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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HEAVENLY VALLEY, LP, et al.,

Plaintiffs,

CIV. NO. S-09-1533 FCD GGH

vs.

LAKE TAHOE DEVELOPMENT
COMPANY, LLC,

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiffs’ motion for default judgment against defendant Lake Tahoe Development Company (“LTD”), filed April 15, 2010, was submitted on the record. Local Rule 78-230(h). Upon review of the motion and the supporting documents, and good cause appearing, the court issues the following findings and recommendations.

BACKGROUND

On June 3, 2009, plaintiffs filed the underlying complaint in this action against defendant, alleging that defendant improperly and without authorization used the Heavenly trademarks in the name “The Chateau at Heavenly Village,” and in the internet domain name www.chateauheavenlyvillage.com in regard to a real estate project entered into under a Condominium Marketing License Agreement between defendant LTD and Plaintiff RockResorts, a subsidiary of Vail Resorts, Inc., of which Heavenly Valley LP is also a subsidiary. Claims are

1 for breach of contract, trademark infringement (15 U.S.C. § 1114), trademark dilution (15 U.S.C.
2 § 1125(c), false designation of origin (15 U.S.C. § 1125(a)), cybersquatting (15 U.S.C. §
3 1125(d)), state law trademark infringement (Cal. Bus. & Prof. Code §§ 14320, 14335 and
4 common law), state law trademark dilution (Cal. Bus. & Prof. Code § 14330), and unfair
5 competition (Cal. Bus. & Prof. Code §§ 17200, 17500, and common law). The summons and
6 complaint were personally served on defendant LTD by personal service on Michael
7 McLaughlin, agent for service of process, on June 8, 2009. Fed. R. Civ. P. 4(h). Pacific Atlantic
8 Trading Co. v. M/V Main Express, 758 F.2d 1325, 1331 (9th Cir. 1985) (default judgment void
9 without personal jurisdiction). Defendant has failed to file an answer or otherwise appear in this
10 action. On July 2, 2009, the clerk entered default against defendant LTD.

11 The instant motion for default judgment and supporting papers were served by
12 mail on defendant at its last known address. Defendant filed no opposition to the motion for
13 default judgment. Plaintiffs seek an entry of default judgment against defendant in the form of a
14 permanent injunction.¹

15 DISCUSSION

16 Entry of default effects an admission of all well-pleaded allegations of the
17 complaint by the defaulted party. Geddes v. United Financial Group, 559 F.2d 557 (9th Cir.
18 1977). The court finds the well-pleaded allegations of the complaint state a claim for which
19 relief can be granted. Anderson v. Air West, 542 F.2d 1090, 1093 (9th Cir. 1976). The
20 memorandum of points and authorities and affidavits filed in support of the motion for default
21 judgment also support the finding that plaintiff is entitled to the relief requested. There are no
22 policy considerations which preclude the entry of default judgment of the type requested. See

23
24 ¹ Although defendant filed for bankruptcy protection on October 5, 2009, the bankruptcy
25 court modified the stay to permit HVLP and RockResorts to pursue injunctive relief for
26 trademark infringement against LTD in this case. In re Lake Tahoe Devel. Co., LLC, No. 09-
41579-B-11 (Bankr. E.D. Cal.). This court takes judicial notice of that order. A court may take
judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir.
1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986).

2 After determining that entry of default judgment is warranted, the court must next
3 determine the terms of the judgment. Plaintiff seeks a permanent injunction preventing
4 defendant from using the name “The Chateau at Heavenly Village,” the internet domain name
5 www.chateauheavenlyvillage.com, or similar use of the term “Heavenly” or the Heavenly
6 trademarks, and that defendant transfer this domain name to plaintiff. The Lanham Act provides
7 for injunctive relief to prevent trademark infringement. 15 U.S.C. § 1116(a). The
8 Anticybersquatting Consumer Protection Act (“ACPA”) provides, *inter alia*, for injunctive relief
9 to prevent use of a confusingly similar mark in a domain name. 15 U.S.C. § 1125(d);
10 Ringcentral, Inc. v. Quimby, ___ F.Supp.2d ___, 2010 WL 1459736 (N.D. Cal. 2010).

11 The injunctive relief requested is reasonable and specifically tailored. Plaintiffs
12 seeks to permanently enjoin defendant from using the name, “The Chateau at Heavenly Village,”
13 the internet domain name www.chateauheavenlyvillage.com, Heavenly’s trademarks or other
14 confusingly similar designations. Plaintiffs also seeks an order preventing defendant from using
15 or reproducing any of the Heavenly trademarks as part of a brand name for its products or
16 services, including the aforementioned names. Also requested is an order requiring defendant to
17 destroy all items in their possession which contain the Heavenly trademarks or aforementioned
18 names. In regard to the www.chateauheavenlyvillage.com domain name, plaintiffs seek an order
19 requiring defendant to relinquish all interest in it or any confusingly similar domain name and
20 transfer all such domain names to HVLP. Finally, plaintiffs seek a permanent injunction
21 preventing defendant, or others acting in concert with defendant, with actual notice from aiding
22 anyone else in engaging in any of the aforementioned activities. This court will recommend that
23 plaintiff’s request for injunctive relief be granted in accordance with terms set forth in plaintiffs’
24 proposed judgment.

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1 CONCLUSION

2 In view of the foregoing findings, it is the recommendation of this court that:

3 1. Plaintiffs' motion for default judgment, filed April 15, 2010, (dkt. # 19), be

4 GRANTED.

5 2. Injunctive relief be granted as specified in plaintiffs' proposed judgment which
6 is approved as to form and substance.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
9 fourteen (14) days after being served with these findings and recommendations, any party may
10 file written objections with the court and serve a copy on all parties. Such a document should be
11 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
12 objections shall be served and filed within fourteen (14) days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: 07/22/2010

/s/ Gregory G. Hollows

16 _____
17 GREGORY G. HOLLOWS
18 UNITED STATES MAGISTRATE JUDGE

18 GGH:076/Heavenly1533.def.wpd