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4 NOTE: CHANGES HAVE BEEN
5 MADE TO THIS DOCUMENT
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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 Sundesa, LLC, a Utah Limited Liability
10 Company,

11 Plaintiff,

12 v.
13

14 Harrison-Daniels, Inc., a Delaware
15 Corporation,

16 Defendant.
17

Civil Action No. 2:14-cv-08713-ODW-SH

**ORDER GRANTING PLAINTIFF'S
APPLICATION FOR DEFAULT
JUDGMENT [13]**

HON. OTIS D. WRIGHT II
UNITED STATES DISTRICT JUDGE
COURTROOM 11



18 BEFORE THE COURT is "Plaintiff's Application for Default Judgment" (the
19 "Application"), made pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure
20 and Local Rule 55-1 in the above-captioned action (the "Action").

21 The Court has carefully considered the Application, the supporting memorandum
22 of points and authorities, and all documents of record in the Action, and hereby finds, as
23 explained in the findings of fact and conclusions of law set forth below, that Sundesa is
24 entitled to default judgment in its favor and against Harrison-Daniels, Inc. ("Defendant")
25 that includes an award of money damages in an amount to be determined at a
26 supplemental hearing before this Court and entry of a permanent injunction, as requested
27 by Sundesa. Therefore, the Court ORDERS that Sundesa's Application should be, and
28

1 hereby is, **GRANTED with the exception of costs and attorneys' fees**, and that
2 judgment be entered in Sundesa' favor and against Defendant as set forth below.¹

3 **FINDINGS OF FACT**

4 On November 10, 2014, Sundesa commenced the Action by filing its Complaint
5 against Defendant. (Dkt. No. 1.) Sundesa's Complaint alleges that Defendant makes,
6 uses, sells, and offers for sale, and imports counterfeit shaker cups that embody at least
7 claim 15 of United States Patent No. 6,379,032 (the "'032 Patent") and allow users to
8 perform the methods claimed in at least claim 18 of the '032 Patent (the "Accused
9 Products"). (Dkt. No. 1.) Examples of the Accused Products are depicted in Exhibit E to
10 Sundesa's Complaint. (Dkt, No. 1, Exhibit E.) Sundesa's Complaint also alleges that
11 each of the Accused Products incorporate the claimed design of either United States
12 Design Patent Nos. D510,235 ("'235 Design Patent"); D626,837 ("'837 Design Patent");
13 or D626,838 ("'838 Design Patent") (referenced herein collectively with the '032 Patent
14 as the "Asserted Patents"). (*Id.*) Sundesa's Complaint further alleges that Defendant's
15 above-referenced activities with respect to the Accused Products constitute infringement
16 of Sundesa's rights in the Asserted Patents pursuant to 35 U.S.C. § 101 *et seq.* (*Id.*)

17 Sundesa is the exclusive licensee of the following federally registered trademarks:
18 BLENDER BALL (Reg. No. 3,515,591), BLENDER BOTTLE (Reg. No. 3,471,977),
19 SPORTMIXER (Reg. No. 4,242,830), the logo mark depicted here  (Reg. No.
20 4,098,340) ("Logo Mark 1"), the logo mark depicted here  (Reg. No. 3,722,198)
21 ("Logo Mark 2") (collectively "Asserted Trademarks"). (*Id.*) Sundesa's complaint
22 alleges that Defendant makes, sells, and offers for sale, and imports the Accused Products
23 and uses the Asserted Trademarks to market the Accused Products. Sundesa asserts that
24 Defendant's use of the Asserted Trademarks to market its products constitutes trademark
25 infringement pursuant to 15 U.S.C. § 1114. (*Id.*) (Dkt. No. 1, ¶¶ 28, 36.)

26
27
28 ¹After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Sundesa’s complaint further asserts claims for false designation and unfair
2 competition under 15 U.S.C. § 1125(a), common law trademark infringement and unfair
3 competition, unfair competition pursuant to California Business and Professions Code §
4 17200 *et seq.*, and false marking under 35 U.S.C. § 292. (*Id.*)

5 On November 14, 2014, Defendant was served with the summons and Complaint.
6 (Dkt. No. 9.) Defendant’s answer to the Complaint was due on or before December 5,
7 2014. (*Id.*) Defendant failed to respond to Sundesa’s Complaint by this deadline. On
8 December 12, 2014, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure,
9 Sundesa filed its request for entry of Defendant’s default (Dkt. No. 10.) The Clerk of this
10 Court entered Defendant’s default on December 15, 2014. (Dkt. No. 11.)

11 Sundesa’s technological innovations are protected by a portfolio of utility and
12 design patents, including the Asserted Patents. Sundesa is the exclusive licensee of the
13 valid and enforceable Asserted Patents and has been granted all rights thereunder,
14 including the right and standing to enforce the Asserted Patents. Sundesa has marked all
15 products embodying the claims of the Asserted Patents since their introduction to the
16 market. (Dkt. No. 1, ¶¶ 15-17.)

17 Defendant is in the business of selling promotional products. In particular,
18 Defendant sells and offers for sale, *inter alia*, counterfeit shaker cups that embody the
19 claims of the Asserted Patents. Examples of these products can be found in Exhibit E to
20 Sundesa’s Complaint (“Accused Products”). (Dkt. No. 1, ¶ 18, Exhibit E.)

21 The Accused Products embody at least claim 18 of the ’032 Patent and allow users
22 to perform the methods claimed in at least claim 18 of the ’032 Patent. Each of the
23 Accused Products also embody the claimed design of either the ’235 Design Patent, the
24 ’836 Design Patent, or the ’838 Design Patent. (Dkt. No. 1, ¶¶ 18-19.)

25 Defendant markets, describes, encourages, and instructs its customers to use the
26 Accused Products to mix ingredients in such a way as to perform the claimed methods of
27 the ’032 Patent. Use of any of Defendant’s Accused Products infringes the ’032 Patent
28 and the Accused Products have no substantial non-infringing uses. (Dkt. No. 1, ¶¶ 20-22.)

1 The design of each Accused Products is substantially the same as the design that is
2 the subject matter of either the '235 Design Patent, the '837 Design Patent, or the '838
3 Design Patent. Furthermore, the design of each of the Accused Products is so similar to
4 the design that is the subject matter of either the '235 Design Patent, the '837 Design
5 Patent, or the '838 Design Patent that customers are likely to be deceived and persuaded
6 to buy the Accused Products thinking they are actually buying products protected by
7 either the '235 Design Patent, the '837 Design Patent, or the '838 Design Patent. (Dkt.
8 No. 1, ¶¶ 23-24.)

9 Defendant had pre-suit knowledge of the '032 Patent and the '235 Design Patent at
10 least because of Sundesa's marking of its products embodying the claims of the Asserted
11 Patents. Defendant continues to sell the Accused Products without a license, approval, or
12 authorization. As such, Defendant's manufacture, use, sale, offers for sale, and
13 importation of the Accused Products has been intentional, deliberate, and willful.
14 Sundesa does not have the ability to shut down Defendant's infringing activity related to
15 the Accused Products without Court intervention. (Dkt. No. 1, ¶¶ 25, 57.)

16 Sundesa has developed recognition and goodwill for the products sold under the
17 Asserted Trademarks among both Sundesa's immediate customers and the consuming
18 public, generally. As a result of, among other things, Sundesa's substantial investment in
19 the Asserted Trademarks, and the products marketed under those trademarks, the
20 consuming public recognizes the Asserted Trademarks, and associates products and
21 features bearing those marks with a single source, namely Sundesa. (Dkt. No. 1, ¶¶ 34-
22 35.)

23 Defendant makes, uses, sells, offers for sale, and imports the Accused Products and
24 uses the Asserted Trademarks to market the Accused Products. Sundesa has not licensed
25 Defendant any rights in or to the Asserted Trademarks and Defendant does not have any
26 right or authority to use, market, display, or sell products that depict these trademarks.
27 Defendant's sale, marketing, and manufacturing of the Accused Products under the
28 Asserted Trademarks has an effect on interstate commerce. Defendant's use of marks

1 that are identical to the Asserted Trademarks in marketing its Accused Products creates
2 confusion as to the source of the Accused Products, leading customers to believe that
3 they are in fact made, or authorized, by Sundesa. (Dkt. No. 1, ¶¶ 36-39.)

4 Sundesa has suffered cognizable injury as a result of Defendant's infringing
5 activities. Sundesa has suffered injury in fact and has lost money or property as a result
6 of Defendant's unfair and unlawful business practices in the form of damage to its good
7 will, lost sales, price erosion, and other actual damages. (Dkt. No. 1, ¶¶ 41-42.)

8 Defendant marks upon, or affix to, or uses the word patent in connection with
9 Accused Products that are marketed as containing a patented blender ball wire whisk.
10 Defendant uses the word patent in advertising the Accused Products for the purpose of
11 deceiving the public and inducing them to believe that the Accused Products were made,
12 offered for sale, sold, or imported into the United States by, or with the consent of, the
13 patentee. Sundesa has suffered a competitive injury as a result of Defendant's use of the
14 word patent in connection with the Accused Products. (Dkt. No. 1, ¶¶ 43-45.)

15 CONCLUSIONS OF LAW

16 1. The Court may decide whether to grant a default judgment as a discretionary
17 matter. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). "In applying this
18 discretionary standard, default judgments are more often granted than denied." *PepsiCo*
19 *v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999).

20 2. The Court may consider several factors, including: (1) the possibility of
21 prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency
22 of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a
23 dispute concerning material facts, (6) whether the default was due to excusable neglect,
24 and (7) the strong policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d
25 1470, 1471-72 (9th Cir. 1986).

26 3. The first *Eitel* factor weighs in favor of Sundesa. Sundesa would suffer
27 prejudice and hardship if default judgment is not entered on behalf of Sundesa.
28

1 4. The second *Eitel* factor also weighs in favor of Sundesa. To recover under a
2 default judgment, Sundesa is required to “state a claim on which it may recover.”
3 *PepsiCo, Inc. v. Cal. Security Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). By
4 failing to answer the Complaint, Defendant has conceded the factual allegations stated in
5 the Complaint. After a default judgment has been entered by the Clerk of Court, “the
6 well-pleaded factual allegations of the complaint are taken as true, except for those
7 allegations relating to damages.” *Elektra Entertainment Group Inc. v. Crawford*, 226
8 F.R.D. 388, 392 (C.D. Cal. 2005). Indeed, given Defendant’s failure to respond, a full
9 adjudication on the merits is impractical, and the unrefuted allegations of Sundesa’s
10 Complaint must be taken as true for purposes of default judgment. *See PepsiCo*, 238
11 F. Supp. 2d at 1177 (“Defendant’s failure to answer Plaintiff’s complaint makes a
12 decision on the merits impractical, if not impossible”).

13 5. Having carefully reviewed Sundesa’s Complaint, the Court finds that
14 Sundesa has set forth all facts necessary to establish each of its claims for (1)
15 infringement of the Asserted Patents, (2) infringement of the Asserted Trademarks, (3)
16 false designation and unfair competition under 15 U.S.C. 1125 (a), (4) common law
17 trademark infringement and unfair competition, and (5) unfair competition in violation of
18 California Business and Professions Code Section 17200 *et seq.*

19 6. Under the patent laws of the United States, any entity that, “without
20 authority, makes, uses, offers to sell, or sells any patented invention, within the United
21 States, or imports into the United States any patented invention during the term of the
22 patent therefor, infringes the patent.” 35 U.S.C. § 271(a).

23 7. By its manufacture, use, sales, offers to sale, and importation of the Accused
24 Products in the United States, Defendant has infringed the Asserted Patents.

25 8. Under the Lanham Act, “[a]ny person who shall, without the consent of the
26 registrant, use in commerce any reproduction, counterfeit, copy, or colorable imitation of
27 a registered mark in connection with the sale, offering for sale, distribution, or advertising
28 of any goods or services on or in connection with which such use is likely to cause

1 confusion, or to cause mistake, or deceive . . . shall be liable in a civil action by the
2 registrant. . . .” 15 U.S.C. § 1114.

3 9. By its use of the Asserted Trademarks to sell, offer for sale, and advertise
4 the Accused Products, Defendant has created a likelihood of confusion in the minds of
5 the consuming public as to the source of the Accused Products. Thus, Defendant has
6 infringed the Asserted Trademarks.

7 10. Unfair competition by infringement of a trademark is covered under Section
8 43(a) of the Lanham Act. 15 U.S.C. § 1125(a), which provides as follow:

9 (a) Civil action

10 (1) Any person who, on or in connection with any goods or services, or
11 any container for goods, uses in commerce any word, term, name,
12 symbol, or device, or any combination thereof, or any false designation
13 of origin, false or misleading description of fact, or false or misleading
14 representation of fact, which –

15 (A) is likely to cause confusion, or mistake, or to deceive as to the
16 affiliation, connection, or association of such person with another person,
17 or as to the origin, sponsorship, approval of his or her goods, services, or
18 commercial activities by another person, or

19 . . .

20 shall be liable in a civil action by any person who believes that he or she
21 is or is likely to be damaged by such act.

22 11. Those with standing to sue under § 1125(a) include parties that “have been
23 injured commercially by the deceptive use of marks” and those “with a commercial
24 interest in the misused mark.” *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1109 (9th Cir.
25 1992).

26 12. To succeed on a claim for violation of California’s unfair competition law
27 (“UCL”), Sundesa needs to show that Defendant committed an “unlawful, unfair, or
28 fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. The California

1 Legislature has intended the UCL to have broad, sweeping language to include “anything
2 that can properly be called a business practice and that at the same time is forbidden by
3 law.” *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1266 (1992). Standing under
4 the UCL is granted to any “person who has suffered injury in fact and has lost money or
5 property as a result of the unfair competition.” Cal. Bus. & Prof. Code. § 17204; *Kwikset*
6 *Corp v. Superior Court*, 51 Cal. 4th 310, 322 (2011).

7 13. For an “unlawful” practice, section 17200 “borrows” violations of other laws
8 and treats them as independently actionable unlawful practices. *Farmers Ins. Exch. v.*
9 *Sup. Ct.*, Cal App. 4th 377, 383 (1992). In fact, a section 17200 claim can be based on an
10 identical set of facts as a claim based on the “borrowed” statute. *Tveter v. AB Turn-O-*
11 *Matic*, 633 F.2d 831 (9th Cir. 1980). Violations of trademark statutes can also be
12 actionable under section 17200 as an “unlawful” practice. *Denbicare U.S.A., Inc. v. Toys*
13 *“R” Us, Inc.*, 84 F.3d 1143 (9th Cir. 1996).

14 14. Defendant’s liability under Section 43(a) of the Lanham Act, and also by
15 extension under section 17200, is governed by a likelihood of confusion test. 15 U.S.C. §
16 1125(a). “Whether we call the violation infringement, unfair competition or false
17 designation of origin, the test is identical – is there a likelihood of confusion?” *New West*
18 *Corp. v. NYM Co. of California, Inc.*, 595 F.2d 1194, 201 (9th Cir. 1997).

19 15. Defendant’s unauthorized use of the Asserted Trademarks is likely to cause
20 confusion, mistake, or deception as to the source, origin, affiliation, connection, or
21 association of the Accused Products with Sundesa, or as to the approval of Accused
22 Products by Sundesa. Consumers are likely to be confused and falsely believe that the
23 Accused Products are made, authorized, or approved by Sundesa.

24 16. Sundesa has suffered, and will continue to suffer a competitive injury and
25 damage by Defendant’s actions.

26 17. Defendant’s actions constitute infringement of the Asserted Trademarks
27 under the Lanham Act.

28

1 18. Defendant has acted with full knowledge of Sundesa’s rights in the Asserted
2 Trademarks and its actions have been intentional, deliberate, and willful.

3 19. Sundesa is statutorily entitled to an award of costs pursuant to 15 U.S.C. §
4 1117(a) of the Lanham Act. In addition to the taxable costs that are normally available to
5 a “prevailing party” under Rule 54(d) of the Federal Rules of Civil Procedure and 28
6 U.S.C. § 1920, Plaintiffs are also entitled to non-taxable costs by virtue of the expense-
7 shifting provisions of the Lanham Act. *See Secalt S.A. v. Wuxi Shenkxi Const. Mach.*
8 *Co., Ltd.*, 668 F.3d 677, 690 (9th Cir. 2012) (“[An award under 15 U.S.C. § 1117(a) of]
9 the Lanham Act may also include reasonable costs that the party cannot recover as the
10 “prevailing party.”); *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir.
11 2010) (“We repeatedly have allowed prevailing plaintiffs to recover non-taxable costs
12 where statutes authorize attorney’s fees awards to prevailing parties.”)

13 20. Sundesa has suffered injury in fact and has lost money or property as a result
14 of Defendant’s unfair and unlawful business practices in the form of damage to its good
15 will, lost sales, and other actual damages.

16 21. Defendant’s actions constitute unfair, unlawful, deceptive, or misleading
17 practices in violation of California Business and Professions Code section 17200 *et seq.*

18 22. Sundesa has also set forth all facts necessary to establish Defendant’s
19 liability for false marking. Under 35 U.S.C. § 292, “[w]hoever marks upon, or affixes to,
20 or uses in advertising in connection with any unpatented article, the word ‘patent’ or any
21 word or number importing that the same is patented, for the purpose of deceiving the
22 public” is liable for damages adequate to compensate for the injury.

23 23. Defendant uses the word patent in its advertising of the Accused Products
24 for the purpose of deceiving the public. Defendant marks its products with the intent to
25 deceive the public for the purpose of falsely establishing itself as an innovator in the
26 shaker cup industry and to gain an unfair competitive advantage. Therefore, Defendant is
27 liable for false marking under 35 U.S.C. § 292.
28

1 24. The third *Eitel* factor weighs in favor of entry of default judgment. By
2 failing to answer or otherwise respond to the Complaint, Defendant has conceded the
3 factual allegations stated in the Complaint. After a default judgment has been entered by
4 the Clerk of Court, “the well-pleaded factual allegations of the complaint are taken as
5 true, except for those allegations relating to damages.” *Elektra*, 226 F.R.D. at 392. The
6 Complaint sets forth well-pleaded claims for relief.

7 25. The fourth *Eitel* factor weighs in favor of default judgment as there is a
8 calculable sum of money at stake. Sundesa has been damaged by Defendant’s
9 infringement of the Asserted Patents and the Asserted Trademarks. Because of
10 Defendant’s failure to plead or otherwise defend itself, Sundesa has been unable to obtain
11 any information regarding the total number of Accused Products used, made, sold,
12 offered for sale, or imported by Defendant into the United States. Thus, the amount of
13 money at stake is not clear. A supplemental hearing will be held before this Court to
14 determine the amount of damages awarded to Sundesa.

15 26. The Court finds this case is not exceptional under 35 U.S.C. § 285 and 15
16 U.S.C. § 1117(a). A case is deemed exceptional if it stands out from others with respect
17 to the substantive strength of a party’s litigation position or unreasonable manner in
18 which the case was litigated. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134
19 S. Ct. 1749, 1755 (2014). Although Defendant willfully infringed the Accused Products,
20 willfulness is only one factor the Court considers when determining if a case is
21 exceptional. *Id.* (“District courts may determine whether a case is ‘exceptional’ in the
22 case-by-case exercise of their discretion, considering the totality of the
23 circumstances.”). Neither willful infringement nor defaults are unusual in patent
24 infringement cases. *Telequip Corp. v. The Change Exch.*, No. 501CV1748FJSGJD, 2007
25 WL 655734, at *2 (N.D. N.Y. Feb. 26, 2007). Further, Defendant did not litigate the case
26 in an unreasonable manner because it did not litigate the case at all. Making a conscious
27 choice to default is not enough to make a case “exceptional.” *See RCI TM Corp. v. R &*
28 *R Venture Grp., LLC*, No. 6:13-CV-945-ORL-22, 2015 WL 668715, at *11 (M.D. Fla.

1 Feb. 17, 2015) (finding there was no exceptional case under *Octane* when defendants
2 failed to respond to a trademark infringement case). After reviewing the totality of the
3 circumstances, the Court concludes that this case is not exceptional and therefore,
4 Plaintiff is not awarded costs and attorneys' fees.

5 27. The fifth *Eitel* factor weighs in favor of default judgment. In this case
6 Sundesa has filed a well-pleaded Complaint and Defendant has failed to answer.
7 Defendant has made no attempt to challenge the accuracy of the allegations of the
8 Complaint and thus no disputes exist that would preclude default judgment. *See, e.g.,*
9 *Landstar Ranger v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916 (C.D. Cal. 2010).

10 28. The sixth *Eitel* factor weighs in favor of default judgment. Here, the
11 likelihood of excusable neglect is remote. Sundesa served the summons and Complaint
12 on Defendant on November 14, 2014. Defendant has failed to defend itself by filing an
13 answer to Sundesa's Complaint. Furthermore, Defendant has failed to seek any extension
14 of time to respond to the Complaint or to bring any motion to set aside its default.

15 29. The seventh *Eitel* factor weighs in favor of default judgment. A judgment
16 on the merits is impossible if a defendant fails to answer or appear in a case, such as here.
17 *See PepsiCo*, 238 F. Supp. 2d at 1177 ("Defendant's failure to answer Plaintiffs'
18 complaint makes a decision on the merits impractical, if not impossible.").

19 30. This Court has power to grant a permanent injunction in this Action pursuant
20 to 35 U.S.C. § 283, 15 U.S.C. § 116(a), and California Business & Professions Code
21 section 17203. A permanent injunction is a proper remedy for unfair competition under
22 the patent laws of the United States, the Lanham Act, and under the UCL. 35 U.S.C. §
23 283 (stating the district court "may grant injunctions in accordance with principles of
24 equity to prevent violation of any right secured by patent, on such terms as the court
25 deems reasonable"); 15 U.S.C. § 1116(a) (stating that the district court has the "power to
26 grant injunctions according to principles of equity and upon such terms as the court may
27 deem reasonable, . . . to prevent a violation under subsection (a), . . . of section 1125 of
28 this title"); Cal. Bus & Prof. Code § 17203 ("Any person who engages, has engaged, or

1 proposes to engage in unfair competition may be enjoined in any court of competent
2 jurisdiction.”)

3 31. A court should grant permanent injunctive relief if the plaintiff
4 demonstrates: (1) an irreparable injury; (2) inadequate remedies available at law; (3) a
5 balance of the hardships favors the plaintiff; and (4) the public interest would not be
6 disserved by a permanent injunction. *eBay, Inc. v. MercExchange LLC*, 547 U.S. 388,
7 391 (2006).

8 32. In this case, injunctive relief is an appropriate remedy for Sundesa as it is
9 necessary to prevent further infringement and harm to Sundesa.

10 33. As to the first factor for injunctive relief, Sundesa faces irreparable injury if
11 Defendant is allowed to continue to make, use, sell, offer to sell and import the Accused
12 Products and market them using the Asserted Trademarks. Additionally, as the exclusive
13 licensee of the Asserted Patents, Sundesa is entitled to prevent all others from making,
14 using, selling, offering for sale, or importing any product that embodies the claims of the
15 Asserted Patents. Sundesa maintains its position as the sole company entitled to produce
16 manufacture and sell products under the Asserted Patents. Sundesa faces permanent loss
17 of customers, loss of goodwill, irreparable harm to business relationships, and irreparable
18 harm to its reputation if Defendant is allowed to continue to import and distribute inferior
19 counterfeit shaker cups in the market place.

20 34. The second factor, inadequate remedies at law, is also satisfied. “[T]he
21 requisite analysis for the second factor of the four-factor test inevitably overlaps with that
22 of the first. . . .” *MercExchange*, 500 F. Supp. 2d at 582. In addition to the irreparable
23 harm that Sundesa faces if Defendant is not enjoined, there are other reasons that favor
24 Sundesa on this factor.

25 35. Sundesa must rely on judicial enforcement in order to shut down
26 Defendant’s manufacture, use, sales, offers to sale, and importation of the Accused
27 Products. There is risk for future infringement unless Sundesa is granted its request for a
28 permanent injunction. *See Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.

1 Supp. 2d 1197, 1220 (C.D. Cal. 2007) (“A legal remedy is inadequate if it would require
2 a ‘multiplicity of suits.’”). Patents secure an exclusive right for the holder of the rights
3 thereunder. Sundesa is an exclusive licensee of the Asserted Patents and it does not grant
4 any sublicenses. If Defendant is allowed to continue its infringement of the Asserted
5 Patents, Sundesa will be deprived of the rights that it is entitled to under these patents.
6 Defendant has ignored Sundesa’s demands to cease importation, sales, and other
7 distribution of the Accused Products and has continued its infringing activity willfully,
8 and in bad faith, even in the face of this pending action. As such, the Court finds that this
9 is an exceptional case.

10 36. To ensure a successful and meaningful result for Sundesa a permanent
11 injunction is required. Indeed, in unfair competition cases, “[i]njunctive relief is the
12 remedy of choice . . . since there is no adequate remedy at law for the injury caused by a
13 defendant’s continuing infringement.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d
14 1175, 1180 (9th Cir. 1988).

15 37. As to the third factor, the balance of hardships weighs in favor of Sundesa.

16 38. Finally, public interest weighs in favor of granting a permanent injunction.
17 There is a strong public interest in protective patent rights. *See Unique Functional Prods.*
18 *v. Mastercraft Boat Co.*, 2002 U.S. Dist. LEXIS 26954, 25 (C.D. Cal. Nov. 19, 2002).
19 Further, it is highly unlikely that grant of a permanent injunction would result in a
20 shortage of shaker cups available to the public. *See id.* (holding that public interest was
21 not negatively affected by an injunction because it would not create a shortage of the
22 patented product.) Additionally, an injunction is appropriate in Lanham Act cases
23 because “[t]he public has an interest in avoiding confusion between two companies’
24 products.” *Internet Specialties West, Inc., v. Milon-DiGiorgio Enters., Inc.*, 559 F.3d
25 985, 993 n.5 (9th Cir. 2009). Enforcement by permanent injunction cuts at the root of
26 unfair competition by putting an end to the unfair and infringing activities. Sundesa’s
27 proposed injunction merely protects its intellectual property.
28

ORDER

1
2 IN LIGHT OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS
3 OF LAW, JUDGMENT IS HEREBY MADE AND ENTERED in the Action in favor of
4 plaintiff Sundesa, LLC (“Sundesa”) and against defendant Harrison-Daniels, Inc.
5 (“Defendant”) as follows:

- 6 1. Sundesa is awarded monetary damages against Defendant in an amount to be
7 determined at a supplemental hearing before this Court pursuant to Rule
8 55(b)(2) of the Federal Rules of Civil Procedure;
- 9 2. Defendant is ordered to make an accounting, within 14 days from the date of
10 this Order, for all the Accused Products it made, used, sold, offered for sale,
11 or imported into the United States;
- 12 3. Defendant and each of its officers, directors, agents, servants, employees,
13 successors, and all those in active concert or participation with them, are
14 permanently enjoined and restrained from directly or indirectly infringing, in
15 any manner, any of the Asserted Patents;
- 16 4. Defendant and each of its officers, directors, agents, servants, employees,
17 successors, and all those in active concert or participation with them, are
18 permanently enjoined and restrained from producing, manufacturing,
19 marketing, advertising, promoting, offering for sale, selling, or distributing
20 products, including the Defendant’s products, in connection with the
21 Asserted Trademarks;
- 22 5. Defendant and each of its officers, directors, agents, servants, employees,
23 successors, and all those in active concert or participation with them, are
24 permanently enjoined and restrained from engaging in unfair business
25 practices pursuant to 15 U.S.C. § 1116(a) and California Business and
26 Professions Code § 17200, *et seq.*;
- 27 6. The Court imposes a constructive trust on the sales made by Defendant as a
28 result of its wrongful or infringing acts.

- 1 7. Defendant is ordered to destroy its entire stock of Accused Products,
2 together with all labels, signs, prints, packages, wrappers, receptacles, and
3 advertisements, as well as all plates, molds, matrices, or other means of
4 making the same, within 14 days from the date of this Order.
- 5 8. The Court shall retain jurisdiction to enforce the foregoing injunction, and
6 Sundesa may engage in post-judgment discovery both to enforce the money
7 judgment and to monitor Defendant's compliance with the injunction;
- 8 9. Interest shall accrue on the money judgment at the legal rate of interest until
9 such time as the money judgment is satisfied in full; and
- 10 10. Sundesa may apply to the Court for the award of post-judgment attorneys'
11 fees incurred in seeking to enforce the money judgment and monitor and
12 enforce the injunction.

13 The Court hereby orders that a supplemental hearing shall be held on **March 30, 2015 at**
14 **1:30 p.m.** to make an accounting for the total number of Accused Products made, used,
15 sold, offered for sale, or imported by Defendant and to determine the amount of
16 Sundesa's damages resulting from Defendant's Infringement and unfair competition.

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18 **IT IS SO ORDERED.**

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20 **Dated: March 5, 2015**

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24 _____
25 Hon. Otis D. Wright II
26 United States District Court Judge
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