

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

AMERICAN CHEMICAL SOCIETY,)	
)	
Plaintiff,)	
)	
v.)	1:17-cv-726 (LMB/JFA)
)	
JOHN DOES 1-99, <u>et al.</u> ,)	
)	
Defendants.)	

ORDER

Before the Court is a Report and Recommendation (“Report”) issued by a magistrate judge on September 28, 2017 [Dkt. No. 22], which recommended that default judgment be entered against defendant Sci-Hub (“Sci-Hub” or “defendant”) on Counts 1 and 3 and that Counts 2, 4, and 5 against Sci-Hub and all counts against defendants John Does 1-99 be dismissed without prejudice, as plaintiff has requested. See Report at 14-15. The parties were advised that any objections to the Report had to be filed within 14 days and that failure to file a timely objection waived the right to appeal the substance of the Report and any judgment based on the Report. Id. at 15. As of November 2, 2017, no party has filed an objection. The Court has reviewed the Report, plaintiff’s motion for default judgment, and the case file and adopts the Report in full, except that the Court will modify the recommended injunction for the reasons stated in open court on November 3, 2017. The injunction will be entered in a separate Order.

The magistrate judge correctly determined that the Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because it involves federal questions arising under the Copyright Act and the Lanham Act. Report at 5. The magistrate judge also correctly concluded that this Court has personal jurisdiction over Sci-Hub because Sci-Hub

“gained unauthorized access to ACS’s website maintained in this District and distributed ACS’s intellectual property” through websites “operated on a domain name maintained in this District.” Id. Moreover, the magistrate judge correctly concluded that venue is appropriate in this district under 28 U.S.C. § 1391 because a substantial portion of the activity described in the Complaint has taken place in this district. Id. Finally, the magistrate judge has correctly concluded that plaintiff properly served Sci-Hub by publishing a notice of the action, emailing notice to various accounts associated with Sci-Hub, and filing an affidavit for service of process on the Secretary of the Commonwealth of Virginia. Id. at 6. Moreover, Sci-Hub has apparently tweeted about this civil action, indicating that it has received actual notice of the litigation. Id.

The Court finds that the magistrate judge correctly determined that plaintiff has pleaded the requirements for obtaining relief under the Copyright Act and the Lanham Act. Specifically, plaintiff has adequately pleaded that it owns the copyrights in a variety of scientific publications, that Sci-Hub has copied elements—and, in many cases, the entirety of—those works, and that Sci-Hub has distributed those works by allowing individuals to download the works from its website, all in violation of the Copyright Act. Report at 7-8. Moreover, the magistrate judge rightly found plaintiff has adequately pleaded that it has registered the titles of its publications as trademarks with the U.S. Patent and Trademark Office, that defendant has willfully produced counterfeit versions of plaintiff’s marks, that defendant’s use of these marks occurred in connection with the distribution of goods, and that defendant’s use of the marks is likely to confuse consumers, all in violation of the Lanham Act. Id. at 8-10. Accordingly, the magistrate judge correctly determined that plaintiff is entitled to relief under the Copyright Act and the Lanham Act. In addition, the magistrate judge correctly found that plaintiff is entitled to both statutory damages and injunctive relief, but, for the reasons stated in open court on November 3,

2017, the Court will issue an injunction that slightly modifies the language recommended by the magistrate judge. Id. at 10-14.

Accordingly, the Report is ADOPTED and plaintiff's Motion for Default Judgment [Dkt. No. 16] is GRANTED, and it is hereby

ORDERED that default judgment be and is entered against defendant Sci-Hub on Counts 1 and 3 in the total amount of \$4,800,000.00 (consisting of the \$150,000 statutory limit per violation for each of the 32 representative registered works at issue); and it is further

ORDERED that Counts 2, 4, and 5 be and are DISMISSED WITHOUT PREJUDICE as to defendant Sci-Hub, and that all counts be and are DISMISSED WITHOUT PREJUDICE as to defendants John Does 1-99.

The Clerk is directed to enter judgment in this matter pursuant to Fed. R. Civ. P. 55 and forward copies of this Order to counsel of record and defendant Sci-Hub.

Entered this 3rd day of November, 2017.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge