo, Lu, and Song to appear for depositions in Macau. [Dkt. No. 116]. However, the day before Song’s scheduled deposition (and after Plaintiffs’ attorneys already traveled to Macau), “TNSG’s counsel informed Plaintiffs that Song fled Macau the night before, was unable to return under her single-entry visa, and refused to appear in Hong Kong (where she could still travel) in response to Plaintiffs’ request. Lu then claimed to be too ill to testify, as did Guo—just after giving 37 minutes of interpreted deposition testimony—so their depositions did not proceed.” Motion at 9; see [Dkt. No. 129-3] ¶¶ 10, 11. Although the Court then ordered all three witnesses to appear for deposition in person in Los Angeles by August 1, TNSG abandoned the litigation and no witnesses appeared. [Dkt. No. 123].

814 (9th Cir. 1985)). Although new counsel for Defendants have now filed notices of appearance to oppose default judgment, the Court is doubtful, given Defendants' conduct to date, that Defendants intend to engage in good faith litigation toward a final decision on the merits. To the contrary, TNSG has stalled and opposed a resolution on the merits for years making it plain to the Court that a determination on the merits is unlikely in this case. Accordingly, this factor does not preclude entry of default judgment.

C. Plaintiffs' Recovery

Because the Eitel factors support granting default judgment, the Court considers whether Plaintiffs are entitled to the requested relief. Plaintiffs seeks statutory damages, injunctive relief, destruction of materials, and cancellation of Defendants' trademarks.

a. Statutory Damages

Plaintiffs seek statutory damages under the Lanham Act for the counterfeiting of the CHILDLIFE and CHILDLIFE ESSENTIALS marks. The Lanham Act, 15 U.S.C. § 1117(c), authorizes statutory damages of up to "\$2,000,000 per counterfeit mark per type of good or services sold, offered for sale, or distributed" where "the use of the counterfeit mark was willful." 15 U.S.C. § 1117(c)(2). A "counterfeit mark" is "a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services." 15 U.S.C. § 1116(d)(1)(B)(i).⁵ "The court

⁵ Although Plaintiffs' FAC also evinces infringement of a third trademark, NUTRITION FOR KIDS!, which is listed on Dr. Clarke's supplemental register, Plaintiffs are entitled only

has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.” *Harris v. Emus Recs. Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (citing *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100 (1919)).

The specimens show the CHILDLIFE mark was used on five nutritional supplements and the CHILDLIFE ESSENTIALS mark was used on three nutritional supplements. FAC, Exs. G-J. Plaintiffs contend that Defendants’ infringement was willful and seek a \$2M award of statutory damages for each (of the eight) nutritional supplements, totaling \$16,000,000.

Based on its review of the record, and taking the facts plausibly alleged as true, the Court finds Defendants’ infringing conduct to be willful. Willfulness requires a connection between the defendant’s awareness of its competitors and the defendant’s actions at those competitors’ expense. *See Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 944 (9th Cir. 2011). Here, there can be no question that Defendants knew of Plaintiffs and intended to counterfeit Plaintiffs’ products. Defendants TNSG and Alps used Plaintiffs’ exact marks, including the ® symbol reflecting Plaintiff Clarke’s registrations. The fact that Defendants knew exactly to whom the trademarks belonged is bolstered by Defendants’ related conduct. Beyond the duplication of the ChildLife Marks, Defendants falsely stated, both on their specimens and on the Mom’s Garden website, that they were

to statutory damages relating to the two trademarks on his principal register. See 15 U.S.C. 1117(c); 15 U.S.C. 1116(d).

cooperating or otherwise affiliated with Dr. Clarke and ChildLife—despite knowing no such association existed.

But the Lanham Act entitles Plaintiffs to statutory damages up to \$2,000,000 “per counterfeit mark per type of good or services sold, offered for sale, or distributed” where “the use of the counterfeit mark was willful.” 15 U.S.C. § 1117(c)(2) (emphasis added). Plaintiffs seek a separate award of statutory damages for each of Defendants’ nutritional supplements, for example, an award for a supplement of liquid calcium with magnesium and an award for a supplement of probiotics with colostrum. The Court concludes that this level of specificity cannot be squared with the directive to award statutory damages per type of good. “Common sense cuts in favor of defining the phrase ‘type of goods’ to be the general product type as opposed to many sub-forms of that product.” *Union of Orthodox Jewish Congregations of Am. v. Am. Food & Beverage Inc.*, 704 F. Supp. 2d 288, 292 (S.D.N.Y. 2010) (finding “type of goods” refers to a generic product category rather than each different flavor, color, or size of a product and using the example of shirts, pants, and hats as types of goods). In short, the Court finds that Defendants have willfully infringed on one type of good: nutritional supplements. Thus, the maximum amount Plaintiffs may seek under 15 U.S.C. § 1117(c)(2)—for the two registered Marks on the principal register—is \$4,000,000.

Defendants argue (through their specially-appearing new counsel) that the Court should not award Plaintiffs the requested statutory damages because Plaintiffs have not shown any evidence of actual damages. Defendants are correct that courts

sometimes consider estimates of actual damages when exercising their discretion to set statutory damages within the permitted range—even on default judgment. *See, e.g., Otter Prod., LLC v. Berrios*, No. CV 13-4384 RSWL AGRX, 2013 WL 5575070, at *10 (C.D. Cal. Oct. 10, 2013) (decreasing the \$4,000,000 statutory damages request of default judgment because it was not plausibly related to Plaintiff’s actual damages, which evidence showed was at least \$88,812). However, “[s]tatutory damages may be elected whether or not there is adequate evidence of the actual damages suffered by plaintiff or of the profits reaped by defendant.” *Harris v. Emus Recs. Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984). In fact, “[s]everal courts have found statutory damages are appropriate in default judgment cases because the information needed to prove actual damages is within the infringers’ control and is not disclosed.” *Otter Prod., LLC v. Berrios*, 2013 WL 5575070, at *9 (quoting *Microsoft Corp. v. Nop*, 549 F.Supp.2d 1233, 1238 (E.D. Cal. 2008)).⁶

The Court determines that, on this record, Plaintiffs are entitled to the maximum statutory damages amount of \$4,000,000. In reaching that conclusion, the Court factors in the need to deter infringement, Defendants’ willfulness both in their counterfeiting activities and decision not to participate in the legal process despite knowledge of the suit, and Defendants’ concealment of their financial information in discovery, among other considerations.

⁶ Were evidence of actual damages a required prerequisite for statutory damages on default judgment, infringers could avoid damages by failing to appear or participate in discovery.

b. Injunctive Relief

Plaintiffs also seek a permanent injunction enjoining Defendants from using any of Plaintiffs' trademarks, including CHILDLIFE, CHILDLIFE ESSENTIALS, and NUTRITION FOR KIDS!. The equitable remedy of injunction is the "usual and normal" remedy for unfair competition and trademark infringement. J. McCarthy, Trademarks and Unfair Competition, § 30:1 (5th ed. 2024). The Lanham Act codifies this traditional remedy, stating that the courts "shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title." 15 U.S.C. § 1116(a)

The Court finds that monetary damages are insufficient to remedy future harm and Plaintiffs will suffer irreparable harm absent injunctive relief. 15 U.S.C. § 1116(a) ("[Plaintiffs] shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction or upon a finding of likelihood of success on the merits for a violation identified in this subsection in the case of a motion for a preliminary injunction or temporary restraining order."). "[I]ntangible injuries," including loss of goodwill, can constitute irreparable harm. *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). A plaintiff need not prove loss of business from trademark infringement; rather, "[t]he fact that [the] plaintiff has had the symbol of its

reputation placed in the hands of another is irreparable injury.” *Steinway & Sons v. Robert Demars & Friends*, No. CV 80-04404, 1981 WL 40530, at *8 (C.D. Cal. Jan. 28, 1981), judgment entered, 1981 WL 641206 (C.D. Cal. Jan. 29, 1981) (internal quotation omitted); *see also Gucci Am., Inc. v. Los Altos Boots, Inc.*, No. CV 14-06680, 2014 WL 12561613, at *7 (C.D. Cal. Aug. 27, 2014) (“Evidence of a loss of control over business reputation and damage to goodwill may be sufficient to show irreparable harm.”). The Court finds that Plaintiffs would be exposed to significant harm in the form of continued counterfeiting if injunctive relief is denied. In contrast, Defendants’ harm would merely constitute “being enjoined from engaging in unlawful trademark infringement,” and courts have consistently found that such imagined harm does not tip the balance of equities/hardship in Defendants’ favor. *Brooklyn Brewery Corp. v. Black Ops Brewing, Inc.*, 156 F. Supp. 3d 1173, 1186 (E.D. Cal. 2016); *see also Triad Sys. Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995), superseded by statute on other grounds, 17 U.S.C. § 117(c) (“[Defendant] cannot complain of the harm that will befall it when properly forced to desist from its infringing activities.”).

Finally, considerations of the public interest favor an injunction where, as here, there is a likelihood of consumer confusion. *See Playboy Enters., Inc. v. Baccarat Clothing Co.*, 692 F.2d 1272, 1275 (9th Cir. 1982) (“In addition to the harm caused the trademark owner, the consuming public is equally injured by an inadequate judicial response to trademark infringement.”). An injunction is plainly warranted. The details of the Court-ordered

permanent injunction are listed in the Judgment issued concurrently with this Order.

c. Destruction of Materials

Plaintiffs also request that the Court order the destruction of infringing materials as a remedy for their third claim for violation of 15 U.S.C. § 1125(a). 15 U.S.C. § 1118. Given the impunity with which Defendants have ignored this Court's prior orders, this provision is necessary to achieve compliance. Plaintiffs' request for this relief is granted.

d. Trademark Cancellation

Pursuant to 15 U.S.C. § 1119, Plaintiffs also seek cancellation of Defendants' wrongfully-obtained U.S. Trademark Reg. Nos. 5957363 and 6030381.⁷ "In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any

⁷ Plaintiffs ask the Court to take judicial notice of five exhibits consisting of TSDR Status reports obtained from the USPTO website. Request for Judicial Notice in Support of Motion for Entry of Default Judgment Against Defendants TNSG Health and Alps Holding Company Limited ("RJN") [Dkt. No. 248]. Federal Rule of Evidence 201 provides that "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it ... is generally known within the trial court's territorial jurisdiction; or ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed R. Evid. 210(b). "[U]nder Fed. R. Evid. 201, a court may take judicial notice of matters of public record." *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (citation omitted). The Court finds judicial notice of the reports is appropriate. Because the reports reflect facts that are officially published on the USPTO website, such facts and records are not subject to any reasonable dispute.

party to the action.” 15 U.S.C. § 1119. Plaintiffs are plainly entitled to this relief, and the Court therefore orders the cancellation of the two registrations identified above.

V. CONCLUSION

Accordingly, the Court grants Plaintiffs’ Motion for Default Judgment against TNSG Health Co., Ltd.⁸ and Alps Holding Company Limited [Dkt. No. 247], and grants Plaintiffs’ Motion for Default Judgment against Zhijuan Guo; Qidong Lu; Mom’s Garden Company Limited; Mom’s Garden GmbH; Nature’s Prime LLC; Naturalist, Inc.; Tilis Company; and Wild Forest, Inc. [Dkt. No. 249].

Based on the findings discussed herein, the Court orders:

- (1) Statutory damages in the amount of \$4,000,000 against Defendants, jointly and severally.
- (2) Injunctive relief as specified in the Court’s accompanying Judgment.
- (3) Destruction of all infringing products within 30 days as specified in the Court’s accompanying Judgment.

⁸ The Court also dismisses with prejudice TNSG Health Co., Ltd.’s counterclaim for a “Declaration of Non-Infringement” asserted in their Amended Answer filed on September 19, 2022. [Dkt. No. 89], at 12-13. This counterclaim is directly at odds with Plaintiffs’ claim for Trademark Infringement, which the Court grants in this Order. In finding Plaintiffs were entitled to default judgment on their trademark infringement claims, the Court of necessity made a finding that TSNG (and Alps) infringed on Plaintiff Clarke’s ChildLife Marks. These findings are in express tension with TNSG’s claim for a “Declaration of Non-Infringement,” and therefore, TNSG’s counterclaim must be dismissed.

APPENDIX C

UNITED STATES COURT OF
APPEAL

FOR THE NINTH CIRCUIT

FILED

NOV 12 2025

MOLLY C.

DWYER,

CLERK

U.S. COURT

OF APPEALS

MURRAY COLIN CLARKE, an
individual, and BIOZEAL, LLC, a
Delaware limited liability
company,

Plaintiffs - Appellees,

v.

TNSG HEALTH CO., LTD., a
United Kingdom Limited
Company; ALPS HOLDING
COMPANY LIMITED, a
Seychelles limited company,

Defendants - Appellants,

and

MOM'S GARDEN CO. LTD., a
German limited liability company;
et al.,

Defendants.

No. 24-3411

D.C. No.

2:21-cv-03463-

HDV-RAO

Central District
of California,
Los Angeles

ORDER

MURRAY COLIN CLARKE and
BIOZEAL, LLC,

Plaintiffs - Appellees,

No. 24-3414

D.C. No.

2:21-cv-03463-

<p>v. QIDONG LU; ZHIJUAN GUO, an individual, Defendants - Appellants, and TNSG HEALTH CO., LTD. and ALPS HOLDING COMPANY LIMITED, Defendants.</p>	<p>HDV-RAO Central District of California, Los Angeles</p>
<p>MURRAY COLIN CLARKE and BIOZEAL, LLC, Plaintiffs - Appellees, v. MOM'S GARDEN CO. LTD., a German limited liability company; et al., Defendants - Appellants, and TNSG HEALTH CO., LTD. and ALPS HOLDING COMPANY LIMITED, Defendants.</p>	<p>No. 24-3417 D.C. No. 2:21-cv-03463- HDV-RAO Central District of California, Los Angeles</p>
<p>MURRAY COLIN CLARKE and BIOZEAL, LLC, Plaintiffs - Appellees, v. TNSG HEALTH CO., LTD. and</p>	<p>No. 24-5440 D.C. No. 2:21-cv-03463- HDV-RAO Central District</p>

ALPS HOLDING COMPANY
LIMITED,
Defendants - Appellants.

of California,
Los Angeles

MURRAY COLIN CLARKE and
BIOZEAL, LLC,
Plaintiffs - Appellees,
v.
QIDONG LU and ZHIJUAN GUO,
Defendants – Appellants.

No. 24-5441
D.C. No.
2:21-cv-03463-
HDV-RAO
Central District
of California,
Los Angeles

MURRAY COLIN CLARKE;
BIOZEAL, LLC,
Plaintiffs - Appellees,
v.
MOM'S GARDEN CO. LTD.; et al.,
Defendants - Appellants.

No. 24-5442
D.C. No.
2:21-cv-03463-
HDV-RAO
Central District
of California,
Los Angeles

Before: GILMAN, WARDLAW, and KOH, Circuit
Judges.*

Defendants-Appellants' petitions for panel
rehearing are DENIED. Dkt. 68, 69.

* The Honorable Ronald Lee Gilman, United States Circuit
Judge for the Court of Appeals, 6th Circuit, sitting by
designation.