

Finding Fault With Default—Default Judgments in Trademark Cases

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Default judgments are not uncommon in trademark cases. If a defendant does not appear or otherwise defend a court usually will accept the allegations of the complaint as true and enter a default, followed by a judgment. (On occasion, an ill-pleaded complaint will be dismissed.) However, the remedies available in trademark cases—including attorney’s fees—are heavily influenced by issues of fault and willfulness (in the case of attorney’s fees, there is a need for an “exceptional case”). Trademark complaints frequently contain allegations of such willfulness, often made rather generally, which are found to satisfy those requirements, resulting in large judgments and large attorney’s fee awards. Moreover, some courts find a case to be exceptional based on the defendant’s failure to appear, thus increasing defendant’s liability by virtue of default. Although it is difficult to muster great sympathy for many of the defendants (in a number of cases they appear to be willful counterfeiters), the manner in which courts casually accept allegations of bad conduct that significantly increase the remedial award raises questions about whether the defendants truly understand the legal significance of the allegations against them. Obviously, we do not wish to give bad actors an incentive to avoid the consequences of their acts by defaulting. But it is worth exploring whether our current system of defaults properly balances the need for an orderly system and the need for responsibility by defendants against unfairly imposed consequences. This article will address whether the rules allowing default judgments properly balance those needs in the context of trademark cases.