

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 08-cv-01119-MSK-KLM

TONY'S TAPS, LLC, d/b/a Pagosa Brewing Company, Inc.,

Plaintiff,

v.

PS ENTERPRISES, INC., d/b/a Pagosa Pub Works Brewpub,  
FRANK SCHIRO, and  
ROBIN SCHIRO,

Defendants,

and

PS ENTERPRISES, INC., d/b/a Pagosa Pub Works Brewpub,

Counterclaimant/Crossclaim Plaintiff,

v.

TONY'S TAPS, LLC, d/b/a Pagosa Brewing Company, Inc.,

Counterclaim Defendant, and

RICHARD ANTHONY SIMMONS, a/k/a Tony Simmons,

Crossclaim Defendant.

---

**ORDER DISMISSING COUNTERCLAIM ASSERTED BY PS ENTERPRISES, INC.  
AND ENTERING DEFAULT AGAINST PS ENTERPRISES, INC. ON ALL CLAIMS BY  
PLAINTIFF**

---

**THIS MATTER** comes before the Court *sua sponte*.

This action is styled as a trademark dispute. Plaintiff/Counterclaim Defendant Tony's

Taps asserts three claims against Defendant PS Enterprises, Inc. d/b/a Pagosa Pub Works Brewpub (“PS Enterprises”), Frank Schiro, and Robin Schiro (i) trademark infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114 and false designation of origin under § 43 of the Lanham Act, 15 U.S.C. § 1125(a); (ii) false advertising under § 43 of the Lanham Act, 15 U.S.C. § 1125(a); (iii) unfair competition and trademark infringement under Colorado law. Defendant PS Enterprises asserts a single counterclaim against Tony’s Taps and Mr. Simmons, the principal of Tony’s Taps, for violation of the Colorado Consumer Protection Act.

On March 3, 2011, this Court authorized the Defendant’s second counsel to withdraw. The Order (#177) observed that PS Enterprises, Inc. must be represented by counsel in order to proceed in this action.. *See Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006) *Harrison v. Wahatoyas, LLC*, 253 F.3d 552, 5556 (10th Cir. 2001);; D.C. Colo. L. Civ. R. 83.3D. Given the upcoming trial scheduled for May 2, 2010, the Order directed that “Defendant PS Enterprises, Inc. shall retain counsel, who shall file an entry of appearance with the Court, on or before March 14, 2011. The failure to comply may result in the dismissal of Defendant PS Enterprises, Inc.’s counterclaim pursuant to Fed. R. Civ. P. 41(b) and/or entry of default judgment against it on Plaintiff’s claims pursuant to Fed. R. Civ. P. 55.” A copy of this order was mailed by the clerk to PS Enterprises.<sup>1</sup>

---

<sup>1</sup> PS Enterprises has been through this procedure before. At a hearing on October 14, 2009, the Court granted prior defense counsel’s motion to withdraw, but stayed the effect of the order for 60 days so that counsel could assist in the preparation of the pretrial documents and the Defendants could obtain substitute counsel. The Court advised the Plaintiffs that PS Enterprises, Inc., as a corporation, could not appear without counsel and warned that if substitute counsel was not obtained within the 60-day time period, default might ultimately be entered against PS Enterprises, Inc. Counsel did not enter an appearance prior to the deadline and the Court issued an Order to Show Cause (#135) as to why the claims should not be dismissed for failure to obtain substitute counsel. PS Enterprises responded (#140), stating that it had obtained counsel.

No counsel has entered an appearance for PS Enterprises and no request for extension of time to retain counsel has been made. PS Enterprises cannot proceed *pro se* in defense or in prosecution of counterclaims at the scheduled trial.

**IT IS THEREFORE ORDERED** that

- (1) Defendant/Counterclaim Defendant PS Enterprises, Inc.'s Counterclaim against Plaintiff Tony's Taps is **DISMISSED** pursuant to Fed. R. Civ. P. 41(b).
- (2) **DEFAULT** is hereby entered against PS Enterprises on all claims brought by the Plaintiff pursuant to Fed. R.Civ P 55(a).

Dated this 18th day of March, 2011

**BY THE COURT:**



---

Marcia S. Krieger  
United States District Judge

---

Accordingly, the Court discharged (#141) the Order to Show Cause.