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

COACH, INC.; COACH SERVICES, INC.,)	Case No. 11-2315 SC
)	
Plaintiffs,)	ORDER DENYING APPLICATION
)	<u>FOR DEFAULT JUDGMENT</u>
v.)	
)	
DIANA FASHION, an unknown business)	
entity; DIANE DAO, an individual;)	
and DOES 1-10, inclusive,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

Plaintiffs Coach, Incorporated ("Coach") and Coach Services, Incorporated ("Coach Services") (collectively, "Plaintiffs") seek entry of Default Judgment against Defendants Diana Fashion and Diane Dao (collectively, "Defendants"). ECF No. 14 ("App. for Default J."). Having considered the papers submitted, the Court concludes that entry of Default Judgment against Defendants is inappropriate and DENIES Plaintiffs' Application without prejudice.

II. BACKGROUND

The following allegations are taken from Plaintiffs' Complaint. Coach Services is a wholly owned subsidiary of Coach, a

1 Maryland corporation with its principal place of business in
2 Jacksonville, Florida. ECF No. 1 ("Compl.") ¶ 5. Coach
3 manufactures, markets, and sells fine leather and mixed material
4 products, including handbags, wallets, and accessories. Id. ¶ 10.
5 Coach owns the "COACH" trademark and various composite trademarks
6 and assorted components (collectively, "Coach Marks"). Id. ¶ 11.
7 Additionally, Coach owns various copyright registrations, including
8 the Horse and Carriage Mark and the Op Art Mark. Id. ¶ 13.

9 Plaintiffs allege that counterfeit Coach branded products were
10 sold and purchased from Defendant Diana Fashion, an unknown
11 business entity operating out of San Jose California. Id. ¶¶ 6,
12 18. Plaintiffs further allege that Defendant Diane Dao is the
13 owner of Diana Fashion and "is the active moving, and conscious
14 force" behind Diana Fashion's infringing activities. Id. ¶ 21.

15 Plaintiffs bring claims for: (1) trademark counterfeiting; (2)
16 federal trademark infringement; (3) false designation of origin and
17 false advertising; (4) federal trademark dilution; (5) trademark
18 dilution in violation of the California Business and Professions
19 Code; (6) common law unfair competition; and (7) copyright
20 infringement. Id. ¶¶ 23-87. Plaintiffs seek injunctive relief, an
21 award of Defendants' profits and all damages sustained by
22 Plaintiffs as a result of Defendants' illicit acts, treble damages
23 pursuant to 15 U.S.C. 1117(b), and interest, costs, and attorney's
24 fees. Id. at 16-17.

25 "Diana Dao" was personally served with a summons in this
26 action on June 2, 2011. ECF Nos. 7 (Proof of Service for Diana
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1 Fashion),¹ 8 ("Proof of Service for Diana Dao"). It is unclear
2 whether the wrong person was served or the process server merely
3 misspelled Defendant Diane Dao's name. In any event, there is no
4 indication in the Proof of Service that a copy of the Complaint was
5 served. After Defendants failed to answer or otherwise respond to
6 the Complaint, the clerk of the court entered default on July 1,
7 2011. ECF No. 13 ("Entry of Default"). Plaintiffs now apply for
8 default judgment.

9
10 **III. LEGAL STANDARD**

11 After entry of a default, the Court may enter a default
12 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do
13 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092
14 (9th Cir. 1980), is guided by several factors. As a preliminary
15 matter, the Court must "assess the adequacy of the service of
16 process on the party against whom default is requested." Bd. of
17 Trs. of the N. Cal. Sheet Metal Workers v. Peters, No. 00-0395,
18 2000 U.S. Dist. LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001). If
19 the Court determines that service was sufficient, it should
20 consider whether the following factors support the entry of default
21 judgment: (1) the possibility of prejudice to the plaintiff; (2)
22 the merits of plaintiff's substantive claim; (3) the sufficiency of
23 the complaint; (4) the sum of money at stake in the action; (5) the
24 possibility of a dispute concerning material facts; (6) whether the
25 default was due to excusable neglect; and (7) the strong policy
26 underlying the Federal Rules of Civil Procedure favoring decisions

27 _____
28 ¹ According to the Proof of Service, Diana Dao is designated by law
to accept service of process on behalf of Diana Fashion.

1 on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.
2 1986).

3
4 **IV. DISCUSSION**

5 Entry of default judgment is inappropriate because service of
6 process on Defendants appears to be defective. Federal Rule of
7 Civil Procedure 4(c)(1) provides that "[a] summons must be served
8 with a copy of the complaint." Service of a summons without a copy
9 of the full complaint constitutes ineffective service of process.
10 See W. Coast Theater Corp. v. Portland, 897 F.2d 1519, 1529 (9th
11 Cir. 1990); see also Albra v. Advan, Inc., 490 F.3d 826, 829 (11th
12 Cir. 2007).

13 Here, Plaintiffs' Proof of Service indicates that the summons
14 was served on "Diana Dao," as opposed to Defendant Diane Dao, on
15 June 2, 2011. There is no indication that Defendant Diane Dao was
16 served or that a copy of the Complaint was included in the service.
17 Because Plaintiffs appear to have failed to serve the Complaint on
18 Defendants in accordance with Rule 4, Plaintiffs' Application for
19 Default Judgment is denied without prejudice.

20
21 **V. CONCLUSION**

22 For the reasons stated above, the Court DENIES Plaintiffs
23 Coach, Incorporated and Coach Services, Incorporated's Application
24 for Default Judgment and VACATES the Clerk's Entry of Default. The
25 Court will reconsider its ruling if, within fifteen (15) days of
26 this Order, Plaintiffs file a corrected Proof of Service showing
27 that Defendants were properly served on June 2, 2011, along with a
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1 declaration verifying the corrected Proof of Service and describing
2 the filing error relative to the original Proof of Service.

3 If Plaintiffs are unable to demonstrate that Defendants were
4 in fact properly served on June 2, 2011, then Plaintiffs shall have
5 thirty (30) days from the date of this Order to effect proper
6 service on Defendants. Plaintiffs may then re-file an application
7 for an entry of default if Defendants fail to timely respond to a
8 properly served complaint. If default is entered, Plaintiffs may
9 re-file an application for default judgment with proof of proper
10 service.

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IT IS SO ORDERED.

Dated: October 12, 2011


UNITED STATES DISTRICT JUDGE