

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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| ZYNGA GAME NETWORK INC., a |) | |
| Delaware Corporation, |) | |
| |) | No. 09-3264 SC |
| Plaintiff, |) | |
| |) | ORDER GRANTING |
| v. |) | PLAINTIFF'S MOTION |
| |) | <u>FOR DEFAULT JUDGMENT</u> |
| NADIR ERKAN, an individual, and |) | |
| YUSUF DINCER, an individual, |) | |
| |) | |
| Defendants. |) | |
| |) | |
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I. INTRODUCTION

Before the Court is the Motion for Default Judgment ("Motion") submitted by Plaintiff Zynga Game Network Inc. ("Plaintiff" or "Zynga"). Docket No. 44. Defendants Nadir Erkan and Yusuf Dincer ("Defendants") did not answer or otherwise respond to Plaintiff's First Amended Complaint ("FAC") and the Clerk entered default on April 23, 2010. Docket No. 42. For the reasons stated herein, the Court GRANTS Plaintiff's Motion.

II. BACKGROUND

1. Procedural Background

Zynga filed its original complaint in this action on July 16, 2009, and its FAC on February 10, 2010. Docket Nos. 1, 29. On

1 March 4, 2010, the Court authorized Zynga to serve Defendants with
2 process by email. Docket No. 33. On March 22, 2010, Zynga served
3 Defendants with process in both English and Turkish. Docket No.
4 39. Defendants did not answer or otherwise respond to Plaintiff's
5 FAC and the Clerk entered default on April 23, 2010. Docket No.
6 42.

7 **2. Factual Background**

8 Zynga, a social gaming company, owns United States Federal
9 Trademark Registration No. 3,685,749 for the mark ZYNGA in
10 International Class 009 for downloadable computer game software
11 for use on wireless devices and computers, and International Class
12 041 for entertainment services, namely providing on-line computer
13 games. Docket No. 29 ("FAC") ¶¶ 9, 14, Ex. 1. Zynga developed
14 Zynga Poker ("the Game"), a computerized version of poker. Id. ¶
15 15.

16 Defendants created and operate web sites, including
17 BUYFACEBOOKCHIPS.NET, ZEROCHIPS.COM, CHIPSOVER.COM, CHIPSOVER.NET,
18 REALCHIPS.NET, and CHIPSBOX.COM, through which they sell Zynga
19 "chips" for use in the Game. Id. ¶¶ 28-29; Varas Decl. Exs. 3-9.¹
20 They advertise and sell these "chips" using the ZYNGA mark and/or
21 misspellings of the ZYNGA mark. Id. ¶ 30. Defendants transfer
22 the "chips" they sell during game play in violation of the Game's
23 terms of service and security measures, and in violation of the
24 license they received from Zynga to participate in the Game or to

25
26 ¹ Christopher Varas ("Varas"), attorney with the law firm of
27 Keats McFarland & Wilson LLP, filed a Declaration in Support of the
28 Motion for Default Judgment. Docket No. 45.

1 access Zynga's servers. Id. ¶ 32.

2 Plaintiff asserts the following causes of action against
3 Defendants: (1) Federal Trademark Infringement, 15 U.S.C. §
4 1114(1); (2) False Designation of Origin, 15 U.S.C. § 1125(a); (3)
5 Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030;
6 (4) Violation of California's Business & Professions Code § 17200;
7 (5) Violation of California Penal Code § 502; (6) California
8 common law trademark infringement; (7) California common law
9 passing off and unfair competition; (8) breach of contract; (9)
10 intentional interference with contractual relations; and (10)
11 trespass to chattels. FAC ¶¶ 35-94.

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13 **III. LEGAL STANDARD**

14 After entry of default, the Court may enter a default
15 judgment. Fed. R. Civ. P. 55(b)(2). The Court's decision whether
16 to enter a default judgment, while "discretionary," Aldabe v.
17 Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980), is guided by several
18 factors. If the court determines service of process was
19 sufficient, the court may consider:

20 (1) the possibility of prejudice to the
21 plaintiff, (2) the merits of plaintiff's
22 substantive claim, (3) the sufficiency of the
23 complaint, (4) the sum of money at stake in the
24 action, (5) the possibility of a dispute
concerning material facts, (6) whether the
25 default was due to excusable neglect, and (7)
the strong policy underlying the Federal Rules
of Civil Procedure favoring decisions on the
merits.

26 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The
27 general rule of law is that upon default the factual allegations

1 of the complaint, except those relating to the amount of damages,
2 will be taken as true." Geddes v. United Fin. Group, 559 F.2d
3 557, 560 (9th Cir. 1977).

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5 **IV. DISCUSSION**

6 Accepting the allegations in the FAC, the Court finds that
7 the Eitel factors favor default judgment. If the Court does not
8 enter Default Judgment, Zynga will suffer prejudice in the form of
9 impairment of its trademark rights and interference with its
10 relationships with its customers. Having reviewed the FAC and the
11 contentions in Plaintiff's Motion, the Court finds that the
12 allegations in the FAC are sufficient to support Plaintiff's
13 causes of action.

14 There is no evidence that Defendants' failure to appear was
15 the result of excusable neglect. The Court authorized Zynga to
16 issue subpoenas to specific entities in an effort to identify and
17 locate Defendants. Docket Nos. 15, 23, 27. Based on the
18 information obtained, Zynga identified approximately twenty-seven
19 email addresses used by Defendants, and Zynga requested the Court
20 for leave to serve Defendants by electronic mail. Docket No. 30.
21 Based on the circumstances of this case, and finding that the
22 request was not prohibited by any international agreement, and
23 that it satisfied the requirements of due process, the Court
24 granted the request on March 4, 2010. Docket No. 33. On March
25 22, 2010, Zynga sent the summons, FAC, and other relevant
26 documents by email to the identified email addresses in both
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1 English and Turkish. Decl. of Orme Mann ¶ 2.² The transmittal
2 email was successfully relayed to twenty-one of the recipients,
3 and read on March 22, 2010. Id. ¶ 4. Despite being served with
4 process, Defendants have not responded to this lawsuit.

5 While it is preferable to decide cases on the merits whenever
6 possible, this preference is not dispositive. Where a party fails
7 to defend against a complaint, Rule 55 authorizes the Court to
8 enter default judgment. Klopping v. Fireman's Fund, No. 94-2684,
9 1996 U.S. Dist. LEXIS 1786, at *10 (N.D. Cal. Feb. 14, 1996).

10
11 **V. CONCLUSION**

12 As set forth in the Default Judgment issued concurrently with
13 this Order, the Court GRANTS the Motion for Default Judgment filed
14 by Plaintiff Zynga Game Network Inc.

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16 IT IS SO ORDERED.

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18 Dated: July 1, 2010

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UNITED STATES DISTRICT JUDGE

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26 _____
27 ² Darrell V. Orme Mann ("Orme Mann"), of Keats McFarland &
28 Wilson LLP, filed a Declaration in connection with Plaintiff's
Proof of Service. Docket No. 39.