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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COACH, INC., a Maryland Corporation; COACH SERVICES, INC., a Maryland Corporation,)	Case No. 10-5151 SC
)	
Plaintiffs,)	ORDER RE SUPPLEMENTAL EVIDENCE
)	
v.)	
)	
DIVA SHOES & ACCESSORIES, an unknown business entity; HERYADI YUSUF, an individual; RIFKY YUSUF, an individual; and DOES 1-10, inclusive,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Plaintiffs Coach, Inc. and Coach Services, Inc. ("Plaintiffs" or "Coach") have filed suit against Defendants Diva Shoes & Accessories ("Diva"), Heryadi Yusuf, and Rifky Yusuf ("collectively, Defendants") for trademark infringement under the Lanham Act and related claims. ECF No. 1 ("Compl."). Coach now seeks default judgment. ECF No. 11 ("Mot."). Having considered Coach's Motion for Default Judgment, the Court hereby orders Coach to provide supplemental evidence as described below.

II. DISCUSSION

In seeking the supplemental information, the Court takes into

1 account "[t]he general rule of law . . . that upon default the
2 factual allegations of the complaint, except those relating to the
3 amount of damages, will be taken as true." Televideo Sys., Inc. v.
4 Heidenthal, 826 F.2d 915, 917-18 (9th Cir.1987). However, the
5 Court is still entitled under Federal Rule of Civil Procedure 55 to
6 conduct a hearing, not only to determine the amount of damages, but
7 also to establish the truth of any allegation by evidence and to
8 investigate any other matter. See Fed. R. Civ. P. 55(b)(2). Here,
9 the Court's concerns relate to the allegations involving Rifky
10 Yusuf and the basis for the amount of damages sought by Plaintiffs.

11 A. Rifky Yusuf

12 Coach has alleged that "Defendants Heryadi Yusuf and Rifky
13 Yusuf were the active, moving, and conscious forces behind the
14 alleged infringing activities of Diva." Compl. ¶ 22. Coach
15 provides further information linking Heryadi Yusuf to Diva; Coach
16 alleges that its own investigators assisted local police in a
17 criminal action against Diva which led to the arrest of Heryadi
18 Yusuf as the store's owner. Compl. ¶ 20. However, Coach provides
19 no further information linking Rifky Yusuf to Diva. Moreover, the
20 process server who served Rifky Yusuf by substitute service was
21 informed by the person in charge at Diva that Rifky Yusuf owns the
22 "iPod Accessories" kiosk located across from Diva. ECF No. 7
23 ("Rifky Yusuf Proof of Service"). Accordingly, the Court requires
24 more evidence that Rifky Yusuf is in fact a moving force behind
25 Diva's infringing conduct and not merely the owner of a kiosk
26 located near the store. The Court therefore orders Coach to
27 provide supplemental evidence supporting its contention that Rifky
28 Yusuf was a moving force behind Diva's infringing activities.

1 B. Statutory Damages Under 15 U.S.C. § 1117(c)

2 In its Motion, Coach asks for statutory damages pursuant to 15
3 U.S.C. § 1117(c). The statute provides for statutory damages "not
4 less than \$ 1,000 or more than \$ 200,000 per counterfeit mark per
5 type of goods or services sold, offered for sale, or distributed,
6 as the court considers just." 15 U.S.C. § 1117(c)(1). In cases
7 where the defendant's conduct is willful, a court may enhance the
8 statutory damages award to an amount "not more than \$ 2,000,000 per
9 counterfeit mark per type of goods or services sold, offered for
10 sale, or distributed, as the court considers just." 15 U.S.C. §
11 1117(c)(2). Coach has alleged sufficient facts to demonstrate that
12 Diva's infringement was willful, and Coach is therefore entitled to
13 seek statutory damages in an amount not less than \$1,000 and not
14 more than \$2,000,000, as the Court considers just. Coach requests
15 an award of \$1,000,000. Mot. at 8.

16 Section 1117(c) does not give any specific guidance as to how
17 a court should determine an appropriate statutory damages award.
18 However, because statutory damages are meant to serve as a
19 substitute for actual damages, the Court should consider whether
20 the requested damages "bear some relation to the actual damages
21 suffered." Coach, Inc. v. Ocean Point Gifts, No. 09-4215, 2010
22 U.S. Dist. LEXIS 59003, *15 (D. N.J. Jun. 14, 2010). Accordingly,
23 some district courts have used § 1117(b), which provides for
24 trebling actual damages in cases of willful infringement, as a
25 guide for setting damages under § 1117(c). Chanel v. Doan, No. C-
26 05-03464, 2007 U.S. Dist. LEXIS 22691, *10 (N.D. Cal. Mar. 13,
27 2007) (estimating defendant's profits and trebling for
28 willfulness). Courts have also considered the factors used to

1 determine awards of statutory damages under an analogous provision
2 of the Copyright Act, which includes factors such as the expenses
3 saved and profits reaped by the defendant, and the revenues lost by
4 the plaintiff. See, e.g., Chanel v. Tshimanga, No. C-07-3592, 2008
5 U.S. Dist. LEXIS 118783, *34 (N.C. Cal. Jul. 15, 2008).

6 In its Motion, Coach notes that "since Defendants have not
7 provided any discovery in this case, Plaintiffs lack information
8 sufficient to determine the exact amount of Defendants' profits or
9 the amount of infringing products actually sold by them." Mot. at
10 6. While this is certainly true, Coach undoubtedly has information
11 in its control that would assist in determining an appropriate
12 damages award but has chosen not to provide this information to the
13 Court. Coach states that its own investigators visited Diva on at
14 least two occasions and witnessed counterfeit goods for sale
15 firsthand. Mot. at 2. The Coach investigators later assisted
16 local police in a criminal action against Diva. Id. Nevertheless,
17 Coach provides almost no information from its investigations.
18 Coach fails to specify the type or types of counterfeit products
19 for sale at Diva -- i.e., whether the counterfeit products were
20 handbags, eyewear, wallets, footwear, jewelry, or other
21 accessories. Nor does Coach provide such crucial information as
22 which of its marks were infringed, approximately how many
23 counterfeit Coach items were displayed in the Diva store at any
24 given time, or the price range of the counterfeit items on display.
25 Coach has provided precisely such information in other nearly
26 identical cases, and the Court is disturbed by its failure to do so
27 here. See, e.g., Coach, Inc. v. Ocean Point Gifts, No. C-09-4215,
28 2010 U.S. Dist. LEXIS 59003, *2 (D. N.J. Jun. 14, 2010). The Court

1 therefore orders Coach to provide supplemental evidence setting
2 forth particular facts of Defendants' infringing conduct such as
3 those noted above.

4

5 **III. CONCLUSION**

6 Coach shall provide the supplemental evidence requested above
7 within two weeks of the date of this order.

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9 IT IS SO ORDERED.

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11 Dated: April 5, 2011

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UNITED STATES DISTRICT JUDGE

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