

**Tru Kids, Inc. v FPG Brands Brasil Gestao De Marcas
LTDA**

2025 NY Slip Op 34437(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 653231/2025

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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TRU KIDS, INC.,

Plaintiff,

- v -

FPG BRANDS BRASIL GESTAO DE MARCAS LTDA,

Defendant.

INDEX NO. 653231/2025

MOTION DATE _____

MOTION SEQ. NO. 001

**AMENDED DECISION +
ORDER ON MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17

were read on this motion to/for JUDGMENT - DEFAULT.

In motion sequence 001, plaintiff moves for a default judgment against defendant.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted].)

In support of its motion, plaintiff submits the affidavit of Jamie Uitdenhowen, plaintiff's Vice-President and General Manager. (NYSCEF 10, Uitdenhowen aff ¶ 1.)

Proof of Service

The summons and complaint were sent to defendant via email. (NYSCEF 8, Aff of Service.) Uitdenhowen affirms that section 24(a) of the parties' licensing agreement provides that legal notices shall be given by email, and in section 24(b), defendant irrevocably consented to service of process in accordance with Section 24(a) and waived personal service of the summons and complaint. (NYSCEF 10, Uitdenhowen aff ¶¶ 24-25.) Thus, plaintiff has satisfied the proof of service requirement.

Proof of Fact

Plaintiff alleges one claim for breach of contract. Uitdenhower affirms that the parties entered into a licensing agreement whereby plaintiff licensed certain marks to defendant in exchange for royalties. (*Id.* ¶¶ 3, 5.) Uitdenhower further affirms that defendant breached the agreement by failing to pay all the royalties owed. (*Id.* ¶ 7.) Despite sending defendant a default notice, defendant did not cure its breach. (*Id.* ¶¶ 9-10.) Uitdenhower states that the licensing agreement granted plaintiff the right to terminate the agreement if a breach occurred and was not cured. (*Id.* ¶ 11.) Plaintiff sent a termination notice. (*Id.* ¶ 14.) Uitdenhower affirms that, upon termination, defendant was required to pay all guaranteed royalties, return all advertising materials, and provide a schedule of all licensed inventory. (*Id.* ¶¶ 16-19.) Uitdenhower also affirms that the agreement provided for interest and attorneys' fees should there be a default and termination. (*Id.* ¶¶ 21-22.) Finally, Uitdenhower states that plaintiff suffered damages in the amount of \$2,240,000. (*Id.* ¶ 28.) This is sufficient to show proof of plaintiff's claim for breach of the agreement. (*Harris v Seward Park Hous. Corp.*, 913 N.Y.S.2d 161, 162 [1st Dept 2010][stating the elements of breach of contract

as (1) the existence of a contract, (2) the plaintiff's performance under that contract; (3) the defendant's breach of that contract and (4) resulting damages].)

Proof of Default

Plaintiff's counsel affirms that defendant failed to answer or otherwise respond to the complaint by June 29, 2025, and to date, defendant has not answered or otherwise appeared. (NYSCEF 6, Ostrove aff ¶¶ 6-7.)

Attorneys' Fees

Uitdenhower affirms that the agreement provided for the recovery of attorneys' fees should there be a default and termination. (*Id.* ¶¶ 21-22.)

To determine the reasonableness of the requested fee, the court is guided by the following factors: (1) "the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented," (2) "the lawyer's experience, ability, and reputation," (3) "the amount involved and benefit resulting to the client from the services" (4) "the customary fee charged by the Bar for similar services," (5) "the contingency or certainty of compensation," (6) "the results obtained," and (7) "the responsibility involved." (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York § 61:7, Criteria for Determining Reasonableness [5th ed, Oct. 2024 update].) The court also relies on its own knowledge of hourly rates charged by private firms who practice in the Commercial Division, New York County. (*See Miele v New York State Teamster Conference Pension & Retirement Fund*, 831 F2d 407, 409 [2d Cir 1987].)

In sum, plaintiff's counsel drafted the complaint and this motion, expending a total of 12.30 hours. (NYSCEF 9, Invoice.) The court finds the hours spent on the tasks

performed reasonable. The court also finds that the hourly rates that counsel charged are usual and customary for commercial law firms in New York City (\$535 member, \$295 associate, \$225 summer associate). The other remaining factors are also satisfied.


Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$2,240,000, with interest at the rate of 1.5% per month from the date of May 16, 2025, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, plus attorneys' fees in the amount of \$3,641.50 together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that defendant is directed to deliver all advertising materials in its possession, custody and/or control to plaintiff to the extent that such materials incorporate any of the marks subject to the licensing agreement (Marks) and produce a schedule itemizing all inventory of licensed products in its possession, custody and/or control in accordance with the licensing agreement within 15 days of the date of this decision and order; and it is further

ADJUDGED that defendant is enjoined and restrained from any further use of the Marks including, but not limited to, any use in relation to defendant's stores and websites: (1) TOYS R US, (2) Geoffrey the Giraffe, and (3) BABIES R US; and it is further

ADJUDGED that defendant is enjoined and restrained from distributing, developing, selling, shipping, or promoting any products incorporating any of the Marks, or any forms of intellectual property owned by plaintiff.



11/19/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE