

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

CHOOLJIAN BROTHERS PACKING)
COMPANY, INC., a California)
corporation,)
Plaintiff,)
v.)
LORRAINE M. TILSON, individually)
and d/b/a The Cranberry Lady, The)
Cranberry Lady Products USA, Inc.,)
Tilsonberry Farms, Ltd., and The)
Cranberry Lady Products Canada, Inc.,)
et. al.,)
Defendants.)

Plaintiff's motion for an assignment order is pending in this action and set for hearing on Tuesday, January 20, 2009. Defendants have filed no opposition. The court has reviewed the moving papers and has determined that this matter is suitable for decision without oral argument. Local Rule 78-230(h). The Court will vacate the January 20, 2009, hearing and instead issue the following order.

On October 28, 2008, this Court adopted findings and recommendations and ordered that a default judgment be entered in favor of Plaintiff. See Court's Docket Doc. No. 30. The amount of the default judgment was \$479,471.04, and the post-judgment interest was set at a rate

1 of 2.15%. See id. The Clerk entered judgment the same day. See Court's Docket Doc. No. 31.
2 On December 1, 2008, Plaintiff filed this motion for an assignment order. The motion indicates
3 that no sums have been paid on the judgment to date. Plaintiff has identified two registered
4 trademarks that are held by Defendants and that have not been assigned to any other person. See
5 Vote Declaration at ¶ 7. Plaintiff seeks an order which "assigns all right, title, and interest in said
6 marks to [Plaintiff] so that [Plaintiff] may lawfully use the packaging it was caused to produce,
7 and collect payments on the marks until the full amount of its judgment against [Defendants] is
8 satisfied." Plaintiff requests that the Court issue an assignment order pursuant to California Code
9 of Civil Procedure ("CCCP") § 708.510, as made applicable through Federal Rule of Civil
10 Procedure 69(a).

11 A federal district court has the authority to enforce its money judgments in accordance
12 with the practice and procedure of the state in which it sits. Fed. R. Civ. Pro. 69(a); Paul Revere
13 Ins. Group v. United States, 500 F.3d 957, 960 (9th Cir. 2007). An assignment order under
14 C.C.C.P. § 708.510 "is a court order assigning to the judgment creditor . . . the debtor's right to
15 payments due from a third person." Rutter Group, California Practice Guide – Enforcing
16 Judgments and Debts § 6.1422.5 (2008) (hereinafter "Rutter Group"). CCCP § 708.510 reads in
17 relevant part:

18 Except as otherwise provided by law, upon application of the judgment creditor
19 on noticed motion, the court may order the judgment debtor to assign to the
judgment creditor . . . all or part of *a right to payment* due or to become due,
20 whether or not the right is conditioned on future developments, including but not
limited to the following types of payments: (1) Wages due from the federal
21 government that are not subject to withholding under an earnings withholding
order. (2) Rents. (3) Commissions. (4) Royalties. (5) Payments due from a
22 patent or copyright. (6) Insurance policy loan value.

23 C.C.C.P. § 708.510(a) (emphasis added). This section also provides that "notice of the motion
shall be served on the judgment debtor. Service shall be made personally or by mail." C.C.C.P.
24 § 708.510(b).

25 In light of the above, the Court cannot grant Plaintiff's motion. First, Plaintiff does not
26 indicate that Defendants have been served either personally or by mail with notice of the motion
27

1 for assignment. See C.C.C.P. § 708.510(b); Rutter Group at § 6:1439. Plaintiff filed no
2 certificate of service and a review of the Court's ECF system does not indicate that the motion
3 for assignment was sent to Defendants.

4 Second, by its plain terms, C.C.C.P. § 708.510 deals with the assignment of rights to
5 payment. See C.C.C. P. § 708.510(a); Rutter Group §§ 6.1422, 6.1422.5. Plaintiff appears to
6 request any payments due from/on the trademarks. This part of the requested relief may be
7 appropriate under C.C.C.P. § 708.510(a). However, Plaintiff also is attempting to gain title to
8 the trademarks so that Plaintiff itself may utilize them. Plaintiff cites no case law that interprets
9 C.C.C.P. § 708.510, nor any authority for the proposition that C.C.C.P. § 708.510 allows the
10 Court to assign something other than the Defendants' right to *payments* due from third parties for
11 use of the trademarks. Because Plaintiff has not shown that Defendants received notice, and
12 because Plaintiff has not shown that C.C.C.P. § 708.510 encompasses the relief requested, the
13 Court will deny the motion.

14
15 Accordingly, IT IS HEREBY ORDERED that the January 20, 2009, hearing is
16 VACATED and that Plaintiff's motion for order of assignment is DENIED.

17
18 IT IS SO ORDERED.

19 **Dated: January 14, 2009**

20 /s/ Anthony W. Ishii
21 CHIEF UNITED STATES DISTRICT JUDGE