

## Lamborghini Scores \$6M TM Win Against Argentine Co. Owner

By **Lauren Berg**

*Law360 (May 22, 2020, 6:01 PM EDT)* -- A Virginia federal judge on Thursday granted default judgment in favor of Lamborghini, awarding the Italian luxury automaker \$6 million in damages in a trademark infringement suit against the owner of an Argentinian company accused of selling counterfeit Lamborghini merchandise.

Adopting a magistrate judge's recommendation, U.S. District Judge T.S. Ellis III entered default judgment against Jose Antonio Fernandez Garcia, one of the operators of Racing Inc., prohibiting him from marketing or selling counterfeit products that infringe Lamborghini's trademarks and declaring that he has no rights to license and sell Lamborghini-branded merchandise.

Judge Ellis also awarded Lamborghini, along with its parent company Volkswagen, \$6 million in statutory damages, according to the order.

Lamborghini and VW first sued Racing Inc., doing business as Lamborghini Latino America USA, Garcia and his alleged co-conspirators Anthony Crudup and Robert Braner in January 2018, asserting claims of trademark infringement and counterfeiting, cybersquatting and trademark dilution. The plaintiffs also sought a declaratory judgment that Garcia's purported licensing agreements with Lamborghini are invalid and fraudulent.

Lamborghini and VW allege that Garcia and his fellow defendants met with Lamborghini to discuss obtaining a license to sell Lamborghini cars and merchandise, but an agreement was never reached, according to the order.

Instead, Garcia and the other defendants used fraudulent licensing agreements to establish "illegal enterprises" throughout the U.S. and Latin America to make and sell counterfeit merchandise, like cigars and T-shirts, bearing the Lamborghini trademarks, the car companies said.

Lamborghini and VW then spent the next year trying to serve their complaint on Garcia, who lives in Argentina, according to the order. The companies were eventually allowed to serve it via email, according to the complaint, but shortly after Garcia answered the complaint, his attorneys requested to withdraw as his counsel.

Garcia said he could no longer afford to pay his attorneys and, after his request for pro bono representation was denied, decided to represent himself, according to the order. Garcia failed to

respond to the plaintiff's amended complaint and failed to fulfill his discovery obligations, according to the order, prompting the car companies to file the instant motion for default judgment against Garcia in December.

Lamborghini and VW reached confidential settlement agreements with Racing Inc. and the other defendants prior to this motion in September 2019, according to court records.

In her April recommendation, U.S. Magistrate Judge Theresa Carroll Buchanan found that Lamborghini sufficiently pled its trademark claims and found that Garcia's purported licensing agreements with Lamborghini are invalid and fraudulent. She recommended issuing a permanent injunction against Garcia prohibiting him from selling counterfeit Lamborghini products and entering a declaratory ruling that he has no licensing rights from Lamborghini.

In a letter to the court on May 11, Garcia wholly objected to the recommendation, saying he wants to defend himself in the case.

In his order Thursday, Judge Ellis took the letter to be "construed liberally" as a motion to set aside entry of default judgment, but denied the request, finding that Garcia hasn't proffered any evidence that he has a meritorious defense or evidence that he possesses valid licensing agreements with Lamborghini and VW.

In contrast, the judge said Garcia's former co-defendant, Braner, signed an affidavit saying he never signed the purported licensing agreements that Garcia relies upon as evidence of a valid license.

The judge said Garcia also waited more than five months before filing any request to set aside the entry of default and that he failed to respond to the plaintiff's amended complaint.

Judge Ellis adopted the magistrate judge's recommendations in their entirety.

The fight isn't quite over yet, however, as Garcia's appeal of Judge Ellis' November 2019 order allowing Lamborghini and VW to file an amended complaint is still pending before the U.S. Court of Appeals for the Fourth Circuit.

The parties did not immediately respond to requests for comment Friday.

Lamborghini and VW are represented by Monica Riva Talley, Daniel E. Yonan, Nicholas J. Nowak, Daniel S. Block and Matthew M. Zuziak of Sterne Kessler Goldstein & Fox PLLC.

Court records show Garcia is representing himself.

The case is Automobili Lamborghini SpA et al. v. Jose Antonio Fernandez Garcia, case number 1:18-cv-00062, in U.S. District Court for the Eastern District of Virginia.

--Editing by Kelly Duncan.