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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERRAGIO, LTD.,
Plaintiff,
v.
MALAKAN DIAMOND CO.,
Defendant.

No. 1:16-cv-01647-DAD-SKO

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT WITHOUT
PREJUDICE

(Doc. No. 37)

MALAKAN DIAMOND CO.,
Counterclaimant,
v.
VERRAGIO, LTD.,
Counter-defendant.

Plaintiff filed this suit on October 31, 2016, alleging various copyright and trademark infringement claims against defendant Malakan Diamond Co. (Doc. No. 1.) On January 6, 2017, defendant Malakan Diamond filed an answer and counterclaims against plaintiff, and cross-claims against AE Jewelers, Inc., AE Jewelers of Appleton, LLC, Harold Jaffee Jewelry, Inc., and Jensen Jewelers of Idaho, LLC. (Doc. No. 10.) Several of those cross-defendants were subsequently dismissed from the suit by Malakan Diamond on March 29, 2017. (Doc. No. 34.)

1 On April 11, 2017, defendant/counterclaimant Malakan Diamond filed a motion for
2 summary judgment with respect to plaintiff's claims against it. (Doc. No. 37.) This motion for
3 summary judgment was opposed by plaintiff on May 2, 2017, both on the merits and because
4 discovery has not yet commenced in this action. (Doc. No. 41.) Additionally, plaintiff sought
5 leave under Rule 56(d) to conduct discovery relevant to this case prior to the court addressing
6 defendant's motion for summary judgment. (*Id.*)

7 Because no discovery has yet been conducted in this action, defendant Malakan
8 Diamond's summary judgment motion is denied as premature and plaintiff's request for leave to
9 conduct discovery is granted. *See* Fed. R. Civ. P. 56(d). The denial of the motion for summary
10 judgment is without prejudice to defendant/counterclaimant refiling that motion following the
11 exchange of sufficient discovery between the parties.

12 IT IS SO ORDERED.

13 Dated: May 12, 2017

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16 UNITED STATES DISTRICT JUDGE
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