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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

ADOBE SYSTEMS INCORPORATED,

No. C 08-04046 SBA

Plaintiff,

**ORDER**

v.

[Docket No. 20]

RICHARD LEWIS, *et al.*,

Defendants.

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9  
10 On March 3, 2009, the Court held a hearing on plaintiff's Motion for Entry of Default  
11 Judgment (the "Motion") [Docket No. 20] based on defendant Lamor Morton's alleged trademark  
12 infringement under 15 U.S.C. § 1114(a)(1). At the hearing, the Court noted the following:

13 (1) Title 50 U.S.C. App. § 521 of the Servicemembers Civil Relief Act (the "Act") requires  
14 Adobe to provide the Court with specific facts regarding Morton's military status or why Adobe is  
15 unable to obtain them. Adobe's counsel declares that "I am informed and believe that Defendant is  
16 not currently serving in the military." Mot., Drey Decl. ¶ 8. At the hearing, counsel said that she  
17 spoke with Morton on October 28, 2008, and that he said he was not in military service at that time  
18 and would not invoke the Act in this matter. Counsel did not declare these facts in her declaration  
19 filed with the Motion. The Court finds that Adobe has not complied with § 521.

20 (2) Adobe claims that Morton engaged in five specific acts of trademark infringement, but  
21 does not specifically identify them in the Motion or its First Amended Complaint [Docket No. 11].  
22 The Court finds that Adobe has not demonstrated five violations of 15 U.S.C. § 1114(a)(1).

23 (3) Adobe has requested a permanent injunction under 15 U.S.C. § 1116(a). Adobe's  
24 evidence shows that from January 8, 2008 through January 8, 2009, Morton sold one allegedly  
25 counterfeit copy of Adobe Sounbooth on May 13, 2008. With regards to an injunction, Adobe has  
26 not shown, *inter alia*, any ongoing irreparable harm or that remedies at law are inadequate. *See eBay*  
27 *Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 392-93 (2006). The Court finds that Adobe has not met  
28 its burden to demonstrate that it is entitled to a permanent injunction.

1 (4) Adobe has requested statutory damages of \$250,000, under 15 U.S.C. § 1117(c)(1) for  
2 willful infringement, or alternatively, under 15 U.S.C. § 1117(c)(2) for innocent infringement. With  
3 regards to § 1117(c)(1), Adobe's only evidence of willful infringement is the evidence presented for  
4 a permanent injunction. With regards to § 1117(c)(2), Adobe requests \$50,000 per trademark  
5 infringement, on this same evidence. Because Adobe has failed to identify the five trademarks  
6 which Morton allegedly infringed upon, it is not entitled to \$50,000 in damages for each alleged  
7 infringement.

8 ACCORDINGLY, the Court orders that:

9 (1) Adobe's Motion for Entry of Default Judgment [Docket No. 20] is DENIED without  
10 prejudice.

11 (2) The entry of default against defendant Lamor Morton is VACATED.

12 (3) Adobe has until March 17, 2009 to file a Second Amended Complaint.

13 (4) A Case Management Conference is SET for May 6, 2009, at 3:00 p.m. The parties  
14 shall **meet and confer** prior to the conference and shall prepare a joint Case Management  
15 Conference Statement which shall be filed no later than ten (10) days prior to the Case Management  
16 Conference that complies with the Standing Order for All Judges of the Northern District of  
17 California and the Standing Order of this Court. Plaintiff shall be responsible for filing the  
18 statement as well as for arranging the conference call. All parties shall be on the line and shall call  
19 (510) 637-3559 at the above indicated date and time.

20  
21 IT IS SO ORDERED.

22 March 4, 2009

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24 Sandra Brown Armstrong  
25 United States District Judge  
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