

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

MYA SARAY, LLC,

Plaintiff,

v.

AL-AMIR, INC.,

&

ALI HAMMOUD,

Defendants.

Civil Action No. 1:10-cv-789

PROPOSED ORDER

UPON CONSIDERATION of the Motion To Impose Sanctions under Fed. R. Civ. P. 37(b) and accompanying memorandum of law as well as the argument of the parties, and it appearing that no substantial justification has been shown by Defendant Al-Amir, Inc. (“Al-Amir”) for its refusal to answer Plaintiff Mya Saray, LLC’s discovery, as required by the Federal Rules of Civil Procedure 33 and 34, and for failing to comply with this Court’s orders of March 3, 2011 and April 1, 2011, and good cause appearing; IT IS HEREBY

ORDERED that Defendants’ answer will be stricken and a default judgment entered in Mya Saray, LLC’s favor and against Defendants.

ORDERED that the deadline for Mya Saray to conduct discovery in relation to its damages shall be extended by another 6 weeks days to May 27, 2011.

ORDERED that the following facts shall be taken as established for the purposes of the action:

(i) That Al-Amir sold every Maganda hookah that it possessed; that Al-Amir sold at least 850 Maganda hookahs in closed top cages subsequent to the litigation settlement agreement between Al-Amir and Mya Saray of effective date November 14, 2008 as an “Andile” hookah; that the Maganda hookah product design is an infringement of U.S. TM Reg. No. 3,845,276 and the common law trademark for the Mya Saray QT hookah product configuration; that Al-Amir had at all times actual notice of such registration and trademark; that all such sales were in the Detroit Metropolitan area; and that each sale of the Maganda hookah by Al-Amir directly resulted in one less sale for Mya Saray of a QT hookah product; and that Mya Saray’s damages are equal to its provable profit on the sale of one QT hookah in a closed-top cage per Maganda hookah sold by Al-Amir in a closed-top cage.

(ii) That Al-Amir sold every Empire hookah that it possessed as an “Andile” hookah; that Empire hookahs included closed-top cages as depicted in Exhibit M of Plaintiff’s First Amended Complaint; that Al-Amir possessed at least 750 Empire hookahs in closed-top cages; that the Empire hookah product design is an infringement of U.S. TM Reg. No. 3,845,276 and the common law trademark for the Mya Saray QT hookah product configuration; that Al-Amir had at all times actual notice of such registration and trademark; that all such sales were in the Detroit Metropolitan area; that each sale of the Empire hookah by Al-Amir directly resulted in one less sale for Mya Saray of a QT hookah product; and that Mya Saray’s damages are equal to its provable profit on the sale of one QT hookah in a closed-top cage per Empire hookah sold by Al-Amir in a closed-top cage.

(iii) That Al-Amir sold every Jamila hookah that it possessed; that Al-Amir possessed at least 1820 Jamila hookahs in open-top cages; that the Jamila hookah product design when sold in the open-top cage, as depicted in Exhibit N of Plaintiff’s First Amended Complaint, is an infringement of U.S. Patent No. 7,404,405; that Al-Amir had at all times actual notice of such patent rights and that the infringement was willful; that all such sales were in the Detroit Metropolitan area; that each sale of the Jamila hookah in the open-top cage by Al-Amir directly resulted in one less sale for Mya Saray of a QT hookah product with an open-top cage; and that Mya Saray’s damages are equal to its provable profit on the sale of one QT hookah in an open-top cage per Jamila hookah sold by Al-Amir in an open-top cage.

(iv) That Al-Amir possessed and sold 1000 of the hookahs depicted in Exhibit 6 of the Declaration of D. Rollins, Ct. Doc. No. 20-2, filed in Support of the Motion for Preliminary

Injunction, Ct. Doc. No. 19; that the characteristics of the hookah are it includes only a genuine Mya Saray stem and all other components are of non-Mya Saray origin; that any sales of such hookah are by their nature intended to, and did, confuse the relevant purchaser into believing that said hookah was a Mya Saray hookah; and that the profits by Al-Amir of sales of such hookah are presumably \$20.00 less such offsetting amounts as provable by Al-Amir are related to its costs and overhead.

(v) That Al-Amir had and sold an indeterminable quantity of hookahs in the packaging of Exhibit H of Plaintiff's First Amended Complaint up until at least December 2008; and that any sales of hookahs within such packaging are by their nature intended to, and did, confuse the relevant purchaser into believing that said hookah was a Mya Saray hookah; and that the profits by Al-Amir of sales of such hookah are presumably \$34.00 less such offsetting amounts as provable by Al-Amir are related to its costs and overhead.

ORDERED that Defendants shall pay Mya Saray's attorneys' fees in bringing this Motion for Sanctions.

ENTERED THIS __ DAY OF _____, 2011.

Judge

WE ASK FOR THIS:

By: _____
M. Keith Blankenship, Esq.
Susan M. Simpson, Esq
Attorneys for Plaintiff
General Counsel, P.C.
6862 Elm Street Suite 800
McLean, VA 22101