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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JACINTO ROMERO, an individual; and
RAMIRO CERDA, an individual d/b/a Yo No
Fui Clothing,

Plaintiffs,

v.

ALESSIA GIACOBINO, and individual; and
DOES 1-10, inclusive,

Defendants.

Case No. 1:13-cv-02046-AWI-SKO

**ORDER DENYING PLAINTIFFS'
REQUEST TO RESET THE HEARING
TO DETERMINE DAMAGES**

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFFS' MOTION
FOR DEFAULT JUDGMENT**

(Docs. 15; 23)

Plaintiffs Jacinto Romero and Ramiro Cerda (“Plaintiffs”) filed a Complaint on December 16, 2013, for trademark infringement, unfair competition, and false designation of origin. (Doc. 1.) Defendant Alessia Giacobino was served on March 26, 2014, with an answer to the complaint due April 16, 2014. (Doc. 5.) The clerk entered default against Defendant on August 29, 2014 (Doc. 11), and Plaintiffs filed their Motion for Default Judgment on November 13, 2014 (Doc. 15).

Because Plaintiffs’ Motion for Default Judgment was set for submission without a hearing, Plaintiffs requested a hearing to determine damages pursuant to Fed. R. Civ. Proc. 55(b)(2), which was set for January 14, 2015. (Docs. 16; 17.) As Defendant resides in Italy, Plaintiffs were

1 unable to serve Defendant with notice of the hearing and Plaintiffs requested the hearing be
2 rescheduled to allow them sufficient time to effect service. (Doc. 18.) The hearing was vacated
3 and reset to June 17, 2015 -- a five-month extension of time. (Doc. 19.) Plaintiffs initiated service
4 on the Defendant in Italy on April 27, 2015, and requested a further continuance of the hearing to
5 determine damages. (Doc. 20.) The hearing was reset to August 12, 2015. (Doc. 21.)

6 On June 3, 2015, Plaintiffs filed their "Notice Regarding International Service of Process,"
7 confirming that international service had commenced upon Defendant of the notice of the August
8 12, 2015, hearing to determine damages. (Doc. 22.) On July 22, 2015, Plaintiffs filed a "Notice
9 Regarding International Service of Process and Request to Reschedule Hearing to Determine
10 Damages," requesting the hearing be reset for some time in November 2015. (Doc. 15.) Plaintiffs
11 explained that Defendant has moved to a new Italian city, and "[u]pon notice of a rescheduled
12 hearing date, Plaintiffs will take necessary steps to locate and serve the [D]efendant." (Doc. 15.)

13 Plaintiffs do not know where Defendant currently resides in Italy. (Doc. 15.) Based on
14 Plaintiffs' difficulties thus far in serving the Defendant, the Court anticipates that an additional
15 ninety day continuance will not provide sufficient time to both locate and personally serve the
16 Defendant. The Court will not continue resetting the hearing to determine damages indefinitely,
17 and Plaintiffs' request to reset the hearing to determine damages is denied.

18 Local Rule 230(b) requires motions to be heard at least twenty-eight (28) days after serving
19 and filing the motion. Because service has not been effectuated within the time required under the
20 Local Rules, the motion for default judgment is procedurally defective and must be denied.

21 Accordingly, the Court will deny Plaintiffs' motion without prejudice to Plaintiffs' right to
22 re-file their motion and set a hearing date at least twenty-eight (28) days after the motion is served
23 and filed. To accommodate international service of process, Plaintiffs will be given one hundred
24 and eighty (180) days to re-file and personally serve upon Defendant their motion for default
25 judgment and notice of their requested hearing on damages. Plaintiffs must file their motion for
26 default judgment and request for a hearing on damages and file proofs of service on Defendant on
27 or before February 10, 2016.

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IT IS HEREBY ORDERED that:

1. Plaintiffs' request to reset the hearing to determine damages is DENIED;
2. Plaintiffs' motion for default judgment is DENIED without prejudice; and,
3. On or before February 10, 2016, Plaintiffs may re-file their motion for default judgment and set a hearing date to determine damages at least twenty-eight (28) days after the motion is filed in compliance with Local Rule 230(b).

IT IS SO ORDERED.

Dated: July 29, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE