

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROKU, INC.,

Plaintiff,

V.

THE INDIVIDUALS, CORPORATIONS, LIMITED  
LIABILITY COMPANIES, PARTNERSHIPS, AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

Case No.: 1:22-cv-00202-JAV-VF

**PLAINTIFF'S PROPOSED FINDING OF FACT AND CONCLUSIONS OF LAW**

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**TO THE HONORABLE VALERIE FIGUEREDO:**

Pursuant to the Court’s January 14, 2025 Order (Dkt. 128), Plaintiff Roku, Inc., by and through its undersigned counsel, hereby respectfully submits its Proposed Findings of Fact and Conclusions of Law in connection with its Order to Show Cause Why Default Judgment and Permanent Injunction Should Not Be Entered Against Defaulting Defendants (Dkt. 107) and the Order of Default (Dkt. 109) entered in this case against the Defendants listed in the First Amended Schedule A to the Complaint (the “Defaulting Defendants”).

**I. FINDINGS OF FACT**

**A. Plaintiff’s Business and its Roku Products**

1. Roku, Inc. (“Roku” or “Plaintiff”) is a leading manufacturer of a variety of digital media players and accessories (including remotes) for video streaming, and has earned an international reputation for quality, reliability, and value. Declaration of Karina Levitian (“Levitian Dec.”), at ¶ 5 (Dkt. 8).

2. Roku Trademarks are and have been the subject of substantial and continuous marketing and promotion by Roku. *Id.* at ¶ 6.

3. Plaintiff has and continues to widely market and promote the ROKU products in the industry and to consumers. *Id.*

4. Plaintiff’s promotional efforts include—by way of example but not limitation—the ROKU products website and social media sites as well as point of sale materials. *Id.*

5. Roku owns all exclusive rights in various trademarks for the ROKU Products including without limitation trademarks covered by US Trademark Registration Nos. 6464718, 6076830, 5886527, 5886526, 5151588, 4937515, 4937514, 4937513, 4843920, 4839473, 4618984, 4286059, 4286059, 4286058, 3177666. (the “ROKU Trademarks”). *Id.* at ¶ 4.

6. Roku is credited for many breakthroughs that have occurred in the digital media player industry, particularly in relation to its various ROKU Products, including remotes and streaming player ranges. *Id.* at ¶ 5.

7. Roku is the official source of Roku Products in the United States. *Id.*

**B. Defaulting Defendants’ Unlawful Conduct**

8. The success of the ROKU Trademarks, brand, and products has resulted in its significant counterfeiting. *Id.* at ¶ 8.

9. Defaulting Defendants’ sale of products on at least Amazon and Wish appear to be genuine ROKU products (the “ROKU Products”) but are actually inferior and unauthorized imitations of the ROKU products (the “Counterfeit Products.”) *Id.* at ¶ 9.

10. The Counterfeit Products are either identical or substantially similar to the appearance of ROKU’s own genuine products and are also marketed by reference to a mark identical or at least substantially identical to the ROKU Trademark Registrations. *Id.*

11. The Defaulting Defendants’ online marketplace pages on Amazon and Wish identified on the First Amended Schedule A to the Complaint (“Defendant Internet Stores”) share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defaulting Defendants’ illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. *Id.* at ¶ 10.

12. Despite Roku’s overall enforcement efforts online, Defendants have persisted in creating the Defendant Internet Stores and engaging in continued sales of the Counterfeit Products. *Id.* at ¶ 11.

13. Roku’s investigation of Defaulting Defendants reveals that Defaulting Defendants are using the Defendant Internet Stores to sell Counterfeit Products from foreign countries such as

China (and elsewhere) to consumers in the U.S., including consumers in this Judicial District. *Id.* at ¶¶ 12–13.

14. Defaulting Defendants and their websites do not conduct business with Roku and do not have the right or authority to use the Roku Trademarks for any reason. *Id.* at ¶ 21.

### **C. Relevant Procedural History**

15. Plaintiff filed this action on January 10, 2022 against Defendants, including Defaulting Defendants, for trademark infringement of Plaintiff’s Roku Trademark Registrations and unfair competition, and moved *ex parte* for an order to file under seal, a temporary restraining order, and order to show cause why a preliminary injunction should not issue, an asset restraining order, and order authorizing alternative service by electronic mail, and an order authorizing expedited discovery (the “Application”). (Dkts. 1–12).

16. In support of its Application, Plaintiff’s agents placed an order for Counterfeit Products from Defendants’ stores, including from all Defaulting Defendants. True and correct copies of order confirmations and invoices showing that Defendants accepted at least one order for Counterfeit Products to be shipped into this Judicial District are attached to the January 10 Declaration of Karina Levitian in Support of Plaintiff’s Application for Entry of an Order to Show Cause with temporary restraints. *See* Levitian Decl. at ¶ 14; Ex. 2 to Levitian Decl. (Dkt. 14–19).

17. On January 20, 2022, the Court granted and entered the Temporary Restraining Order (“TRO”). (Dkt. No. 22).

18. The TRO specifically ordered that service shall be made on and deemed effective as to all Defendants if completed by delivery of: (i) PDF copies of the TRO together with the Summons and Complaint; (ii) a link to a website where each Defendant is able to download PDF copies of the TRO together with the Summons and Complaint, and all papers filed in support of

Plaintiff's Application to Defendants' e-mail addresses as provided through discovery by third parties. *Id.* at 8.

19. On January 27, 2022, after receiving and analyzing initial discovery from third parties, Plaintiff served copies of the TRO together with the Complaint, Order to Show Cause for Preliminary Injunction and Temporary Restraining Order, Injunction Hearing, and a link to the website where documents can be downloaded, pursuant to the terms of the TRO. (Dkt. 35).

20. On January 31, 2022, Plaintiff served a copy of the Court Issued Summons, Complaint, and Order Adjourning Preliminary Injunction Hearing and Extending Time to Oppose Plaintiff's Request for Preliminary Injunction. *Id.*

21. On February 7, 2022, the Court extended the TRO through the time at which the Preliminary Injunction hearing takes place. (Dkt. 39).

22. On February 10, 2022, the Court granted and entered the Preliminary Injunction ("PI Order"). (Dkt. 41).

23. On July 15, 2022, Plaintiff filed for a Clerk's Certificate of Default as to those Defendants listed in the First Amended Schedule A, including all Defaulting Defendants. (Dkts. 100–101).

24. On July 15, 2022, the Clerk issue a certificate of default as to the defendants listed on the First Amended Schedule A. (Dkt. 102).

25. On July 25, 2022, Plaintiff filed its Proposed Order to Show Cause Why Default Judgment and Permanent Injunction Should Not Be Entered Against Defaulting Defendants and supporting papers. (Dkts. 103–106) .



26. On July 27, 2022, the Court entered an Order to Show Cause Why Default Judgment and Permanent Injunction Should Not Be Entered Against Defaulting Defendants (“Default Judgment OSC”), (Dkt. 107).

27. In accordance with the Default Judgment OSC, on July 27, 2022, Plaintiff served Defaulting Defendants with the Default Judgment OSC and all papers submitted in support of Plaintiff’s Proposed Order to Show Cause for Entry of Default. (Dkt. 108).

28. On August 18, 2022, Plaintiff appeared at the Show Cause Hearing, but no Defaulting Defendants appeared. (Dkt 109).

29. On September 19, 2022, the Court entered an order granting default judgment in favor of Plaintiff against Defaulting Defendants (“Defaulting Judgment Order”), finding Defaulting Defendants liable for trademark infringement and/or violation of unfair competition under New York common law. (Dkt. 109 ).

30. On September 19, 2022, the Court entered an Order referring the case to Magistrate Judge Valarie Figueredo for Inquest After Default Damages Hearing. (Dkt. 110).

31. On December 20, 2024, the case was reassigned to Judge Jeannette A. Vargas. (Dkt 126).

32. On January 14, 2025, Magistrate Judge Figueredo issued the Scheduling Order for Damages Inquest. (Dkt. 128)

**D. Plaintiff’s Damages**

33. Despite having been served with process, including Summons, Complaint, and all other documents supporting Plaintiff’s Application on Defaulting Defendants in accordance with the alternative service methods authorized by the TRO, the Defaulting Defendants’ failure to answer the Complaint or otherwise appear has deprived Plaintiff of the ability to confirm whether or not Defaulting Defendants have ceased manufacturing, importing, exporting, advertising,

marketing, promoting, distributing, displaying, offering for sale and or selling Counterfeit Products. Affidavit of Christopher Tom at ¶ 13 (“Tom Aff.”).

34. Additionally, due to Defaulting Defendants’ defaults Plaintiff was unable to engage in any meaningful discovery with Defaulting Defendants regarding the scope of their sales and profits, among other discoverable issues *Id.* at ¶ 14.

35. To date, the only discovery Plaintiff was able to obtain regarding Defaulting Defendants’ sales was produced by Amazon and Wish. The sales discovery received relates exclusively to Defaulting Defendants’ storefronts on Amazon and Wish and not on any other platform. *Id.* at ¶ 15.

36. Consequently, the number of sales of Counterfeit Products made by Defaulting Defendants, as identified in the discovery received, is incomplete. *Id.* at ¶ 16.

37. Accordingly, Plaintiff’s actual damages are extremely difficult, if not impossible to calculate. *Id.* at ¶ 17.

38. The statutory damages requested by Plaintiff are based upon a combined analysis of the following: (1) the discovery responses provided by Amazon and Wish, which show the number of sales of counterfeit Products made by Defaulting Defendants on only those platforms: (2) Plaintiff’s orders of Counterfeit Products from Defaulting Defendants: and (3) Defaulting Defendants’ wrongful use of the ROKU Trademark Registrations. *Id.* at ¶ 18.

39. A chart detailing each and every Defaulting Defendants’ (1) number of sales of Counterfeit Products, based upon the discovery from Amazon and Wish, and Plaintiff’s own orders of Counterfeit Products from Defaulting Defendants and (2) a brief discussion of Defaulting Defendants’ wrongful use of the ROKU Trademark Registrations is attached as **Exhibit 1**. *Id.* at ¶ 19.

40. No part of the judgment sought by Plaintiff against each Defaulting Defendant has been paid to Plaintiff by any Defaulting Defendants.

## II. CONCLUSIONS OF LAW

### A. Plaintiff's Entitlement to Heightened Statutory Damages

41. A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each claim alleged in the complaint, yet "it is not considered an admission of damages." *Greyhound Exhibitgroup, Inc. v. E.L. U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992).

42. In an inquest, the "Court must 'conduct an inquiry in order to ascertain the amount of damages with reasonable certainty.'" *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003) (citing *Credit Lyonnais Securities (USA) v. Alcantara*, 183 F.3d 151, 152 (2d Cir. 1999)).

43. The two-prong analysis involves "determining the proper rule for calculating damages on such a claim and assessing plaintiff's evidence supporting the damages to be determined under this rule." *Id.*

44. The Lanham Act allows a plaintiff to elect either statutory damages or actual damages for willful infringement. 15 U.S.C. § 1117(c)(1).

45. Plaintiff respectfully seeks statutory damages under the Lanham Act.

46. The lack of information regarding Defaulting Defendants' sales and profits makes statutory damages particularly appropriate for default cases like the instant case. *See Lucerne Textiles, Inc. v. H.C.T. Textiles Co., Ltd.* 2013 WL 174226, at \*2–3 (S.D.N.Y. Jan. 17, 2013); *Petmed Express, Inc. v. medpets.com, Inc.*, 336 F. Supp.2d 1213, 1220 (S.D. Fla. 2004).

47. Pursuant to the statutory damages provision of the Lanham Act, a plaintiff in a case involving the use of a counterfeit work may elect to receive an award of statutory damages "for any such use in connection with the sale, offering for sale, or distribution of goods or services in

the amount of (1) not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just, or (2) if the court finds that the use of the counterfeit mark was willful, 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).

48. Although 15 U.S.C. § 1117(c) contains the dollar range for possible statutory damage awards, the only guidance provided by the statute for how to determine a damage award within the statutory dollar range is “as the court considers just.” 15 U.S.C. § 1117(c).

49. In determining possible statutory damage awards, courts have analogized case law applying the statutory damage provision of the Lanham Act contained in 15 U.S.C. § 1117(c) with that of the Copyright Act contained in 17 U.S.C. § 504(c). *See Roku, Inc. v. Individuals, et al.*, No. 22-CV-2168 (PKC), 2023 WL 137747, at \*2 (S.D.N.Y. Jan. 9, 2023).

50. The Second Circuit’s standard for awarding statutory damages for copyright infringement under 17 U.S.C. § 504(c) is articulated in *Fitzgerald Publishing Co., Inc. v. Baylor Publishing Co.*, 807 F.2d 1110, 1117 (2d Cir. 1986).

51. In computing the award amount, a court may consider factors such as “(1) the expenses saved and the profits reaped; (2) the revenue lost by the plaintiff; (3) the value of the copyright; (4) the deterrent effect on others beside the defendant; (5) whether the defendant’s conduct was innocent or willful; (6) whether a defendant has cooperated in providing particular records from which to assess the value of the infringing material produced; and (7) the potential for discouraging the defendant.” *Gucci America, Inc. v. Duty Free Apparel, Ltd.*, 315 F. Supp. 2d 511, 520 (S.D.N.Y. 2004) (*quoting Fitzgerald Pub. Co.*, 807 F.2d at 1117); *see also Tiffany (NJ) Inc.*, 282 F. Supp. 2d at 125.

52. For the first two factors (expenses saved and profits reaped by Defaulting Defendants and the revenue lost by plaintiff), while the amounts are unknown, “the Court resolves any uncertainty in favor of [the plaintiff] because it should not be deprived of its right to recover statutory damages simply because [these amounts] are impossible to discern.” particularly given that Defaulting Defendants have failed to appear and have provided no information. *Off-White LLC v. adagio*, 2020 WL 1646673, at \*7 (S.D.N.Y. Apr. 3, 2020) (collecting cases) (“*adagio*”); see also *Tangle, Inc. v. Individuals, Corporations, Limited Liability Companies, et al.*, No. 21-CV-9352, 2022 WL 2442302, at \*7 (S.D.N.Y. June 29, 2022) (when defendants fail to appear, answer, or otherwise respond to the Complaint, or comply with the expedited discovery ordered in the TRO and PI order, “the Court may, and does, infer that the Defaulting Defendants financially benefitted to a significant degree by marketing and selling counterfeit [...] products.”)

53. Likewise, the sixth factor weighs in favor of Plaintiff as none of the Defaulting Defendants appeared or otherwise cooperated in the case or provided any discovery. Tom Aff. ¶¶ at 13–14.

54. As to the third factor, courts in this District consider the significant value of a plaintiff’s brand and the efforts taken to protect, promote and enhance that copyright and/or brand in determining the appropriate dollar figure for the award. See *Tangle*, 2022 WL 2442302, at \*8 (“the third factor—the value of [Plaintiff’s trademark and copyrights] weighs in favor of increased statutory damages” when “Plaintiff has established that [its] products have achieved international recognition and success as a result of Plaintiff’s efforts in building up and developing consumer recognition, awareness, and goodwill in those products.”). This factor thus also weighs in favor of Plaintiff as Plaintiff has established that Roku is a leading manufacturer and distributor of remote-control devices whose substantial promotional efforts have earned it an international

reputation for quality, reliability and value. *See* Levitian Dec. at ¶¶ 6–8; *see also Roku*, 2023 WL 137747, at \*4 (awarding a significant damages award to Roku in similar anticounterfeiting matter because it “credibly alleged that its marks are valuable and widely recognized by consumers.”).

55. The remaining factors also weigh in favor of Plaintiff. First, courts have awarded high damage amounts where a defendant’s counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. *See Roku*, 2023 WL 137747, at \*3 (noting that sales of counterfeit items over internet suggest a broad scope of operations) (quotation omitted); *Noble v. Crazetees.com*, No. 13 Civ. 5086, 2015 WL 5697780, at \*7 (S.D.N.Y. Sept 28, 2015) (stating that an award of statutory damages should be substantial when defendants conduct their business online as “[t]he number of potential customers for online shopping is huge, and the plaintiff’s compensation should reflect this.”); *see also adagio*, 2020 WL 1646673, at \*7 (“[t]he need to deter other counterfeiters is particularly compelling given the apparent extent of counterfeit activity”).

56. Moreover, the remedy imposed under the statute must be “substantial enough to deter the defendants and others from infringing.” *Crazetees.com*, 2015 WL 5697780, at \*7; *see also adagio, LLC*, 2020 WL 1646673 at \*7 (“A substantial award is necessary to discourage the Defaulting Defendants from continuing to engage in their illicit conduct.”). For example, in *Phillip Morris USA Inc. v. Marlboro Express*, the Court stated that due to “the size of the potential profit given the quantities of [counterfeit goods] involved, and the need for a substantial deterrent to future misconduct by defendants and other counterfeit traffickers . . . plaintiff is entitled to the maximum statutory award under 15 U.S.C. § 1117(c)(2).” *Phillip Morris USA Inc. v. Marlboro Express*, No. CV-03-1161 (CPS), 2005 WL 2076921, at \*6 (E.D.N.Y. Aug. 26, 2005).

57. Finally, in this district, “where [ . . . ] the defendant has defaulted, the complaint’s allegation of willfulness may be taken as true”. *Crazetees.com*, 2025 WL 5697780, at \*7; *see also*

*Off-White LLC v. ^\_^Warm House^\_^Store*, 2019 WL 418501, at \*5 (S.D.N.Y. Jan. 17, 2019) (“Warm House”) (“a defaulting defendant is considered a *per se* willful infringer”). The fifth factor is thus satisfied.

58. Each Defaulting Defendant in this case has willfully sold and arranged to be shipped at least one Counterfeit Product into the Southern District of New York. *See* Levitian Aff. at ¶ 15; Ex. 2 to Levitian Decl. (Dkt 14–19). Given the Court’s clear discretion in determining the appropriate amount of the statutory damages award within the statutory limits of 15 U.S.C. § 1117(c), Plaintiff respectfully requests statutory damage awards ranging from twenty-five thousand dollars (\$25,000) to one hundred fifty thousand dollars (\$150,000.00) per Defaulting Defendant as listed on Exhibit 1—an amount with the range of damages awarded by other courts in this Judicial District in similar matters. *See Roku*, 2023 WL 137747, at \*3 (awarding Roku statutory damages of \$130,000 per Defaulting Defendant in similar matter); *Spin Master Ltd. v. Alan Yuan’s Store*, 325 F. Supp. 3d 413, 426 (S.D.N.Y. 2018) (finding that “[a]n award of \$100,000 per defendant is appropriate and just, given that each defendant sold at least one infringing product”).

## **B. Defendants Acted Willfully**

59. Defaulting Defendants facilitate sales by designing the Defaulting Defendant Internet Stores so that they appear to unknowing consumers to be authorized online sellers of genuine products. (Dkt. No. 1 at ¶¶ 4, 26).

60. Pursuant to 15 U.S.C. § 1117(e) a trademark infringement is presumed willful “if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.” 15 U.S.C. § 1117(e).

61. Many of the Defaulting Defendants' names and physical addresses used to register the Defaulting Defendant Domain Names are incomplete, contain randomly typed letters, or fail to include cities or states. (Dkt 1 at ¶ 33.) Thus, willfulness is presumed in the instant case under 15 U.S.C. § 1117(e).

62. Even without the statutory presumption it is clear that Defaulting Defendants' counterfeiting was willful. "Infringement is willful when the defendant had knowledge that [his] conduct represents infringement or perhaps recklessly disregarded the possibility." *Burberry Ltd. v. Euro Moda, Inc.*, No. 08-Civ-5781, 2009 WL 4432678, at \*3 (S.D.N.Y. Dec 4, 2009) (internal quotations and citation omitted). Indeed, willfulness may be established by a defendant's default. *All-Star Marketing Group, LLC v. Media Brands Co, Ltd.*, 775 F. Supp. 2d 613, 621 (S.D.N.Y. 2011 ) (citing cases). In awarding statutory damages, the Court is not required to follow any rigid formula. *See id.* at 622. The Court may consider various factors including "the value of the trademark," "the deterrent effect on others besides defendant." And "whether the defendant's conduct was willful or innocent." *Id.* (internal quotation marks and citation omitted).

63. Indeed, willfulness may be established by a defendant's default and is considered per se willful in this district. *All-Star Marketing Group, LLC v. Media Brands Co., Ltd.*, 775 F. Supp. 2d 613, 621 (S.D.N.Y. 2011) (citing cases); *Crazetees.com*, 2015 WL 5697780, at \*7 ("Where [ . . . ] the defendant has defaulted, the complaint's allegation of willfulness may be taken as true").

64. Here, Defaulting Defendants clearly had knowledge that their activities constituted infringement or at least a reckless disregard for Plaintiff's rights in the Roku Trademarks, especially given Plaintiff's extensive promotional efforts discussed above. After all, the Defaulting



Defendants took great pains to conceal their identities to try to avoid being held accountable for their counterfeiting activities. [See Dkt. 1. ¶¶ 6, 32–34.]

**C. Plaintiff’s Entitlement to a Permanent Injunction**

65. In addition to the foregoing relief, Plaintiff respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiff’s registered trademark rights in its Roku Trademark Registrations, including at least all injunctive relief previously awarded by this Court to Plaintiff in the TRO and Preliminary Injunction.

66. The Lanham Act provides a district court with the power to grant injunctive relief 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).

67. In the case of a default, a court may issue an injunction if 1) the plaintiff is entitled to injunctive relief under the applicable statute and 2) the plaintiff meets the prerequisites for the issuance of an injunction. *Warm House*, 2019 WL 418501, at \*3.

68. First, “[i]n trademark infringement cases, the Lanham Act expressly provides that federal courts have the power to grant injunctions according to the principles of equity” satisfying the first prong of the analysis. *Id.* (internal quotation and citation omitted).

69. With respect, specifically to the eBay factors for the issuance of a permanent injunction, Plaintiff has also satisfied the requirements as Plaintiff has successfully established its claims for trademark infringement and counterfeiting as illustrated in the TRO and preliminary injunction already entered in this case, and by virtue of Defaulting Defendants’ default. Plaintiff’s well-pled factual allegations in the complaint are accepted as true. *Adagio*, 2020 WL 1646673, at \*4; see Dkts. 6, 22, and 41.

70. Furthermore, “[i]n a trademark case, irreparable injury is established where there is a likelihood that an appreciable number of ordinarily prudent purchasers are likely to be misled, or simply confused, as to the source of the goods in question.” *Lobo Enters., Inc. v. Tunnel, Inc.*, 822 F.2d 331, 333 (2d Cir. 1987) (internal quotation and citation omitted). Accepting Plaintiff’s allegations in the Complaint as true, irreparable injury has been established. Dkt. 1 at ¶¶ 45–51.

71. In addition, given that the Defaulting Defendants have not appeared or otherwise participated in this action, there are no assurances that Defaulting Defendants will stop infringing Plaintiff’s trademarks. *Warm House.*, 2019 WL 418501, at \*6.

72. As to the balance of the hardships, it is axiomatic that an infringer “cannot complain about the loss of the ability to offer its infringing product” and thus this factor also weighs in favor of Plaintiff. *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 287 (2d Cir. 2012).

73. Finally, the public interest factor also weighs in favor of issuance of a permanent injunction as “the public has an interest in not being deceived—in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality.” *New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 344 (S.D.N.Y. 2010).

74. Plaintiff is also entitled to injunctive relief so it can quickly take action against any new websites and online marketplace accounts that are found to be linked to Defaulting Defendants and selling Counterfeit/Infringing Products. *See Salinger v. Coking*, 607 F.3d 68, 77–78 (2d Cir. 2010); *U.S. Polo Ass’n, Inc. v. PRL USA Holdings, Inc.*, 800 F. Supp. 2d 515, 539 (S.D.N.Y. 2011).

75. This Court has already entered a preliminary injunction to prevent Defaulting Defendants from further infringing Plaintiff’s trademarks. Plaintiff respectfully requests the terms of that injunction be continued on a permanent basis.

**D. Plaintiff's Entitlement to a Post-Judgment Asset Freeze and Transfer of Defaulting Defendants**

76. “Once a defendant is found liable and a money judgment is rendered against it, a district court sitting in New York has the power to restrain that defendant’s assets.” *adagio*, 2020 WL 1646673, at \*8; *see also Spin Master*, 325 F. Supp. 3d at 427 (“Without [an asset restraint]) defendants would have fourteen days which they could hide their assets.”).

77. In cases such as this, where a pre-judgment asset restraint was previously imposed on Defaulting Defendants and third-parties by the Court in both TRO and PI Orders, “courts in this district routinely order transfers of infringing defendant’s frozen assets.” *Warm House*, 2019 WL 418501, at \*6 (collecting cases); *see also Roku*, 2023 WL 137747, at \*4.

78. The necessity of the relief sought is predicated on the fact that without it, Defaulting Defendants would be free to hide their assets and avoid liability. *Adagio*, 2020 WL 1646673, at \*9.

**III. CONCLUSION**

Plaintiff respectfully requests that the Court award statutory damages in the amounts ranging from twenty-five thousand dollars (\$25,000) to one hundred fifty thousand dollars (\$150,000.00) per Defaulting Defendant, and enter a permanent injunction order prohibiting Defaulting Defendants from selling Counterfeit Products, permanently disabling the domain names used by Defaulting Defendants to sell Counterfeit Products, and transferring all assets in Defaulting Defendants’ financial accounts to Plaintiff consistent with the Proposed Judgment previously filed by Plaintiff. (Dkt. 106).

Dated: February 13, 2025

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP

By: /s/Christopher Tom

Christopher Tom  
55 Hudson Yards  
New York, NY 10001  
(212) 446-2300  
ctom@bsfllp.com

*Attorney for Plaintiff ROKU, Inc.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROKU, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 1:22-cv-00202-JAV-VF
	)	
THE INDIVIDUALS, CORPORATIONS, LIMITED	)	
LIABILITY COMPANIES, PARTNERSHIPS, AND	)	
UNINCORPORATED ASSOCIATIONS	)	
IDENTIFIED ON SCHEDULE A HERETO,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

---

**PLAINTIFF’S EXHIBIT – DEFAULTING DEFENDANTS’ KNOWN SALES AND  
REQUESTED STATUTORY DAMAGES**

No.	Defaulting Defendant	Known Items Sold	Defaulting Defendant’s Wrongful Use of Intellectual Property	Requested Statutory Damages
11.	Gaudi	20,947	Used at least one (1) of Plaintiff’s registered Trademarks	\$150,000
13.	HzzgangDirect	1,024	Used at least one (1) of Plaintiff’s registered Trademarks	\$100,000
43.	AuntbingluuX	1	Used at least one (1) of Plaintiff’s registered Trademarks	\$25,000
56.	Electronic_outlet	1	Used at least one (1) of Plaintiff’s registered Trademarks	\$25,000
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74.	jinyuzhir	21	Used at least one (1) of Plaintiff’s registered Trademarks	\$50,000
77.	kappdo	128	Used at least one (1) of Plaintiff’s registered Trademarks	\$100,000

79.	laceskong	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
86.	Loverhart	610	Used at least one (1) of Plaintiff's registered Trademarks	\$100,000
89.	Mccmyy	51	Used at least one (1) of Plaintiff's registered Trademarks	\$50,000
93.	monsterlady	255	Used at least one (1) of Plaintiff's registered Trademarks	\$100,000
95.	mykshop	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
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101.	phonemol	111	Used at least one (1) of Plaintiff's registered Trademarks	\$100,000
103.	Richapex2016	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
106.	schaef	10	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
126.	xuenvzhuang	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
127.	Xutao	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000
129.	zhanghongyue	1	Used at least one (1) of Plaintiff's registered Trademarks	\$25,000

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROKU, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 1:22-cv-00202
	)	
THE INDIVIDUALS, CORPORATIONS,	)	
LIMITED LIABILITY COMPANIES,	)	
PARTNERSHIPS, AND	)	
UNINCORPORATED ASSOCIATIONS	)	
IDENTIFIED ON SCHEDULE A HERETO,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF CHRISTOPHER TOM IN SUPPORT OF PLAINTIFF’S REQUEST  
FOR STATUTORY DAMAGES AND PERMANENT INJUNCTION**

I, Christopher Tom, affirm as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of New York and the United States District Court for the Southern District of New York. I am one of the attorneys for Plaintiff Roku, Inc. (“Plaintiff”) in this action.

2. I have personal knowledge of the facts stated herein or on business records that were made at the time or in the regular course of business. If called as a witness, I could and would testify to the statements made herein.

3. I make and submit this Affidavit in connection with Plaintiff’s Request for Statutory Damages and Permanent Injunction against the entities identified on **Exhibit 1** attached hereto (collectively, the “Defaulting Defendants”).

4. This Court has original subject matter jurisdiction over the trademark infringement and false designation of origin claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051 et seq., 28 U.S.C. § 1338(a)–(b), and 28 U.S.C. § 1331.

5. Defaulting Defendants’ Merchant Storefronts accepted orders of Counterfeit Products that could be shipped to addresses located in this Judicial District. Screenshots of the shopping carts from Defaulting Defendant Internet Stores allowing Counterfeit Products to be

shipped to this Judicial District are attached as Exhibit 2 to the Declaration of Karina Levitian. (Dkt. 14–19).

6. On January 27, 2022 and January 31, 2022, I served the Summons, Complaint, and other documents upon the Defaulting Defendants in accordance with the service methods permitted by the Order to Show Cause for Preliminary Injunction and Temporary Restraining Order entered on January 20, 2022. (“TRO”). (Dkt. 35).

7. On July 25, 2022, Plaintiff filed its Proposed Order To Show Cause Why Default Judgment And Permanent Injunction Should Not Be Entered Against Defaulting Defendants. (Dkt. 103–106).

8. On July 27, 2022, the Court entered an Order to Show Cause Why Default Judgment and Permanent Injunction Should Not Be Entered Against Defaulting Defendants (“Default Judgment OSC”). (Dkt. 107).

9. In accordance with the Default Judgment OSC, on July 27, 2022, Plaintiff served Defaulting Defendants with the Default Judgment OSC and all papers submitted in support of Plaintiff’s Proposed Motion for Entry of Default. (Dkt. 108).

10. On September 19, 2022, the Court entered an order granting default judgment in favor of Plaintiff against Defaulting Defendants (“Default Judgment Order”), finding Defaulting Defendants liable for willful federal trademark infringement and counterfeiting (15 U.S.C. § 1114), false designation of origin (15 U.S.C. § 1125(a)), and/or violation of unfair competition under New York common law. (Dkt. 109). A true and correct copy of the Default Judgment Order is attached hereto as **Exhibit 2**.

11. On September 19, 2022, the Court entered an order referring the case to Magistrate Judge Valerie Figueredo. (Dkt. 110). A true and correct copy of this order is attached hereto as **Exhibit 3**.

12. On December 20, 2024, the Court reassigned this case to Judge Jeannette Vargas (Dkt. 126).



13. On January 14, 2025, Magistrate Judge Valarie Figueredo issued the Scheduling Order for Damages Inquest. (Dkt. 128). A true and correct copy of this order is attached hereto as **Exhibit 4**.

14. Despite having been served process, including Summons, Complaint and all other documents supporting Plaintiff's Application on Defaulting Defendants in accordance with the alternative service methods authorized by the TRO, the Defaulting Defendants' failure to answer the Complaint or otherwise appear has deprived Plaintiff of the ability to confirm whether or not Defaulting Defendants have ceased manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Counterfeit Products.

15. Additionally, due to Defaulting Defendants' defaults, Plaintiff was unable to engage in any meaningful discovery with Defaulting Defendants regarding the scope of their sales and profits, among other discoverable issues.

16. To date, the only discovery Plaintiff was able to obtain regarding Defaulting Defendants' sales was produced by the platforms Amazon and Wish.

17. Consequently, the number of sales of Counterfeit Products made by Defaulting Defendants, as identified in the discovery received, is incomplete.

18. Accordingly, Plaintiff's actual damages are extremely difficult, if not impossible to calculate.

19. The statutory damages requested by Plaintiff are based upon a combined analysis of the following: (a) the discovery responses provided by Amazon and Wish, which show the number of sales of Counterfeit Products made by Defaulting Defendants on only those platforms; (2) Plaintiff's orders of Counterfeit Products from Defaulting Defendants; and (3) Defaulting Defendants' wrongful use of the Roku Trademark Registrations.

20. A chart detailing each and every Defaulting Defendants' (1) number of sales of Counterfeit Products, based upon the discovery from Amazon and Wish, and Plaintiff's own orders of Counterfeit Products from Defaulting Defendants and (2) a brief discussion of Defaulting Defendants' wrongful use of the Roku Trademark Registrations is attached as **Exhibit 5**.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 13, 2025 in Cranford, New Jersey.

/s/ Christopher Tom  
Christopher Tom

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROKU INC.,

Plaintiff,

V.

THE INDIVIDUALS, CORPORATIONS, LIMITED  
LIABILITY COMPANIES, PARTNERSHIPS, AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A HERETO,  
Defendants.

Case No.: 1:22-cv-00202

**FIRST AMENDED SCHEDULE A**

Doe No.	Defendant Seller	Defendant Online Marketplace
11.	Gaudi	<a href="https://www.amazon.com/sp?seller=A3SXZVKR9JCQKK">https://www.amazon.com/sp?seller=A3SXZVKR9JCQKK</a>
13.	HzzgangDirect	<a href="https://www.amazon.com/sp?seller=A3E8ZAQLE3WB1O">https://www.amazon.com/sp?seller=A3E8ZAQLE3WB1O</a>
43.	AuntbingluuX	<a href="https://www.wish.com/merchant/5f4f6120fedbc502820a2e6b">https://www.wish.com/merchant/5f4f6120fedbc502820a2e6b</a>
56.	Electronic_outlet	<a href="https://www.wish.com/merchant/607e381db20cf82213520cfc">https://www.wish.com/merchant/607e381db20cf82213520cfc</a>
70.	huangchen123	<a href="https://www.wish.com/merchant/58410459a81dba0befad0921">https://www.wish.com/merchant/58410459a81dba0befad0921</a>
74.	jinyuzhir	<a href="https://www.wish.com/merchant/603379a313006b0dc16faa2d">https://www.wish.com/merchant/603379a313006b0dc16faa2d</a>
77.	kappdo	<a href="https://www.wish.com/merchant/5e062a89a57753146b033050">https://www.wish.com/merchant/5e062a89a57753146b033050</a>
79.	laceskong	<a href="https://www.wish.com/merchant/56f8cb2d796b2f58ad96a139">https://www.wish.com/merchant/56f8cb2d796b2f58ad96a139</a>

<b>Doe No.</b>	<b>Defendant Seller</b>	<b>Defendant Online Marketplace</b>
86.	Loverhart	<a href="https://www.wish.com/merchant/5a1e5e65ffccf24b61ca68e1">https://www.wish.com/merchant/5a1e5e65ffccf24b61ca68e1</a>
89.	Mccmyy	<a href="https://www.wish.com/merchant/5b79265a559dbd25b255974e">https://www.wish.com/merchant/5b79265a559dbd25b255974e</a>
93.	monsterlady	<a href="https://www.wish.com/merchant/5344c1a25aefb06607e48bcd">https://www.wish.com/merchant/5344c1a25aefb06607e48bcd</a>
95.	mykshop	<a href="https://www.wish.com/merchant/5fd48a297885467e6b3935f6">https://www.wish.com/merchant/5fd48a297885467e6b3935f6</a>
97.	noral	<a href="https://www.wish.com/merchant/5a0956a00ec30f6eald5e36f">https://www.wish.com/merchant/5a0956a00ec30f6eald5e36f</a>
101.	phonemol	<a href="https://www.wish.com/merchant/58bd1f1f48f3a0527d18d535">https://www.wish.com/merchant/58bd1f1f48f3a0527d18d535</a>
103.	Richapex2016	<a href="https://www.wish.com/merchant/5856abd0913e184c9c72c0bf">https://www.wish.com/merchant/5856abd0913e184c9c72c0bf</a>
106.	schaef	<a href="https://www.wish.com/merchant/5f42cc5ce84e07db8539ae63">https://www.wish.com/merchant/5f42cc5ce84e07db8539ae63</a>
126.	xuenvzhuang	<a href="https://www.wish.com/merchant/5848d9b068eb840a4ffe9905">https://www.wish.com/merchant/5848d9b068eb840a4ffe9905</a>
127.	Xutao	<a href="https://www.wish.com/merchant/5819d4354199ad024c4f3eb3">https://www.wish.com/merchant/5819d4354199ad024c4f3eb3</a>
129.	zhanghongyue	<a href="https://www.wish.com/merchant/58e635492d91301f043a9bf0">https://www.wish.com/merchant/58e635492d91301f043a9bf0</a>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROKU, INC.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS, AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

**ORDER OF DEFAULT**

22 Civ. 202 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

WHEREAS the Complaint in this case was filed on January 10, 2022 (Dkt. No. 9);

WHEREAS on January 20, 2022, this Court granted Plaintiff's application for a temporary restraining order; an order restraining merchant storefronts and Defendants' assets with financial institutions; an order to show cause as to why a preliminary injunction should not issue; an order authorizing bifurcated and alternative service by electronic means; and an order authorizing expedited discovery (Dkt. Nos. 5, 22);

WHEREAS Plaintiff served the Summons, Complaint, TRO, all supporting papers, and the Court's scheduling orders on each Defendant by January 31, 2022, in accordance with the order authorizing alternative service (Dkt. No. 35);

WHEREAS on February 8, 2022, this Court conducted a preliminary injunction hearing as to all the Defendants listed in Schedule A to the Complaint except Defendants Parts Outlet, vtinva, Auteey, Carbonline, CØLIPSØ, JEM&JULES, USonline911, Buy & Delight, Melody Store, Sourcing Remote, Value Foremost, and Chunghop Store;

WHEREAS Plaintiff appeared at the preliminary injunction hearing, but no Defendants appeared;

WHEREAS at the preliminary injunction hearing, this Court determined that Plaintiff had not shown a basis for the Court to exercise personal jurisdiction over Defendants akadaddy, EleLink Shop, and YJY Shop;

WHEREAS on February 10, 2022 this Court issued a preliminary injunction as to all Defendants listed in Schedule A to the Complaint, except Defendants Parts Outlet, vtinva, Auteey, Carbonline, CØLIPSØ, JEM&JULES, USonline911, Buy & Delight, Melody Store, Sourcing Remote, Value Foremost, Chunghop Store, akadaddy, EleLink Shop, and YJY Shop (Dkt. No. 41);

WHEREAS since the Complaint was filed, Plaintiff has voluntarily dismissed its claims against 110 of the 130 Defendants listed in Schedule A to the Complaint (Dkt. Nos. 26, 78, 58-59, 64-66, 69-71, 73, 77-79, 81, 83-85, 87-93, 95-96, 98-99);

WHEREAS on July 15, 2022, Plaintiff obtained a certificate of default against the remaining 20 Defendants: Gaudi, HzgangDirect, WINBOUS, AuntbingluuX, Electronic\_outlet, huangchen123, jinyuzhir, kappdo, laceskong, Loverhart, Mccmyy, monsterlady, mykshop, noral, phonemol, Richapex2016, schaef, xuenvzhuang, Xutao, and zhanghongyue (the “Defaulting Defendants”) (Dkt. No. 102);

WHEREAS on July 25, 2022, Plaintiff moved for a default judgment as to the Defaulting Defendants (Dkt. Nos. 103-06);

WHEREAS on July 27, 2022, this Court entered an Order to Show Cause, which directed Plaintiff to serve the Defaulting Defendants the order by August 1, 2022. The Defaulting Defendants’ opposition papers were due on August 8, 2022. A show cause hearing was scheduled for August 18, 2022 (Dkt. No. 107);

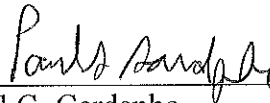
WHEREAS a certificate of service was filed by Plaintiff on July 28, 2022 stating that Plaintiff had served each of the Defaulting Defendants with the Order to Show Cause and supporting papers on July 27, 2022 (Dkt. No. 108); and

WHEREAS the Defaulting Defendants have filed no opposition to Plaintiff's motion for a default judgment and did not appear at the August 18, 2022 hearing;

It is hereby ORDERED that default is entered against the Defaulting Defendants, and this matter is referred to Magistrate Judge Figueredo for an inquest into damages. The Clerk of Court is directed not to close this case.

Dated: New York, New York  
September 19, 2022

SO ORDERED.

  
\_\_\_\_\_  
Paul G. Gardephe  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROKU, INC.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS, AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

**ORDER OF REFERENCE  
TO A MAGISTRATE JUDGE**

22 Civ. 202 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

The above entitled action is referred to the designated Magistrate Judge  
for the following purpose(s):

General Pretrial (includes scheduling,  
discovery, non-dispositive pretrial  
motions, and settlement)

Specific Non-Dispositive  
Motion/Dispute:

\_\_\_\_\_  
If referral is for discovery disputes when  
the District Judge is unavailable, the time  
period of the referral:

\_\_\_\_\_

Settlement

☒ Inquest After Default/ Damages Hearing

Consent under 28 U.S.C. § 636(c) for all  
purposes (including trial)

Consent under 28 U.S.C. § 636(c) for  
limited purpose (e.g., dispositive motion,  
preliminary injunction)

Purpose: \_\_\_\_\_

Habeas Corpus

Social Security

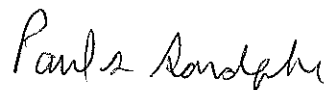
Dispositive Motion (i.e., motion requiring  
a Report and Recommendation)

Particular Motion: \_\_\_\_\_

All such motions: \_\_\_\_\_

Dated: New York, New York  
September 19, 2022

SO ORDERED.



Paul G. Gardephe  
United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
ROKU INC.,

Plaintiff,

-v-

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS, AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON  
SCHEDULE A HERETO,

Defendant(s).

22 Civ. 00202 (JAV) (VF)

**SCHEDULING ORDER**

**VALERIE FIGUEREDO**, United States Magistrate Judge.

This matter having been referred to me to conduct an inquest and to report and recommendation concerning plaintiff's damages and attorneys' fees, it is hereby **ORDERED** that:

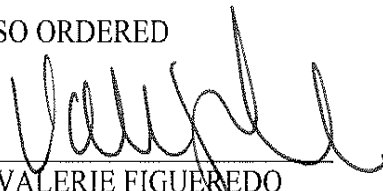
1. Plaintiff shall submit proposed findings of fact and conclusions of law concerning damages no later than **February 14, 2025**. Plaintiff must support all factual assertions by affidavit and/or other evidentiary material. Plaintiff's requested attorneys' fees and costs must be recorded in the form below, adding fields as necessary, and supported by evidentiary material.
2. Defendants shall submit their response to plaintiff's submissions, if any, no later than **March 14, 2025**. IF DEFENDANTS (1) FAIL TO RESPOND TO PLAINTIFF'S SUBMISSIONS, OR (2) FAIL TO CONTACT MY CHAMBERS BY DEFENDANTS' DEADLINE ABOVE AND REQUEST AN IN-COURT HEARING, I INTEND TO

ISSUE A REPORT AND RECOMMENDATION CONCERNING DAMAGES BASED ON PLAINTIFF'S WRITTEN SUBMISSIONS ALONE WITHOUT AN IN-COURT HEARING. See Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997) (“[I]t [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.” (quoting Fustok v. ContiCommodity Services Inc., 873 F.2d 38, 40 (2d Cir. 1989))).

Plaintiff is directed to serve this Order on Defendants and file proof of service by no later than **February 14, 2025**.

Dated: New York, New York  
January 14, 2025

SO ORDERED



VALERIE FIGUEREDO  
United States Magistrate Judge

<u>Requested Attorneys' Fees</u>			
Timekeeper	Requested Rate	Requested Hours	Requested Total
		<b>TOTAL:</b>	

<u>Requested Costs</u>		
Type of Expense	Evidence (with ECF cite)	Amount Requested
	<b>TOTAL:</b>	

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ROKU, INC.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS, LIMITED  
LIABILITY COMPANIES, PARTNERSHIPS, AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

Case No.: 1:22-cv-00202-JAV-VF

**PLAINTIFF'S EXHIBIT – DEFAULTING DEFENDANTS' KNOWN SALES AND  
REQUESTED STATUTORY DAMAGES**

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