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

COACH, INC., a Maryland)	Case No. 10-5151 SC
corporation and COACH SERVICES,)	
INC., a Maryland corporation,)	<u>DEFAULT JUDGMENT</u>
)	
Plaintiffs,)	
)	
v.)	
)	
DIVA SHOES & ACCESSORIES, an)	
unknown business entity; HERYADI)	
YUSUF, an individual; RIFKY YUSUF,)	
an individual,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

Plaintiffs Coach, Inc. and Coach Services, Inc. ("Plaintiffs" or "Coach") now seek the entry of a default judgment against Defendants Diva Shoes & Accessories, Heryadi Yusuf, and Rifky Yusuf ("Defendants"). ECF No. 11 ("Mot."). Coach filed this action on November 12, 2010, asserting federal claims for trademark counterfeiting and infringement, 15 U.S.C. § 1114, false designation of origin, *id.* § 1125(a), and trademark dilution, *id.* § 1125(c), along with related claims under state law, for Defendants' alleged sale of counterfeit Coach merchandise. *See* ECF No. 1 ("Compl."). The Clerk of the Court entered default against Defendants on February 3, 2011. ECF No. 10. On April 5, 2011,

1 after reviewing the instant Motion, the Court ordered Coach to
2 provide supplemental evidence of certain details about Defendants'
3 infringing conduct. ECF No. 15 ("Apr. 5, 2011 Order"). Coach
4 filed a supplemental brief on April 12, 2011 addressing the Court's
5 concerns. ECF No. 16 ("Pl.'s Supp. Br."). Having considered the
6 papers submitted by Plaintiffs, this Court concludes that an award
7 of default judgment against Defendants is appropriate, and GRANTS
8 Plaintiffs' Motion.

9
10 **II. BACKGROUND**

11 Except where otherwise indicated, the following allegations
12 are taken from Coach's Complaint. For over sixty years Coach has
13 been in the trade of luxury fashion accessories. Compl. ¶ 11.
14 Coach manufactures, markets, and sells a variety of goods,
15 including handbags, wallets, eyewear, footwear, jewelry, and
16 watches. Id. Coach sells its goods through its own specialty
17 retail stores, department stores, catalogs, and via the Internet.
18 Id. Coach owns a number of federally registered trademarks and
19 assorted design components (collectively, "Coach Marks") that it
20 uses on its products. Id. ¶ 12. The Coach Marks are valuable
21 because they are affiliated with billions of dollars in sales
22 volume and more than a hundred million dollars have been expended
23 in advertising and marketing associated with the trademarks. Id. ¶
24 16.

25 Coach alleges that Defendants used reproductions of the Coach
26 Marks in commerce in connection with the purchase, advertising and
27 sale of counterfeit products without Coach's consent at the store
28 Diva Shoes & Accessories ("Diva"), located at 7710-3 Serramonte

1 Center in Daly City, California. Id. ¶¶ 18-25. Coach further
2 alleges: that Defendants Heryadi Yusuf and Rifky Yusuf were the
3 moving forces behind the infringing activities; that Defendants
4 acted with knowledge of Coach's ownership of the Coach Marks and
5 with the intention to unfairly benefit from the goodwill inherent
6 in the Coach Marks; and that Defendants' use of the Coach Marks is
7 likely to cause confusion or mistake or to deceive customers and
8 has thereby caused damage to Coach. Id. ¶¶ 22, 27, 36-38.

9 On September 12, 2009, private investigators hired by Coach
10 visited Diva and discovered merchandise bearing Coach Marks
11 displayed for sale. Id. ¶ 18; Buckner Decl. ¶ 5.¹ They examined
12 these items and determined them to be counterfeit. Id. The
13 counterfeit Coach items bore reproductions of at least four Coach
14 Marks. Buckner Decl. ¶ 6. The investigators served Diva employee
15 Teresa Lai with a cease-and-desist letter. Id.; Compl. ¶ 18.

16 In August 2010, a private investigator returned to Diva and
17 again discovered counterfeit Coach merchandise on display. Compl.
18 ¶ 19. He observed five counterfeit Coach handbags and four
19 counterfeit Coach wallets displayed for sale and purchased one
20 counterfeit Coach handbag for \$43.69. Buckner Decl. ¶ 7. He also
21 obtained a business card from Diva bearing the names of individual
22 Defendants Heryadi Yusuf and Rifky Yusuf. Id. ¶ 8 Ex. 1.

23 On August 19, 2010, the private investigators assisted the
24 Daly City Police Department in a criminal action at Diva. Compl. ¶
25 20. Defendant Heryadi Yusuf was identified as the owner of Diva

26 _____
27 ¹ Coach submitted a declaration from Kris Buckner ("Buckner"),
28 President of Investigative Consultants, Inc., in support of its
Supplemental Brief. ECF No. 15-1.

1 and arrested for the sale of counterfeit merchandise. Id. ¶ 20.
2 Five counterfeit Coach handbags and three counterfeit Coach wallets
3 were recovered from Diva by the police. Buckner Decl. ¶ 10.
4

5 **III. LEGAL STANDARD**

6 After entry of a default, the Court may enter a default
7 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do
8 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092
9 (9th Cir. 1980), is guided by several factors.

10 As a preliminary matter, the Court must "assess the adequacy
11 of the service of process on the party against whom default
12 judgment is requested." Bd. of Trs. of the N. Cal. Sheet Metal
13 Workers v. Peters, No. 00-0395, 2000 U.S. Dist. LEXIS 19065, *2
14 (N.D. Cal. Jan. 2, 2001). If the Court determines that service was
15 sufficient, it may consider the following factors in its decision
16 on the merits of a motion for default judgment:

17
18 (1) the possibility of prejudice to the
19 plaintiff, (2) the merits of plaintiff's
20 substantive claim, (3) the sufficiency of the
21 complaint, (4) the sum of money at stake in the
22 action; (5) the possibility of a dispute
23 concerning material facts; (6) whether the
24 default was due to excusable neglect, and (7)
25 the strong policy underlying the Federal Rules
26 of Civil Procedure favoring decisions on the
27 merits.

28 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The
general rule of law is that upon default the factual allegations of
the complaint, except those relating to the amount of damages, will
be taken as true." Geddes v. United Fin. Group, 559 F.2d 557, 560
(9th Cir. 1977). Therefore, for the purposes of this Motion, the

1 Court accepts as true the facts as presented in the Complaint.

2 **IV. DISCUSSION**

3 **A. Adequacy of Service**

4 1. Diva Shoes & Accessories

5 Federal Rule of Civil Procedure 4(h) provides that a
6 corporation, partnership, or other unincorporated association may
7 be served in the manner prescribed by Rule 4(e)(1), which allows
8 service to be perfected in the manner prescribed by state law.
9 Fed. R. Civ. P. 4(h), 4(e)(1). California law provides that a
10 corporation or unincorporated association may be served:

11
12 by leaving a copy of the summons and complaint
13 during usual office hours in . . . [the
14 corporation or association's] office or . . .
15 usual mailing address . . . with the person who
16 is apparently in charge thereof, and by
thereafter mailing a copy of the summons and
complaint by first-class mail, postage prepaid
to the person to be served at the place where a
copy of the summons and complaint were left.

17 Cal. Code Civ. Proc. 415.20(a). This method of service is deemed
18 complete on the tenth day after the mailing. Id.

19 Here, service was left with "Huan Jain," the person in charge
20 at Diva's store located at 7710-3 Serramonte Center, Daly City,
21 California, on December 3, 2010, at 11:45 a.m. ECF No. 6 ("Diva
22 Proof of Service"). On December 17, 2010, the summons, complaint
23 and other relevant documents were mailed to Diva at the same
24 address. Id. The Court finds that service of process upon Diva
25 was adequate and complete by December 28, 2010.

26 2. Heryadi Yusuf and Rifky Yusuf

27 Federal Rule of Civil Procedure 4(e)(1) provides that an
28 individual may be served in a judicial district of the United

1 States in accordance with state law. California law provides that,
2 if an individual cannot be personally served with reasonable
3 diligence the individual may be served:

4
5 by leaving a copy of the summons and complaint
6 at the person's . . . usual place of business
7 or usual mailing address . . . with a person
8 apparently in charge of his or her office,
9 place of business, or usual mailing address . .
10 . and by thereafter mailing a copy of the
11 summons and complaint by first-class mail,
12 postage prepaid to the person to be served at
13 the place where a copy of the summons and
14 complaint were left.

15 Cal. Code Civ. Proc. 415.20(b). This method of service is also
16 deemed complete on the tenth day after the mailing. Id.

17 Here, the process server declares that he attempted to serve
18 Heryadi Yusuf on December 3, 2010 and December 6, 2010, at the Diva
19 store but was told both times that Heryadi Yusuf was not present.
20 ECF No. 8 ("Heryadi Yusuf Proof of Service"). On December 7, 2010,
21 at 4:35 p.m., service was left with "Gourney Jain," the person in
22 charge at the Diva store. Id. On December 17, 2010, the summons,
23 complaint, and other relevant documents were mailed to Heryadi
24 Yusuf at the address where the copies were left. Id.

25 The process server declares that he attempted to serve Rifky
26 Yusuf at the Diva store on December 3, 2010. ECF No. 7 ("Rifky
27 Yusuf Proof of Service"). The person in charge at the Diva store
28 informed the process server that Rifky Yusuf owned a kiosk called
"iPod Accessories" across from the Diva store. Id. Rifky Yusuf
was not present at the kiosk. Id. The process server returned on
December 6, 2010, but Rifky Yusuf was again not present at the
kiosk. Id. On December 7, 2010, at 4:40 p.m., the process server

1 left service with "Joe Albert," the person in charge at the "iPod
2 Accessories" kiosk located at 7710 Serramonte Center, Daly City,
3 California. Id. On December 17, 2010, the summons, complaint, and
4 other relevant documents were mailed to Rifky Yusuf at the address
5 where the copies were left. Id.

6 The Court finds that service of process upon Heryadi Yusuf and
7 Rifky Yusuf was adequate and complete by December 28, 2010.

8 **B. Default Judgment**

9 After entry of a default, a court may grant a default judgment
10 on the merits of the case. See Fed. R. Civ. P. 55. A default
11 judgment may not be entered, however, against an infant or
12 incompetent person unless represented in the action by a general
13 guardian or other such representative who has appeared. See id.
14 Furthermore, a default judgment may not be entered against an
15 individual in military service until after the court appoints an
16 attorney to represent the defendant. See 50 U.S.C. App. § 521.
17 Heryadi Yusuf and Rifky Yusuf are not infants, incompetent persons,
18 or persons in military service. Chan Decl. ¶ 5.² Accordingly, the
19 Court may consider whether a default judgment may be entered
20 against Defendants.

21 Here, the majority of the Eitel factors favor default
22 judgment.

23 1. Prejudice

24 Coach served a cease-and-desist letter upon Diva in September
25 2009 but to no avail. If the motion for default judgment were to
26 be denied, then Coach would likely be left without a remedy. Thus,

27 _____
28 ² Cindy Chan, attorney for Plaintiffs, filed a declaration in
support of the Motion. ECF No. 11-2.

1 Plaintiffs would be prejudiced absent entry of default judgment.

2 2. Merits of Plaintiffs' Substantive Claims and
3 Sufficiency of the Complaint

4 Taken together, the second and third Eitel factors essentially
5 require that "a plaintiff state a claim on which [it] may recover."
6 Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1175 (C.D.
7 Cal. 2002) (internal quotations omitted). Coach asserts claims for
8 (1) trademark counterfeiting and infringement, 15 U.S.C. § 1114;
9 (2) false designation of origin, id. § 1125(a); (3) trademark
10 dilution, id. § 1125(c); and (4) related claims under state law.
11 See Compl. Coach seeks to recover statutory damages in lieu of
12 actual damages as relief. Mot. at 6. Accordingly, the Court
13 examines the only one of Coach's claims for which statutory damages
14 are available -- its claim for trademark counterfeiting and
15 infringement. See 15 U.S.C. § 1117(c) (providing for statutory
16 damages for trademark counterfeiting); see also Chanel, Inc. v.
17 Tshimanga, No. C-07-3592, 2008 U.S. Dist. LEXIS 118783, *17 (N.D.
18 Cal. July 15, 2008) (adopting same approach).

19 To prevail on its trademark infringement and counterfeiting
20 claim, Coach must prove that, without its consent, Defendants used
21 in commerce a reproduction or copy of Coach's registered trademark
22 in connection with the sale or advertising of any goods or
23 services, and that such use is likely to cause confusion, mistake,
24 or deceive customers. 15 U.S.C. § 1114(1)(a); Brookfield Commc'n v.
25 West Coast Entm't, 174 F.3d 1036, 1046-47 (9th Cir. 1999). As
26 outlined in Part I above, Coach has properly alleged all of these
27 elements. Taking these allegations to be true, as the Court must,
28 Coach has adequately stated a claim on which it may recover.

1 3. Amount of Money at Stake

2 Pursuant to the fourth Eitel factor, "the court must consider
3 the amount of money at stake in relation to the seriousness of
4 Defendant's conduct." Pepsico, 238 F. Supp. 2d at 1176. Here,
5 Defendants have engaged in the sale and distribution of counterfeit
6 goods bearing four of Plaintiffs' trademarks, and Defendants'
7 continued sale of counterfeit Coach merchandise despite being
8 served with a cease-and-desist letter augments the seriousness of
9 their conduct. Given Defendants' disregard of the cease-and-desist
10 letter, the likelihood that Defendants' conduct may cause confusion
11 or mistake or otherwise deceive customers, and Defendants' failure
12 to comply with the judicial process or to participate in any way in
13 the present litigation, the imposition of a substantial monetary
14 award is justified. The amount of money at stake is therefore
15 proportionate to Defendants' conduct, especially in light of the
16 fact that the size of the award is limited by what the Court
17 considers just.

18 4. Possibility of Dispute Concerning Material Facts

19 The fifth Eitel factor considers the possibility of dispute as
20 to any material facts in the case. Here, Plaintiffs filed a well-
21 pleaded complaint alleging the facts necessary to establish their
22 claims and provided evidence in the form of Buckner's declaration.
23 Defendants have not responded to any of the proceedings in this
24 case, and thus no dispute has been raised regarding the material
25 averments of the Complaint. The likelihood that any genuine issue
26 may exist is, at best, remote. This factor therefore favors the
27 entry of default.

28 ///

1 5. Whether Default Was Due to Excusable Neglect

2 Defendants have had nearly five months to respond to the
3 Complaint and have not done so. There is no evidence in the record
4 that Defendants' failure to appear and otherwise defend was the
5 result of excusable neglect. Defendants' failure to appear after
6 being served with the Complaint indicates that their failure to
7 appear was willful.

8 6. Strong Policy Favoring Decision on the Merits

9 Finally, the mere existence of Federal Rule of Civil Procedure
10 55(b) indicates that the seventh Eitel factor is not alone
11 dispositive. Pepsico, 238 F. Supp. 2d at 1177. Moreover,
12 Defendants' failure to answer Plaintiffs' Complaint makes a
13 decision on the merits impractical, if not impossible. Therefore,
14 the seventh Eitel factor does not preclude the Court from entering
15 default judgment against Defendants.

16 **C. Remedies**

17 1. Statutory Damages

18 The remedies available to a plaintiff who prevails on a claim
19 for trademark infringement and counterfeiting under 15 U.S.C. §
20 1114 are listed under 15 U.S.C. § 1117(a)-(c). Under § 1117(a), a
21 registered mark holder may recover: (1) defendant's profits, (2)
22 any damages sustained by the plaintiff, and (3) the costs of the
23 action, subject to the principles of equity. Section 1117(b)
24 requires the court to treble the damages assessed under subsection
25 (a) if the defendant "intentionally us[es] a mark or designation,
26 knowing such mark . . . is a counterfeit mark . . . in connection
27 with the sale, offering for sale, or distribution of goods or
28 services." Section 1117(c) permits a plaintiff to elect statutory

1 damages, instead of actual damages and profits, in cases involving
2 the use of a counterfeit mark in connection with the sale of goods.
3 Plaintiffs who elect statutory damages may recover "not less than
4 \$1,000 or more than \$200,000 per counterfeit mark per type of goods
5 or services sold, offered for sale, or distributed, as the court
6 considers just." 15 U.S.C. § 1117(c)(1). Additionally, 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). If a plaintiff elects to recover statutory damages,
12 the court has wide discretion in determining the amount of
13 statutory damages to be awarded. Chanel, Inc. v. Lin, No. C-09-
14 04996, 2010 U.S. Dist. LEXIS 61295, *39 (N.D. Cal. May 7, 2010)
15 (citing Columbia Pictures Television, Inc. v. Krypton Broad. of
16 Birmingham, 259 F.3d 1186, 1194 (9th Cir. 2001)).

17 In the instant case, where Plaintiffs have established that
18 Defendants' conduct was willful, Plaintiffs may recover statutory
19 damages pursuant to § 1117(c) in an amount not less than \$1,000 and
20 not more than \$2,000,000 per counterfeit mark per type of goods
21 sold, as the Court considers just. Buckner's declaration states
22 that Defendants offered for sale two types of goods -- wallets and
23 handbags -- and infringed four distinct Coach Marks. However,
24 Coach does not specify whether each of the marks was infringed by
25 both a wallet and a handbag. The Court cannot assume that each of
26 Coach's marks was infringed by both a wallet and a handbag.
27 Rather, applying the phrase "per counterfeit mark per type of goods
28 sold" requires the Court to look at each trademark and determine

1 how many types of goods infringe that mark. See, e.g., Tshimanga,
2 2008 U.S. Dist. LEXIS 118783 at *36. Given the lack of evidence on
3 this point, the Court will assume that each mark was infringed by
4 either a wallet or a handbag, but not both. Under § 1117(c),
5 therefore, Coach may recover not less than \$4,000 and not more than
6 \$8,000,000.

7 Section 1117(c) does not give any specific guidance as to how
8 a court should determine an appropriate statutory damages award.
9 "Although the statutory damages need not reflect the defendants'
10 unlawfully obtained profits, some district courts use § 1117(b) as
11 a guide for setting damages under § 1117(c). In doing so, courts
12 both counteract the profitability of counterfeiting and execute the
13 punitive purposes of the statute." Chanel, Inc. v. Doan, No. C-05-
14 03464, 2007 U.S. Dist. LEXIS 22691, *13 (N.D. Cal. Mar. 13, 2007)
15 (calculating statutory damages by estimating defendant's profits
16 and trebling for willfulness). In other words, because statutory
17 damages are meant to serve as a substitute for actual damages the
18 Court should discern whether the requested damages "bear some
19 relation to the actual damages suffered." Coach, Inc. v. Ocean
20 Point Gifts, No. C-09-4215, 2010 U.S. Dist. LEXIS 59003, *15 (D.
21 N.J. June 14, 2010) (internal citations omitted).

22 When determining the appropriate amount of statutory damages
23 to award under § 1117(c), some courts have considered the following
24 factors that guide the award of statutory damages under an
25 analogous provision of the Copyright Act: (1) the expenses saved
26 and the profits reaped by the defendant; (2) the revenues lost by
27 the plaintiff; (3) the value of the copyright; (4) the deterrent
28 effect on others besides the defendant; (5) whether the defendant's

1 conduct was innocent or willful; (6) whether a defendant has
2 cooperated in providing particular records from which to assess the
3 value of the infringing material produced; and (7) the potential
4 for discouraging the defendant. See, e.g., Tshimanga, 2008 U.S.
5 Dist. LEXIS 118783 at *34; Microsoft Corp. v. Nop, 549 F. Supp. 2d
6 1233, 1237-38 (E.D. Cal. 2008).

7 Here, Plaintiffs request \$1,000,000 in statutory damages.
8 Mot. at 2. They contend that such a large award is necessary to
9 deter Defendants and other potential counterfeiters from selling
10 counterfeit Coach merchandise. Id. at 7. Plaintiffs rely on
11 Philip Morris U.S.A., Inc. v. Castworld Prods., 219 F.R.D. 494, 502
12 (C.D. Cal. 2003) to support their request. In Philip Morris, the
13 court awarded \$2,000,000 in statutory damages against a defendant
14 who imported 8,000,000 counterfeit cigarettes. Id. The court
15 found such a large award appropriate in light of the defendant's
16 "importation of large, commercial quantities" of counterfeit
17 cigarettes "having a street value of millions of dollars." Id. at
18 500-01.

19 Coach's reliance on Philip Morris is misplaced. Here, there
20 is no evidence that Defendants were importing "large, commercial
21 quantities" of counterfeit Coach merchandise, and the merchandise
22 at issue certainly did not have a street value of millions of
23 dollars. Furthermore, the Court notes that in other recent cases
24 brought by Coach, Coach has found much lower awards sufficient to
25 deter violators. For instance, in Coach, Inc. v. Cheap Sunglasses,
26 No. 09-CV-1059, 2010 U.S. Dist. LEXIS 68200, *5-6 (S.D. Cal. July
27 6, 2010), Coach sought only \$10,000 in statutory damages where a
28 website willfully infringed Coach trademarks by selling counterfeit

1 Coach eyewear. The court found a \$6,000 award appropriate. Id. at
2 *6. Similarly, in Coach, Inc. v. Cosmetic House, No. C-10-2794,
3 2011 U.S. Dist. LEXIS 32924, *20 (D.N.J. Mar. 29, 2011), Coach
4 sought a \$100,000 award where a retail store willfully infringed
5 Coach trademarks by selling counterfeit sunglasses. The court
6 determined that an award of \$10,000 was appropriate. Id. In Ocean
7 Point Gifts, Coach sought \$100,000 per mark per type of goods sold
8 where defendants willfully infringed Coach trademarks by selling
9 counterfeit handbags, wallets, and other items at a retail outlet.
10 2010 U.S. Dist. LEXIS 59003 at *18. The court found \$10,000 per
11 mark per type of goods appropriate and awarded a total of \$200,000.
12 Id. at *19.

13 Taking the above into account, the Court proceeds to consider
14 the seven factors commonly considered in copyright law.

15 a. Expenses Saved and Profits Reaped

16 The lack of discovery in this case leaves no data as to
17 Defendants' expenses saved and profits reaped, but a rough estimate
18 can be made based on the data available and a few reasonable
19 assumptions.³ Buckner's declaration suggests that an average of
20 between eight and nine counterfeit Coach items -- consisting of a
21 mixture of handbags and wallets -- were displayed for sale on a
22 typical day.⁴ The only pricing information made available to the

23 ³ The court in Ocean Point Gifts applied similar assumptions to
24 ensure that its award of statutory damages was roughly proportional
25 to the amount of actual damages likely incurred. 2010 U.S. Dist.
26 LEXIS 59003 at *20-21. Given the lack of discovery in this case,
the Court finds that applying some reasonable assumptions is the
best -- and only -- approach available to calculate a ballpark
estimate of Plaintiffs' actual damages.

27 ⁴ A total of nine counterfeit Coach items were displayed for sale
28 when investigators visited Diva on August 4, 2010, and a total of
eight counterfeit Coach items were seized from Diva by police on

1 Court is the fact that an investigator purchased a handbag for
2 \$43.69. If the wallets were offered at a similar price, then the
3 value of the displayed counterfeit Coach merchandise on a typical
4 day was approximately \$396. Generously assuming that the store
5 sold all of its displayed counterfeit Coach inventory each week and
6 had a profit margin as high as 300 percent, Defendants' profits
7 would have been about \$891 per week. Coach first discovered
8 Defendants' infringing activity in September 2009 and alleges that
9 it continues to this day. Over this approximately 78-week period,
10 the amount of Defendants' profits from infringing the Coach Marks
11 would be \$23,166. Given Defendants' willful infringement, an award
12 of actual damages under § 1117(a)-(b) would result in treble this
13 amount -- a sum equal to \$69,498. While these are of course very
14 rough estimates, they nevertheless suggest that the requested award
15 of \$1,000,000 is grossly disproportionate to Coach's actual
16 damages.

17 b. Revenues Lost

18 Coach has provided no evidence of its revenues lost, either as
19 a result of Defendants' infringing activities or as a result of
20 counterfeiting in general. It has stated that it typically charges
21 between \$148 and \$298 for bags similar to those sold by Defendants.
22 Pl.'s Supp. Br. at 7. Given that the counterfeit bags sold by
23 Defendants are significantly less expensive than authentic Coach
24 merchandise, the shoppers who buy from Defendants are arguably not

25
26 August 19, 2010. Coach notes that investigators observed about
27 seventy counterfeit items during the first visit to Diva in
28 September 2009, but Buckner's declaration makes clear that these
items were comprised of Chanel, Gucci, and Louis Vuitton branded
merchandise in addition to counterfeit Coach items. Buckner Decl.
¶¶ 5, 7, 10.

1 likely to purchase authentic Coach products. Thus, the revenues
2 lost as a direct result of Defendants' infringing activities may
3 not be substantial. Absent some evidentiary showing, the Court
4 cannot reach any conclusion about the magnitude of lost revenues to
5 Coach.

6 c. Value of the Intellectual Property

7 The Coach Marks are extremely valuable because they are
8 affiliated with billions of dollars in sales volume and more than a
9 hundred million dollars have been expended in advertising and
10 marketing associated with the Marks. Compl. ¶ 16.

11 d. Willfulness of Defendants' Conduct

12 Defendants' conduct was undoubtedly willful, as they continued
13 their infringing conduct after receiving a cease-and-desist letter.

14 e. Defendants' Lack of Cooperation in Providing
15 Records

16 Defendants have not provided any discovery or participated in
17 this litigation in any way.

18 f. Deterrent Effect on Defendants

19 As Defendants operate only a single retail store of moderate
20 scale based on the investigators' observations, it is likely that
21 they can be deterred by a moderate damages award. Moreover, the
22 deterrent effect of a monetary award will be in addition to the
23 deterrent effect of the criminal action also brought against
24 Defendants.

25 g. Deterrent Effect on Others

26 A significant award against Defendants would clearly have some
27 kind of deterrent effect on other would-be infringers, although the
28 magnitude of this effect is difficult to determine.

1 Taking into account all of the above, the Court finds \$140,000
2 to be an appropriate award. This amount is roughly double the
3 liberal estimate of Coach's actual damages calculated above. It is
4 within the guidelines established by Congress, takes into account
5 the willfulness shown by continuing to sell counterfeit merchandise
6 after receiving a cease-and-desist letter and the culpability of
7 failing to respond, and is significant enough to serve as
8 compensation to Coach and a deterrent to both the Defendants and
9 others. This award is also in a range consistent with other recent
10 cases in this district and others that involved similar
11 merchandise. See, e.g., Doan, 2007 U.S. Dist. LEXIS 22691 at *13
12 (N.D. Cal. Mar. 13, 2007) (awarding \$127,701 where defendant sold
13 counterfeit handbags on the internet); Tshimanga, 2008 U.S. Dist.
14 LEXIS 118783 at *34 (awarding \$75,000 per violation for a total of
15 \$450,000 where defendant sold counterfeit handbags and wallets on
16 the Internet); Ocean Point Gifts, 2010 U.S. Dist. LEXIS 59003 at
17 *20-21 (awarding \$200,000 where defendant sold counterfeit Coach
18 handbags, scarves, and hats at a small retail store).

19 2. Injunctive Relief

20 In addition to damages, Coach requests a permanent injunction
21 enjoining Defendants from using Coach trademarks in connection with
22 the sale and offer for sale of infringing products. The Lanham Act
23 gives the court "power to grant injunctions according to the rules
24 of equity and upon such terms as the court may deem reasonable, to
25 prevent the violation" of a trademark holder's rights. 15 U.S.C.
26 § 1116(a). Permanent injunctions are routinely granted in cases
27 like the instant one where a defendant has not appeared in the
28 action at all. Philip Morris, 219 F.R.D. at 502; Pepsico, 238

1 F. Supp. 2d at 1178; Cheap Sunglasses, 2010 U.S. Dist. LEXIS 68200
2 at *6. Accordingly, the Court grants Coach's request for a
3 permanent injunction enjoining Defendants from using Coach
4 trademarks in connection with the sale and offer for sale of
5 infringing products.

6 3. Costs

7 Coach also requests costs under 15 U.S.C. § 1117(a), which
8 authorizes recovery of the costs of an action for the violation of
9 any right of the registrant of a trademark. Coach is entitled to
10 the costs of this action. See Lindy Pen Co. v. Bic Pen Corp., 982
11 F.2d 1400, 1405 (9th Cir. 1993). Coach may submit its Bill of
12 Costs in accordance with Civil Local Rule 54-1.

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V. CONCLUSION

The Court GRANTS the Motion for Default Judgment filed by Plaintiffs Coach, Inc. and Coach Services, Inc. against Defendants Diva Shoes & Accessories, Heryadi Yusuf, and Rifky Yusuf. The Court enters JUDGMENT in favor of Plaintiffs against Diva Shoes & Accessories, Heryadi Yusuf, and Rifky Yusuf in the amount of \$140,000 plus Plaintiffs' costs. Defendants are PERMANENTLY ENJOINED from infringing any of Plaintiffs' trademarks.

Plaintiffs shall submit their Bill of Costs within fourteen (14) days of this Order as provided by Civil Local Rule 54-1. Failure to do so will result in a waiver of costs.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: April 19, 2011


UNITED STATES DISTRICT JUDGE