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11 OTTER PRODUCTS LLC; TREEFROG

12 DEVELOPMENTS, INC. d/b/a

13 LIFEPROOF,

14 Plaintiff,

15 v.

16 ACE COLORS FASHION, INC.;

17 ELECTRONICOS; SHAYNA'S CELL

18 PHONE ACCESSORIES; VANESSA

19 ACCESSORIES; DOES 1–10, inclusive,

20 Defendants.

Case No. 2:14-cv-00141-ODW(ASx)

**ORDER DENYING PLAINTIFFS'****APPLICATION FOR DEFAULT****JUDGMENT AGAINST****DEFENDANT ELECTRONICOS [45]**

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**I. INTRODUCTION**

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Plaintiffs Otter Products, LLC (“OtterBox”) and Treefrog Developments, Inc., dba LifeProof (“LifeProof”) discovered that Defendant Electronics was selling unauthorized goods bearing Plaintiff’s registered trademarks. Plaintiffs filed suit for trademark-infringement against Defendant Electronics and other parties. (ECF No. 1.) Electronics was served with a Summons and Complaint on March 14, 2014, with personal service to Pedro Perez, the “person-in-charge” at Electronics. (ECF No. 26.) On April 28, 2014, Plaintiffs filed a motion requesting entry of default

1 judgment against Electronicos. (ECF No. 45.) After reviewing the Plaintiffs’ motion,  
2 the Court issued an Order to Show Cause why Plaintiffs’ application should not be  
3 denied for lack of adequate notice. (ECF No. 51.) Since Plaintiffs failed to respond to  
4 that Order, the Court **DENIES** Plaintiffs’ Application for Default Judgment Against  
5 Defendant Electronicos.<sup>1</sup> (ECF No. 45.)

## 6 II. DISCUSSION

7 Plaintiffs failed to respond to the Court’s Order to Show Cause regarding the  
8 defect in service to Electronicos.<sup>2</sup> Plaintiff also has not provided sufficient  
9 information to show proper service of Electronicos under any provision of Federal  
10 Rule of Civil Procedure 4. The Court therefore cannot grant default judgment.

11 The Federal Rules of Civil Procedure provide four possible avenues of service  
12 to an individual within a judicial district of the United States. Fed. R. Civ. P. 4(e).  
13 A Plaintiff may serve individual by (1) following state law for serving a summons of  
14 the state where the district court is located, (2) delivering a copy of the summons and  
15 of the complaint to the individual personally, (3) leaving a copy of the summons and  
16 the complaint at the individual’s dwelling or usual place of abode with a resident of  
17 suitable age, or (4) by delivering a copy of the summons and complaint to an agent  
18 authorized by appointment or by law to receive service. *Id.*

19 As this Court is located in the Central District of California, Plaintiffs may  
20 satisfy service by complying with California state law. *See* Fed. R. Civ. P. 4(e)(1).  
21 California law permits that a summons may be served by leaving a copy of the  
22 summons and the complaint at the individual’s “usual place of business” in the  
23 presence of “a person apparently in charge of his or her office, [or] place of business  
24 . . . at least 18 years of age.” Cal. Civ. Proc. Code § 415.20(b). In such a case, the  
25 plaintiff must send a copy of the summons and complaint via first-class mail “to the

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27 <sup>1</sup> After 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.

28 <sup>2</sup> The Court specifically warned Plaintiffs in its Order to Show Cause that failure to timely respond  
to the Order would “result in denial of the default-judgment application.” (ECF No. 51, at 2.)

1 person to be served at the place where a copy of the summons and complaint were  
2 left.” *Id.*

3 Plaintiff has not provided Defendant Electronicos with proper service under  
4 Rule 4. In their Proof of Service, Plaintiffs indicate compliance with Rule 4(e)(2)(C).  
5 Plaintiffs state that the Summons and Complaint were served to “Pedro Perez, Person  
6 In Charge, who is designated by law to accept service of process on behalf of  
7 Electronicos.” (ECF No. 26.) However, as Electronicos is an unknown business  
8 entity, of unknown legal status, there is no way for Plaintiffs, or the Court, to know  
9 who the appropriate service agent is. (*See* Compl. ¶ 4.) Service to the appropriate,  
10 legally designated agent is a practical impossibility. For this reason, notice is  
11 improper under Rule 4(e)(2)(C).

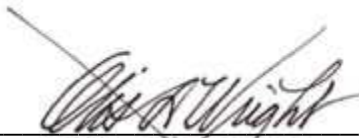
12 Moreover, Plaintiff failed to comply with the service requirements under  
13 California law as well. Plaintiff complied with the first requirement of California law  
14 by personally serving Perez, the person allegedly in charge, at Electronicos’s place of  
15 business. (ECF No. 26.) However, Plaintiff has failed to provide any proof that they  
16 complied with the mailing requirement of section 415.20(b). As such, service was not  
17 properly provided as required under Rule 4(e)(1). Plaintiff failed to meet the  
18 requirements of any provision of Rule 4(e) and thus, service was improper.

### 19 III. CONCLUSION

20 For the reasons discussed above, the Court **DENIES** Plaintiffs’ Application for  
21 Default Judgment Against Defendant Electronicos. (ECF No. 45.)

22 **IT IS SO ORDERED.**

23  
24 June 18, 2014

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27 **OTIS D. WRIGHT, II**  
28 **UNITED STATES DISTRICT JUDGE**