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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SUNTECH POWER HOLDINGS CO., LTD., a corporation of the Cayman Islands; WUXI SUNTECH POWER CO., LTD., a corporation of the People’s Republic of China; and SUNTECH AMERICA, INC., a Delaware corporation,

Plaintiffs,

vs.

SHENZHEN XINTIAN SOLAR TECHNOLOGY CO., LTD., a corporation of the People’s Republic of China; and SUN TECH SOLAR CO., LTD., a Honk Kong corporation,

Defendants.

CASE NO. 08-CV-01582 H (NLS)

**ORDER**

**(1) GRANTING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

**(2) GRANTING PLAINTIFF’S MOTION FOR PERMANENT INJUNCTION**

**(3) GRANTING PLAINTIFF’S MOTION FOR ATTORNEYS FEES**

Before the Court is Plaintiff’s motion for default judgment, permanent injunction and attorneys fees. (Doc. No. 38.) Defendant has filed no opposition to Plaintiff’s motion. The Court concludes that this matter is appropriate for resolution without oral argument and submits Plaintiff’s motion under Local Rule 7.1(d)(1). For the following reasons, the Court grants Plaintiff’s motion for default judgment, grants Plaintiff’s motion for permanent injunction, and grants Plaintiff’s motion for attorneys fees.

1 **Background**

2 Plaintiffs Suntech Power Holdings Co, Ltd, Wuxi Suntech Power Co., Ltd, and Suntech  
3 America, Inc. (collectively, “Suntech”) design, manufacture and sell solar energy products to  
4 homeowners, commercial owners, architects and builders. (Efird Decl. ISO Mot. for Prelim.  
5 Inj. ¶ 3.) Suntech’s products are sold nationwide through a network of sales offices,  
6 installation partners and authorized dealers. (Id. ¶ 4.) Suntech owns United States Trademark  
7 Registration No. 3,111,705, which consists of the word SUNTECH and an accompanying  
8 design (“the ‘705 Registration”). (Efird Decl. Ex. A.) This trademark is registered for use in  
9 connection with batteries and other related products. (Id.) Suntech also claims ownership of  
10 the unregistered trademark SUNTECH in connection with the sale of solar energy products.  
11 (Efird Decl. ¶ 7.) Suntech makes extensive use of these marks in promoting and selling its  
12 products. (Efird. Decl. Ex. B.)

13 Suntech became aware of Defendant Sun Tech Solar when Suntech’s president received  
14 several telephone calls from individuals seeking information about “Sun Tech” branded  
15 products not sold by Plaintiff. (Id. ¶ 12.) Defendant manufactures and sells solar modules.  
16 (Efird Decl. Ex. G.) Sun Tech Solar is the Hong Kong branch of Shenzhen. (Id.) Defendant’s  
17 products are marketed under the marks SUN TECH or SUN TECH SOLAR or both. (Efird  
18 Decl. Ex. H.) Defendant also operates a website at [www.solarsuntech.com](http://www.solarsuntech.com). (Id.)

19 On August 28, 2008, Plaintiff filed a complaint against Defendant alleging trademark  
20 infringement. (Doc. No. 1.) On October 6, 2008, the Court issued an order preliminarily  
21 enjoining the Defendant’s infringing activity. (Doc. No. 16.)

22 On October 14, 2008, Defendant set up a booth at the Solar Power International 2008  
23 Trade Show in San Diego, California displaying the mark SUN TECH SOLAR on its signage  
24 and promotional material. (Somer Decl. ISO mot. for seizure [“Somer Decl.”] ¶ 3; Ex. A, B.)  
25 Defendant refused to cease its infringing activity, even after its representative was served with  
26 a copy of the preliminary injunction and the Court’s order to show cause why Defendant  
27 should not be held in contempt for violation of the injunction (Doc. No. 22.). Accordingly, the  
28 Court ordered the seizure of the infringing materials. (Doc. No. 23.)

1 At a subsequent hearing, the Court provided the Defendant with copies of Plaintiffs'  
2 complaint, the Court's order to show cause, and the Court's order granting Plaintiff's motion  
3 for seizure. (Doc. No. 25.) The Court personally advised Defendant's representatives of the  
4 need to retain an attorney and answer Plaintiff's complaint no later than November 17, 2008.  
5 (Id.) Defendant has not responded to the complaint. On December 1, 2008, the Clerk of Court  
6 entered default as to Shenzhen Xintian Solar Technology Co., LTD and Sun Tech Solar Co.,  
7 LTD. (Doc. No. 36.)

## 8 Discussion

### 9 **I. Motion for Default Judgment**

10 Under Federal Rule of Civil Procedure 55(b)(2), a court may enter a default judgment  
11 following a clerk's default against a party who has failed to plead or otherwise defend against  
12 a lawsuit. Generally, "upon default the factual allegations of the complaint . . . will be taken  
13 as true." TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). In  
14 determining whether default judgment is warranted, courts consider the following factors: (1)  
15 the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3)  
16 the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility  
17 of a dispute concerning material facts, (6) whether the default was due to excusable neglect,  
18 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions  
19 on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Here, these factors  
20 warrant entry of default judgment against the Defendant.

21 First, the Court concludes that Plaintiff will be prejudiced if judgment is not entered.  
22 The Defendant has made it clear that it does not intend to cease infringing Plaintiff's  
23 trademarks and refuses to acknowledge this litigation. Without a court judgment in its favor,  
24 Plaintiff would have no recourse to address the infringement.

25 Next, the Court considers the merits of Plaintiff's substantive claim. To succeed on its  
26 registered trademark infringement claim under 15 U.S.C. § 1114, Plaintiff must show that  
27 Defendant used a reproduction or colorable imitation of a registered mark "in connection with  
28 the sale, offering for sale, distribution, or advertising of goods or services" in such a way as

1 to cause a likelihood of confusion. 15 U.S.C. § 1114(1)(a). To succeed on its claim for  
2 infringement of an unregistered trademark, Plaintiff must show that Defendant used in  
3 connection with goods or services “any word, term, name, symbol, or device, or any  
4 combination thereof . . . which is likely to cause confusion.” 15 U.S.C. § 1125(a)(1)(A).  
5 Considering the evidence submitted by the Plaintiff (Efird Decl. Ex. G.), and taking the  
6 complaint’s factual allegations as true, the Court concludes that Plaintiff’s claims for violations  
7 of its registered and unregistered trademarks are meritorious.

8         Additionally, Plaintiff asserts a cause of action under California Business and  
9 Professions Code § 17200. Instead of proscribing specific acts, § 17200 defines “unfair  
10 competition” as including “any unlawful, unfair or fraudulent business act or practice.” Cal.  
11 Bus & Prof. Code § 17200. This language covers “anything that can properly be called a  
12 business practice and that at the same time is forbidden by law.” Rubin v. Green, 4 Cal. 4th  
13 1187, 1200 (Cal. 1993) (internal quotes omitted). Thus, the statute effectively “borrows  
14 violations of other laws and treats them as unlawful practices” that are “independently  
15 actionable.” Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180  
16 (Cal. 1999) (internal quotes omitted). Here, based on Defendant’s infringing activity, the  
17 Court concludes that Plaintiff’s § 17200 claim is meritorious.

18         Next, the Court considers the sufficiency of Plaintiff’s complaint and concludes that  
19 Plaintiff has sufficiently pled its causes of action for trademark infringement and unfair  
20 competition.

21         Because Plaintiff seeks injunctive relief instead of monetary damages, the fourth Eitel  
22 factor cuts in favor of default judgment.

23         Based on the record, the Court concludes that there is little possibility of dispute as to  
24 the material facts of this case. Plaintiff has submitted evidence of Defendant’s infringement  
25 and Defendant has not denied its use of the SUN TECH and SUN TECH SOLAR marks.

26         Under the sixth Eitel factor, the Court concludes that Defendant’s failure to respond is  
27 not due to excusable neglect. After receiving notice of this suit and of the preliminary  
28 injunction, Defendant continued to use the infringing marks. Subsequently, the Court

1 personally provided the Defendant's representatives with copies of Plaintiffs' complaint, the  
2 Court's order to show cause, and the Court's order granting Plaintiff's motion for seizure.  
3 (Doc. No. 25.) By order and through a qualified interpreter, the Court advised Defendant's  
4 representatives of the need to retain an attorney and answer Plaintiff's complaint no later than  
5 November 17, 2008. (Id.) Defendant has received adequate notice of Plaintiff's claims and  
6 has had ample opportunity to respond.

7 Finally, the Court considers the policy underlying the Federal Rules of Civil Procedure  
8 favoring decisions on the merits. Though this factor will always cut against default judgment,  
9 it does not preclude default judgment where otherwise warranted. "When a defendant in a  
10 judicial forum refuses to respond to a complaint that is properly filed and served, the court has  
11 the power to enter and enforce a default judgment." Brown v. Dillard's, Inc., 430 F.3d 1004,  
12 1013 (9th Cir. 2005). In this action, Defendant has largely ignored this suit and refuses to  
13 respond to Plaintiff's complaint.

14 Accordingly, the Court grants Plaintiff's motion for default judgment on its claims for  
15 trademark infringement under 15 U.S.C. § 1114, 1125 and for unfair competition under  
16 California Business and Professions Code § 17200.

## 17 **II. Motion for Permanent Injunction**

18 The Lanham Act provides district courts with the "power to grant injunctions, according  
19 to the principles of equity and upon such terms as the court may deem reasonable . . . to  
20 prevent a violation" of trademark rights. 15 U.S.C. § 1116(a). The decision whether to grant  
21 or deny injunctive relief "rests within the equitable discretion of the district courts." eBay Inc.  
22 v. MercExchange, L.L.C., 547 U.S. 388, 393 (2006). In determining whether a permanent  
23 injunction is warranted, courts use "the four-factor test historically employed by courts of  
24 equity." Id. at 390 To obtain a permanent injunction, the prevailing "plaintiff must  
25 demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law,  
26 such as monetary damages, are inadequate to compensate for that injury; (3) that, considering  
27 the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted;  
28 and (4) that the public interest would not be disserved by a permanent injunction." Id. at 391.

1 The Court considers each factor in turn.

2 First, the Court concludes that Plaintiff has suffered an irreparable injury. When a  
3 commercial entity's intellectual property is infringed, there may be a threat to its business,  
4 profits or reputation that results in irreparable injury. See, e.g., Sardi's Restaurant Corp. v.  
5 Sardie, 755 F.2d 719, 724 (9th Cir. 1985). Plaintiff makes extensive use of its trademarks in  
6 promoting its products and managing its reputation. (Efird. Decl. Ex. B.) Defendant's  
7 infringement deprives Plaintiff of control over its reputation and constitutes irreparable harm.

8 By definition, a party suffering irreparable harm may not be made whole with damages  
9 alone. Here, the damage to Plaintiff's reputation caused by Defendant's infringement is  
10 difficult if not impossible to quantify. Recognizing this fact, Plaintiff has requested injunctive  
11 relief in lieu of damages. To redress Plaintiff's injury, the Defendant's infringement must be  
12 enjoined. Accordingly, the Court concludes that remedies available at law are inadequate in  
13 this case.

14 Considering the balance of hardships between the Plaintiff and Defendant, the Court  
15 concludes that a remedy in equity is warranted. A permanent injunction will merely require  
16 Defendant to comply with the Lanham Act. On the other hand, denying injunctive relief would  
17 leave Brighton needlessly vulnerable to future infringement necessitating additional litigation.

18 Finally, the Court concludes that a permanent injunction serves the public interest.  
19 Trademark law exists to protect the "public interest in avoiding consumer confusion." E.S.S.  
20 Entm't 2000, Inc. v. Rock Star Videos, Inc., 547 F.3d 1095, 1099 (9th Cir. 2008). The  
21 removal of infringing products from the market serves the public interest – as does an  
22 injunction preventing their reappearance. The Court concludes that this factor cuts in favor  
23 of injunctive relief.

24 Accordingly, the Court grants Plaintiff's motion for a permanent injunction.

### 25 **III. Motion for Attorneys Fees**

26 The Lanham Act provides that "in exceptional cases," the court may award "reasonable  
27 attorney fees to the prevailing party." 15 U.S.C. § 1117(a). "[A] case is exceptional within  
28 the meaning of 15 U.S.C. § 1117(a) where the infringement is willful, deliberate, knowing or

1 malicious.” Earthquake Sound Corp. v. Bumper Indus., 352 F.3d 1210, 1216 (9th Cir. 2003).  
2 When a complaint pleads willful trademark infringement, a district court may properly grant  
3 attorneys fees in connection with a default judgment. See, Derek Andrew, Inc. v. Poof Apparel  
4 Corp., 528 F.3d 696, 702 (9th Cir. 2008). Here, Plaintiff’s complaint properly pleads willful  
5 trademark infringement. (Compl., ¶ 26.) Furthermore, Defendant’s continued infringement  
6 in spite of a preliminary injunction and a finding of contempt demonstrates that its actions are  
7 deliberate and knowing. The Court concludes that an award of reasonable attorneys fees is  
8 appropriate in this exceptional case.

9 In calculating a reasonable attorneys fees award, courts use the lodestar method.  
10 Camacho v. Bridgeport Financial, Inc., 523 F.3d 973, 978 (9th Cir. 2008). The lodestar  
11 amount is calculated by multiplying the number of hours the prevailing party reasonably  
12 expended on the matter by a reasonable hourly rate. Id. The reasonable hourly rate is  
13 determined by the “rate prevailing in the community for similar work performed by attorneys  
14 of comparable skill, experience, and reputation.” Chalmers v. City of Los Angeles, 796 F.2d  
15 1205, 1210-11 (9th Cir. 1986). Affidavits from the movant’s counsel constitute “satisfactory  
16 evidence of the prevailing market rate” and create a rebuttable presumption of reasonableness.  
17 Camacho, 523 F.3d at 980 (internal citations omitted). In determining the lodestar amount,  
18 courts consider several factors: (1) the novelty and complexity of the issues, (2) the special  
19 skill and experience of counsel, (3) the quality of representation, and (4) the results obtained.  
20 Morales v. City of San Rafael, 96 F.3d 359, 364 n.9 (9th Cir. 1996).

21 Plaintiff’s attorneys have charged their normal and customary rates for their services  
22 in this matter. (Bleeker Decl. ISO Mot. for Atty’s Fees [“Bleeker Decl.”] ¶¶ 13-22.) Counsel  
23 has submitted a declaration stating that its fees are appropriate for the type of work along with  
24 survey data concerning billing rates for other attorneys performing similar work. (Bleeker  
25 Decl. ¶ 13; Ex. B.) Plaintiff’s counsel has spent approximately 100 hours representing its  
26 client in this matter. The Court concludes that Plaintiff’s requested attorneys fees are  
27 reasonable as to billing rate and hours expended. Accordingly, the Court calculates the  
28 lodestar amount to be \$43,773.30 based on Plaintiff’s submitted billing records. (Id. ¶ 12.)

1 Next, the Court must decide whether to enhance or reduce the lodestar amount based  
2 on an evaluation of factors not subsumed in the initial calculation. Fischer v. SJB-P.D. Inc.,  
3 214 F.3d 1115, 1119 (9th Cir. 2000). “A strong presumption exists that the lodestar figure  
4 represents a reasonable fee, and therefore, it should only be enhanced or reduced in rare and  
5 exceptional cases.” Id. at 1119 n.4 (internal quotes omitted). After carefully considering the  
6 relevant factors, the Court concludes that an adjustment of the lodestar figure is not warranted  
7 in this case.

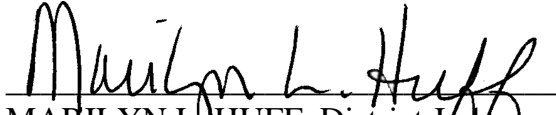
8 Accordingly, the Court grants Plaintiff’s motion for reasonable attorneys fees in the  
9 amount of \$30,919.85, which represents the lodestar amount minus the fees already awarded  
10 in the Court’s November 21, 2008 order. (Doc. No. 33.)

11 **Conclusion**

12 The Court grants Plaintiff’s motion for default judgment as to its trademark  
13 infringement claims under 15 U.S.C. § 1114, 1125 and its unfair competition claim under  
14 California Business and Professions Code § 17200. The Court grants Plaintiff’s motion for  
15 permanent injunction. The Court grants Plaintiff’s motion for attorneys fees in the amount of  
16 \$30,919.85.

17 IT IS SO ORDERED.

18 DATED: January 29, 2009

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20 MARILYN L. HUFF, District Judge  
21 UNITED STATES DISTRICT COURT  
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