

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

XPEL TECHNOLOGIES, CORP.,	§	No. 5:16-CV-1308-DAE
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
CARLAS INTERNATIONAL	§	
AUTOMOBILE ACCESSORY	§	
LIMITED, GUANGZHOU	§	
SUIZHONG AUTO ACCESSORIES	§	
CO., LTD, GUANGZHOU CARLAS	§	
CAR ACCESSORIES CO., LTD.,	§	
	§	
Defendants.	§	
	§	

ORDER: (1) ADOPTING REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE; AND (2) GRANTING IN PART
MOTION FOR DEFAULT JUDGMENT

Before the Court is a Report and Recommendation (“the Report”) (Dkt. # 23) submitted by United States Magistrate Judge Elizabeth S. Chestney. Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After reviewing the Report, the Court **ADOPTS** Judge Chestney’s recommendations and **GRANTS IN PART** Plaintiff’s Motion for Default Judgment. (Dkt. # 16.)

On December 28, 2016, Plaintiff XPEL Technologies Corp. (“XPEL” or “Plaintiff”) filed suit against Defendants Carlas International Automobile Accessory Limited, Guangzhou Suizhong Auto Accessories Co., Ltd., and Guangzhou Carlas Car Accessories Co., Ltd. (collectively, “Defendants”), alleging claims of federal trademark infringement, federal false designation of origin, unfair competition, “passing off” and false advertising under the Lanham Act, dilution under the Texas Business and Commerce Code, and unfair competition under Texas common law. (Dkt. # 3.)

After Defendants were served with XPEL’s amended complaint and summons, none of the three defendants filed an answer or other responsive pleading in this case. On July 27, 2017, the Clerk entered a default against Defendants. (Dkt. # 14.) On August 30, 2017, Plaintiff moved for entry of final default judgment against Defendants. (Dkt. # 16.) The Court thereafter referred the matter to Judge Chestney for a Report.

On November 27, 2017, Judge Chestney entered her Report, recommending that the Court grant Plaintiff’s motion for default judgment in part, and enter final judgment based in part on Plaintiff’s proposed order. (Dkt. # 23.) Objections to the Report were due within 14 days after being served with a copy. None of the Defendants filed any objections.

Where, as here, none of the defendants objected to the Magistrate Judge's findings, the Court reviews the Report for clear error. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989). After careful consideration, the Court adopts the Magistrate Judge's Report. The Court finds the Magistrate Judge's conclusions that (1) XPEL's first amended complaint establishes a basis for judgment against Defendants for federal trademark infringement under Section 32(1) of the Lanham Act, (2) XPEL's first amended complaint establishes a basis for judgment against Defendants for federal trade dress infringement under Section 43(a) of the Lanham Act, (3) XPEL's first amended complaint establishes a basis for judgment against Defendants for dilution under Section 16.103 of the Texas Business and Commerce Code, (4) XPEL's first amended complaint establishes a basis for judgment against Defendants for violation of unfair competition under Texas common law, (5) XPEL's first amended complaint does not establish a basis to award exemplary damages, and (6) that XPEL is entitled to its attorney's fees and costs, but that the Court should reduce the award by one-half, are reasonable and absent of clear error. Therefore, the Court determines that the Magistrate Judge's conclusions and recommendations are neither clearly erroneous nor contrary to law.

Accordingly, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation (Dkt. # 23) as the opinion of the Court, and **GRANTS IN PART**

Plaintiff's Motion for Default Judgment (Dkt. # 16). In accordance with the Magistrate Judge's Report, the Court **ORDERS** that:

A. Defendants and those persons and entities in concert or participation with Defendants, and their respective affiliates, successors, and assigns along with the directors, officers, agents, servants, and employees thereof be permanently enjoined from:

1. Using any of the XPEL Marks or any mark that is confusingly similar to the any aftermarket automotive product;
2. Diluting, tarnishing, blurring, and infringing the XPEL Marks and from injuring XPEL's goodwill and reputation;
3. Passing off or falsely designating the origin of Defendants' products as those of Plaintiffs;
4. Doing any other act likely to induce the belief that Defendants' products are in any way connected with, sponsored, affiliated, licensed, or endorsed by XPEL; and
5. Using any of the XPEL Marks for goods and services, or on the internet or as domain names, email addresses, meta tags, invisible data or otherwise engaging in acts or conduct that would cause confusion as to the source, sponsorship or affiliation of Defendants with XPEL.

- B. That Defendants in accordance with 15 U.S.C. § 1116(a), be directed to file with this Court and serve upon XPEL within thirty days after service of the permanent injunction a report in writing under oath, setting forth in detail the manner and form in which Defendants have complied with the permanent injunction;
- C. That Defendants be ordered to deliver an accounting to Plaintiff within thirty days of the entry of judgment;
- D. That Defendants be ordered to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, and advertisements in their possession that bear any of the XPEL Marks or any reproduction, counterfeit, copy, or colorful imitation thereof, and all plates, molds, matrices, and other means of making the same;
- E. That Defendants be ordered to take down the www.usaxppf.com and www.carlaswrap.com websites and the identified Facebook pages unless and until all use of any mark that is confusingly similar to the XPEL Marks is removed;
- F. That Defendants' acts constitute trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1);
- G. That Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

- H. That Defendants diluted the XPEL Marks in violation of Section 16.103 of Texas Business & Commerce Code;
- I. That Defendants' acts constitute unfair competition in violation of Texas common law;
- J. That Defendants shall disgorge to XPEL its profits made as a result of Defendants' wrongful actions;
- K. That this case be deemed an exceptional case under 15 U.S.C. §§ 1117(a) and (b) and that Defendants be deemed liable for and ordered to reimburse XPEL for its reasonable attorneys' fees in the amount of \$37,381.00;
- L. That XPEL recover its costs in this action in the amount of \$902.76;
- M. That Defendants shall pay post-judgment interest, to be calculated and compounded pursuant to 28 U.S.C. 1961, until paid in full; and
- N. That XPEL's remaining causes of actions asserted in this lawsuit are

DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATE: San Antonio, Texas, December 19, 2017.



David Alan Ezra
Senior United States District Judge