UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-62612-CIV-ZLOCH

SPEARMINT RHINO COMPANIES WORLDWIDE, INC.,

Plaintiff,

vs.

DEFAULT FINAL JUDGMENT

RHINO HOLDINGS, INC., and RHINO BOCA RATON, LLC,

Defendants.
_____/

THIS MATTER is before the Court upon Plaintiff's Motion For Final Judgment By Default (DE 16). The Court has carefully reviewed said Motion, the entire Court file and is otherwise fully advised in the premises.

By prior Order (DE 14), the Court entered Default against Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, and ordered Plaintiff to file a Motion For Default Final Judgment. Plaintiff now moves for Final Judgment against Defendant. DE 16. The Court notes that Defendants have not appeared or otherwise defended against Plaintiff's claims.

The well-pleaded allegations made in Plaintiff's Amended Complaint (DE 17) are deemed admitted by Defendants by virtue of the Default entered against them. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1277-78 (11th Cir. 2005) (citations omitted). Thus, the Court finds as follows. Plaintiff owns several marks utilizing a silhouette of a rhinoceros or the name "Rhino," including the following trademarks registered with the United

States Patent and Trademark Office: 2,712,739; 3,189,326; 3,196,409; 3,196,410; 3,189,324; 4,397,611; and 4,363,699. Defendants operate restaurants under the names of "Rhino Doughnuts and Coffee" and "Rhino Doughnuts." Defendants utilize marks with a silhouette of a rhinoceros, similar to Plaintiff's, and the name "Rhino." Those marks are registered with the United States Patent and Trademark Office under numbers 4,832,483 and 4,832,484. Plaintiff's marks became famous before Defendants' use of similar marks, and Defendants do not have Plaintiff's permission to use the marks bearing a silhouette of a rhinoceros or the name "Rhino." Defendants' use of such marks is likely to cause confusion between Plaintiff's business and Defendants', both of which have a component of food and drink preparation and service. Moreover, Defendants' use of the rhinoceros depiction and "Rhino" marks is likely to cause dilution of Plaintiff's famous marks. Thus, the Court finds that Defendants have infringed Plaintiff's registered trademarks in violation of 15 U.S.C. §1114 and engaged in false designation of origin in violation of 15 U.S.C. § 1125(a). The Court further finds that Defendants have diluted Plaintiff's trademarks in violation of 15 U.S.C. § 1125(c) and Florida Statute § 495.151.

By the instant Motion (DE 16), Plaintiff seeks injunctive relief requiring Defendants to cease activities that infringe Plaintiff's trademarks. In the Eleventh Circuit, a plaintiff seeking a permanent injunction must demonstrate that "(1) it has suffered an irreparable injury; (2) remedies available at law . . . are inadequate to compensate for that injury; (3) considering the

balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction." Angel Flight of Ga., Inc. v. Angel Flight Am., Inc., 522 F.3d 1200, 1208 (11th Cir. 2008). The Eleventh Circuit has extended "a presumption of irreparable harm once a plaintiff establishes . . . success on the merits of a trademark infringement claim." North America Med. Corp. v. Axiom Worldwide, Inc., 522 F.3d 1211, 1227 (11th Cir. 2008). To that end, "it is generally recognized in trademark infringement cases that (1) there is not adequate remedy at law to redress infringement and (2) infringement by its nature causes irreparably harm." Tally-Ho, Inc. v. Coast Community College Dist., 889 F. 2d 1018, 1029 (11th Cir. 1989)(quoting Processed Plastic Co. v. Warner Communications, 675 F.2d 852, 858 (7th Cir. 1982).

Plaintiff has achieved success on the merits and hence has established the absence of an adequate remedy at law and irreparable harm. The Court finds that the balance of hardships favors an award of equitable relief. Whereas Plaintiff would continue to suffer dilution of its marks and loss of consumer goodwill without injunction, the only hardship imposed on Defendants by an award of equitable relief is that they will be required to cease that which they had no right to do——infringing Plaintiff's trademarks. See Tiramisu Intern., LLC v. Clever Imports, LLC, 741 F. Supp. 2d 1279, 1287-88 (S.D. Fla. 2010); Gaffigan v. Does, 689 F. Supp. 1332, 1341 (S.D. Fla. 2009). Lastly, the Court concludes that injunctive relief in this case

would serve the public interest. In "a long line of trademark cases," the Eleventh Circuit has explained that "the 'public interest' relevant to the issuance of a permanent injunction is the public's interest in avoiding unnecessary confusion." Angel Flight, 522 F.3d at 1209. The Court stresses that Defendants have, by their default, admitted that their own marks are likely to cause confusion with Plaintiff's. That confusion favors issuance of a permanent injunction. Plaintiff has thus satisfied each of the elements necessary for issuance of a injunctive relief. As is typical in trademark infringement actions, "complete injunction[] against the infringing party [is] the order of the day." Id.

Accordingly, after due consideration, it is **ORDERED AND ADJUDGED** as follows:

1. The Court has personal jurisdiction over the Parties hereto and the subject matter herein;

2. Plaintiff's Motion For Final Judgment By Default (DE 16) be and the same is hereby **GRANTED**;

3. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff Spearmint Rhino Companies Worldwide, Inc., and against Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, upon the Amended Complaint (DE 11) filed herein;

4. Pursuant to Federal Rule of Civil Procedure 65, Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, be and the same are hereby **PERMANENTLY RESTRAINED AND ENJOINED** from:

a. Operating under any mark that includes the name "Rhino" or a silhouette of a rhinoceros, or any colorable imitations thereof;

b. Operating the website www.rhinodoughnuts.com;

c. Registering or operating any further internet domains that are confusingly similar to Plaintiff's trademarks'; and

d. Selling or transferring the domain www.rhinodoughnuts.com, or any confusingly similar domain, to any party other than Plaintiff;

5. Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, be and the same are hereby **ORDERED** to transfer immediately to Plaintiff the domain www.rhinodouhnuts.com;

6. Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, be and the same are hereby **ORDERED** to relinquish to Plaintiff all products, paraphernalia, kits, labels, signs, prints, packages, containers, stationery, promotion materials, advertising, and other items, whether physical or electronic, bearing any name, mark, trade dress, indication of source or other identifier that includes a silhouette of a rhinoceros or the name "Rhino" by noon on Wednesday, August 31, 2016;

7. Pursuant to 15 U.S.C. § 1119, United States Trademark Numbers 4,832,483 and 4,832,484, respectively owned by Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, shall be **CANCELLED** by the United States Patent and Trademark Office. The Clerk of the United States District Court for the Southern District of Florida is hereby **DIRECTED** to forward a certified copy of this Order to the Director of the United States Patent and Trademark Office;

8. Plaintiff shall cause a true and correct copy of this Default Final Judgment and Permanent Injunction to be personally

served upon Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, on or before noon on Wednesday, August 10, 2016, and file a completed Return of Service reflecting the same;

9. Pursuant to 15 U.S.C. § 1116(a), Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, be and the same are hereby **ORDERED** to file with the clerk of court a report in writing under oath setting forth in detail the manner and form in which Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, have complied with the terms of the Permanent Injunction issued herein. Such report shall be filed no later that thirty (30) days after the date on which Defendants Rhino Holdings, Inc., and Rhino Boca Raton, LLC, are personally served with a copy of this Default Final Judgment and Permanent Injunction;

10. To the extent not otherwise disposed of herein, all pending motions are **DENIED** as moot; and

11. The Court will retain jurisdiction over the above-styled cause solely for the purpose of entertaining a motion for attorney's fees from Plaintiff.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 28th day of July, 2016.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record

Director of the United States Patent and Trademark Office
(Certified copy)