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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CALIFORNIA BOARD SPORTS, INC.,
a California Corporation,

Plaintiff,

vs.
MARK A. GRIFFIN, an individual; G-
BAGS, LLC, a Pennsylvania limited
liability company,

Defendants.

CASE NO. 10cv1849 WQH (WVG)

ORDER

HAYES, Judge:

The matters before the Court are the Request for Appointment of Counsel for Defendant G-Bags, LLC filed by Defendant Mark A. Griffin (“Griffin”) (ECF No. 19), the Motion for a Stay of All Proceedings (ECF No. 21) filed by Griffin, and the Motion for Dismissal of Plaintiff’s Complaint Due to Lack of Personal Jurisdiction filed by Griffin (ECF No. 23).

BACKGROUND

On September 3, 2010, Plaintiff California Board Sports, Inc. initiated this action by filing a Complaint and filed an Amended Complaint on September 29, 2010, alleging claims of false designation of origin and false representation, federal trademark infringement, state trademark infringement and unfair competition, and common law trademark infringement and unfair competition against Defendants Mark A. Griffin and G-Bags, LLC. (ECF Nos. 1, 8). On October 14, 2010, Defendant Mark Griffin, filed a Motion requesting an extension of time to respond to the Complaint for himself and G-Bags, LLC, a Pennsylvania limited liability company. (ECF No. 13). The Court granted Defendant Griffin an extension of time to

1 respond to the Complaint and stated: “To date, there has been no appearance in this case by
2 any attorney for either Defendant Griffin or G-Bags, LLC.” (ECF No. 18 at 1 (citing Civ. L.R.
3 83.3(k) which provides: “Only natural persons representing their individual interests in propria
4 persona may appear in court without representation by an attorney All other parties,
5 including corporations, partnerships and other legal entities, may appear in court only through
6 an attorney”)).

7 On November 12, 2010, Defendant Griffin filed a Request for Appointment of Counsel
8 for Defendant G-Bags, LLC. (ECF No. 19). On November 16, 2010, Defendant Griffin filed
9 a Motion for a Stay of All Proceedings (ECF No. 21) and a Motion for Dismissal of Plaintiff’s
10 Complaint Due to Lack of Personal Jurisdiction (ECF No. 23).

11 On December 6, 2010, Plaintiff filed an Opposition to Griffin’s Motion to Dismiss Due
12 to Lack of Personal Jurisdiction and Motion to Stay Proceedings. (ECF No. 25).

13 DISCUSSION

14 I. Motion for Appointment of Counsel for Defendant G-Bags, LLC

15 Defendant Mark Griffin, who is proceeding pro se, requests appointment of counsel for
16 Defendant G-Bags, LLC, a limited liability company.

17 Generally, a person does not have a right to counsel in a civil case. *See Campbell v.*
18 *Burt*, 141 F.3d 927, 931 (9th Cir.1998); *Ivey v. Board of Regents of the University of Alaska*,
19 673 F.2d 266, 269 (9th Cir.1982). A federal court does not have the authority to “make
20 coercive appointments of counsel.” *Mallard v. United States District Court*, 490 U.S. 296, 310
21 (1989). A court has discretion to appoint counsel for indigent civil litigants pursuant to 28
22 U.S.C. § 1915(e)(1). However, appointment of counsel under 28 U.S.C. § 1915(e)(1) does
23 not apply to “artificial entities.” *Rowland v. California Men's Colony, Unit II Men's Advisory*
24 *Council*, 506 U.S. 194, 211 (1993). In addition: “It has been the law for the better part of two
25 centuries ... that a corporation may appear in the federal courts only through licensed counsel.”
26 *Id.* at 201-02. Therefore, Defendant Mark Griffin may not bring this Motion on behalf of
27 Defendant G-Bags, LLC, and even if he could the Motion is **DENIED**.

28

1 **II. Motion to Dismiss Plaintiff’s Complaint Due to Lack of Personal Jurisdiction**

2 Defendant Mark Griffin seeks to dismiss Plaintiff’s Complaint due to lack of personal
3 jurisdiction or, alternatively, seeks a transfer of venue to the Eastern District of Pennsylvania.
4 Griffin has submitted an affidavit and states that he has never been a resident of California, he
5 has not engaged in business transactions in California, he does not conduct activity in
6 California, and the only contact he has had with Plaintiff were emails and phone conversations
7 in an attempt to settle this action.

8 Plaintiff California Board Sports, Inc. contends that Defendant Griffin has advertised
9 his products for sale on his website www.g-bags.com as well as via Facebook, Twitter,
10 YouTube, Merchant Circle, Super Pages, and Yellow Pages. Plaintiff contends that by doing
11 so, Defendant Griffin has “clearly marketed and made his products available for purchase by
12 California customers.” (ECF No. 25 at 2). Plaintiff contends that Defendant Griffin has sold
13 products in California. Plaintiff contends that prior to this lawsuit, Defendant Griffin, through
14 Ohio counsel, sent Plaintiff a cease and desist letter regarding Plaintiff’s use of its trademark
15 G BAGS.

16 Plaintiff has submitted the abstract of title for the trademark registration of G-BAGS
17 which states that on June 8, 2007, Defendant Mark Griffin applied for the trademark and on
18 March 18, 2008, Defendant Mark Griffin obtained the trademark. Plaintiff has also submitted
19 the assignment of abstract of title which states that on July 23, 2010, Defendant Griffin
20 assigned the G-BAGS mark to G-Bags, LLC.

21 Plaintiff has submitted the declaration of Joshua J. Richman who states that on
22 September 3, 2010, he purchased a product from Defendant’s website www.gbags.com using
23 the “electronic shopping function located on the website.” (ECF No. 25-1 at 1). Richman
24 states in his declaration that on September 13, 2010, Defendant Griffin sent him an email
25 confirming the order and stating that the product had been shipped. *Id.* Richman has attached
26 the email and receipt showing that the order was shipped to his San Diego address. *Id.* at 4-5.
27 Richman has also submitted copies of G-Bag’s Facebook page, Twitter messages, and
28 YouTube page containing advertisements for products offered by G-Bags. The Facebook page

1 contains photo albums of G-Bag products created on September 16, 2009, posts describing the
2 products and providing the website address www.gbags.com, and invitations to participate in
3 monthly contests by “following” Defendant’s Twitter account to win free G-Bags products
4 dated from June 11, 2009 through February 10, 2010. *Id.* at 11-17. The Twitter messages
5 include product videos and commercials, links to other websites which carry G-Bags products,
6 links to the website address www.gbags.com, and invitations to participate in contests by
7 “following” Defendant’s Twitter account to win free G-Bags products dated from March 25,
8 2009 through July 4, 2010. *Id.* at 19-170. The YouTube page contains videos of G-Bags
9 products. *Id.* at 172. One video dated January 18, 2009, contains the following statement:
10 “This is our recently released media commercial providing the merits of all our products.
11 www.gbags.com Enjoy.” *Id.* Plaintiff has also attached a letter to the Complaint dated August
12 26, 2010 and sent to a Carlsbad, California address in which an attorney states that he represent
13 Defendant G-Bags, L.L.C. and states:

14 It recently came to our attention that your company is marketing and
15 selling a product labeled as the ‘G BAG.’ This product is apparently
16 offered for sale on numerous online retailers ... and available at skate shops
17 at various locations across the United States. Clearly [Plaintiff]¹ cannot
 continue to market and sell goods in direct competition with our client’s
 line of identical products under a moniker that is so likely to cause
 customer confusion with our registered trademark.

18 (ECF No. 1 at 16).

19 On a motion to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears
20 the burden of establishing personal jurisdiction. *Farmers Ins. Exchange v. Portage La Prairie*
21 *Mut. Ins. Co.*, 907 F.2d 911, 912 (9th Cir. 1990). Where the motion to dismiss is based on
22 written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie
23 showing of jurisdictional facts to satisfy this burden. *Dole Food Co. v. Watts*, 303 F.3d 1104,
24 1108 (9th Cir. 2002). While the plaintiff cannot “simply rest on the bare allegations of its
25 complaint,” *Amba Marketing Systems, Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir.

27 ¹ The letter is addressed to Osiris Shoes, Legal Department, 5601 Palmer Way,
28 Carlsbad, California 92010. Plaintiff California Board Sports, Inc. alleges that this letter was
sent to it. Plaintiff is a corporation with its principal place of business located at 5601 Palmer
Way, Carlsbad, California 92010.

1 1977), uncontroverted allegations in the complaint must be taken as true. *AT&T v. Campagnie*
2 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). Conflicts between parties over
3 statements contained in affidavits must be resolved in the plaintiff’s favor. *Id.*; *see also*
4 *Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (“Because
5 the prima facie jurisdictional analysis requires us to accept the plaintiff’s allegations as true,
6 we must adopt [the plaintiff’s] version of events for purposes of this appeal.”). “[I]f a
7 plaintiff’s proof is limited to written materials, it is necessary only for these materials to
8 demonstrate facts which support a finding of jurisdiction in order to avoid a motion to
9 dismiss.” *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th
10 Cir. 1977).

11 The exercise of personal jurisdiction over a nonresident defendant must be authorized
12 under the state’s long-arm statute and must satisfy the due process clause of the United States
13 Constitution. *Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir.
14 1985). California’s long-arm statute permits the exercise of personal jurisdiction “on any basis
15 not inconsistent with the Constitution of this state or the United States.” Cal. Civ. Pro. Code
16 § 410.10. Due process requires that the defendant have such “minimum contacts” with the
17 forum state that the exercise of jurisdiction over the defendant does not offend “traditional
18 notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S.
19 310, 316 (1954). Under due process analysis, a defendant may be subject to either general or
20 specific personal jurisdiction. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S.
21 408, 414 (1984).

22 “For general jurisdiction to exist over a nonresident defendant . . . the defendant must
23 engage in continuous and systematic general business contacts, that approximate physical
24 presence in the forum state.” *Schwartzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801
25 (9th Cir. 2004) (internal quotations omitted). “This is an exacting standard, as it should be,
26 because a finding of general jurisdiction permits a defendant to be haled into court in the forum
27 state to answer for any of its activities anywhere in the world.” *Id.*

28 A court exercises specific personal jurisdiction over a defendant where the claim arises

1 out of or has a substantial connection to the defendant’s contact with the forum. *Glencore*
2 *Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).

3 The Ninth Circuit analyzes specific jurisdiction according to a three-prong test:

4 (1) The non-resident defendant must purposefully direct his activities or
5 consummate some transaction with the forum or resident thereof; or perform
6 some act by which he purposefully avails himself of the privilege of conducting
7 activities in the forum, thereby invoking the benefits and protections of its laws;

8 (2) the claim must be one which arises out of or relates to the defendant’s forum-
9 related activities; and

10 (3) the exercise of jurisdiction must comport with fair play and substantial
11 justice, i.e. it must be reasonable.

12 *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007).

13 When personal jurisdiction is premised on a defendant’s internet activity, courts must
14 examine “the level of interactivity and commercial nature of the exchange of information that
15 occurs on the Web site.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997)
16 (quotation omitted). “[T]he likelihood that personal jurisdiction can be constitutionally
17 exercised is directly proportionate to the nature and quality of commercial activity that an
18 entity conducts over the Internet.” *Id.* at 419 (quotation omitted); *see also Gator.Com Corp.*
19 *v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003) (“This test requires both that the party
20 in question clearly [do] business over the Internet, and that the internet business contacts with
21 the forum state be substantial or continuous and systematic.”) (quotation and citation omitted).

22 The Court concludes that Defendant’s website www.gbags.com is interactive and
23 commercial in nature. Defendant Griffin has advertised extensively over the internet and has
24 directed business activities at consumers in California by selling products on the website
25 www.gbags.com and shipping merchandise to a San Diego address. In addition, Defendant
26 Griffin’s limited liability company sent a letter to Plaintiff at a Carlsbad, California address
27 requesting Plaintiff to “immediately terminate use of the trademark ‘G-BAG’ or any
28 confusingly similar product name” (ECF No. 1 at 16). The Court concludes that Plaintiff
has made a prima facie showing of jurisdictional facts.

III. Motion for a Stay of All Proceedings

Defendant Mark Griffin also seeks “a stay of all proceedings and discovery, or in the


1 alternative for a protective order preventing that any discovery be served on him, pending
2 resolution of Defendant's Motion to Dismiss for Lack of Jurisdiction" (ECF No. 21).

3 This Court has ruled on the Motion for Dismissal of Plaintiff's Complaint Due to Lack
4 of Personal Jurisdiction filed by Griffin; therefore, a stay pending resolution of the Motion is
5 not necessary. Defendant Griffin's Motion for a Stay of All Proceedings (ECF No. 21) is
6 DENIED as moot.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Request for Appointment of Counsel for Defendant
9 G-Bags, LLC filed by Defendant Griffin (ECF No. 19) and the Motion for Dismissal of
10 Plaintiff's Complaint Due to Lack of Personal Jurisdiction filed by Defendant Griffin (ECF
11 No. 23) are DENIED. The Motion for a Stay of All Proceedings (ECF No. 21) filed by
12 Defendant Griffin is DENIED as moot.

13 DATED: February 14, 2011

14 
15 **WILLIAM Q. HAYES**
16 United States District Judge

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