

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 15-02245 JVS (RNBx) Date February 29, 2016

Title Sundesha LLC v. Giant Sports Products LLC

Present: The Honorable James V. Selna

James Selna

Deputy Clerk

Attorneys Present for Plaintiffs:

Not Present

Not Present

Court Reporter

Attorneys Present for Defendants:

Not Present

Proceedings: **(IN CHAMBERS)**

**Order Granting in Part Plaintiff's  
Renewed Application for Default Judgment**

Plaintiff Sundesa, LLC ("Sundesha") renews its application for entry of default judgment against Defendant Giant Sports Products, LLC ("Giant"). (Docket No. 31.) Sundesa requests the Court award damages, award attorneys' fees and costs, and grant a permanent injunction against Giant. Sundesa also asks the Court to order Giant to conduct an accounting. Giant has filed no opposition to the renewed application. As set forth below, the Court grants in part, and denies in part, Sundesa's renewed application for entry of default judgment.

I. Procedural History and Factual Background

The background is recited in this Court's prior Order dated November 2, 2015. (Docket No. 24.)

II. Discussion

Sundesha seeks judgment for an award of damages, treble damages under 35 U.S.C. § 284, attorneys' fees under 35 U.S.C. § 285, costs, prejudgment interest, post-judgment interest, and permanent injunctive relief.

A. Damages

In the Court's prior Order, the Court denied Sundesa's request for an evidentiary hearing to determine the amount of damages. The Court instructed Sundesa to make its evidentiary showing regarding damages by way of declaration.

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Sundesha has submitted its declaration regarding damages. (Decl. Wright Supp. P.’s Appl. Default J. Re Damages (“Decl. Wright Damages”), Docket No. 25.) However, Sundesha admits it lacks evidence to prove damages. (Id. ¶ 9.) Consequently, the Court denies Sundesha’s request for damages without prejudice.

Sundesha requests the Court “order Giant to make an accounting of the total number of infringing units made, used, sold, offered for sale, or imported into the United States by Giant to facilitate a determination of damages.” (P.’s Memo. P. & A Supp. Renewed Appl. (“Renewed Appl.”) 6–7, Docket No. 6-7.) However, in violation of L.R. 7-5(a), Sundesha provides this Court with no authority suggesting it is entitled to such an order.

Nevertheless, there is some authority for an accounting. E.g. R. Wallace & Sons Mfg. v. Ellmore Silver Co., 91 F. Supp. 703, 705 (D. Conn. 1950). Accordingly, the Court grants Sundesha’s request for an accounting. The Court denies, as premature, Sundesha’s request for prejudgment interest.

B. Attorneys’ Fees

Pursuant to 35 U.S.C. § 285, “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” An exceptional case “is simply one that stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S. Ct. 1749, 1756 (2014). “District courts may determine whether a case is ‘exceptional’ in the case-by-case exercise of their discretion, considering the totality of the circumstances.” Id. Sanctionable conduct under Federal Rule of Civil Procedure 11 is not the benchmark because “a district court may award fees in the rare case in which a party’s unreasonable conduct—while not necessarily independently sanctionable—is nonetheless so ‘exceptional’ as to justify an award of fees.” Id. at 1756–57. The moving party need only show by a preponderance of the evidence that it is entitled to fees under § 285. Id. at 1758.

The court determines, based on its previous finding that Giant acted willfully,<sup>1</sup> and

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<sup>1</sup> See Order pp. 4–5, Docket No. 24.

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there is no evidence against a finding of exceptionality, that this is an exceptional case. Ceiva Logic Inc. v. Frame Media Inc., No. 08-cv-00636 (JVS), 2014 WL 7338840, at \*4 (C.D. Cal. Dec. 19, 2014). As noted below, Sundesa has secured a permanent injunction. The Court has reviewed Sundesa's evidence submitted to support its attorney fee request which includes the rate and hours worked by each attorney. (Docket No. 30.) The Court determines that the attorneys' fees requested, \$9,758.90, appear reasonable for work on a matter that resulted in default judgment. Accordingly, the Court grants Sundesa's request for attorneys' fees. The Court also grants Sundesa's request for post-judgment interest on attorneys' fees. See Perkins v. Standard Oil Co., 487 F.2d 672, 676 (9th Cir. 1973) ("claims for 'reasonable' attorneys fees, being unliquidated until they are determined by a court, are not entitled to pre-judgment interest as would be certain liquidated claims. But once a judgment is obtained, interest thereon is mandatory without regard to the elements of which that judgment is composed.).

C. Costs

Sundesa requests its costs in this matter. A patentee may recover costs incurred in litigating an infringement action "upon finding for the claimant." 35 U.S.C. § 284. Sundesa argues that its total amount of costs is \$834.18. (Renewed Appl. 7; Wright Decl. Damages Ex. A p. 1, Docket No. 30.)

The basis for this amount is the purchase of the infringing product, the filing fee for the complaint, two fees for a messenger service to deliver copies of documents, a fee for downloading portions of the docket, a fee for a business search, and two fees for service of the summons and the complaint. (See Wright Decl. Damages Ex. A.)

The costs of an action are not the full measure of expenses incurred in litigation. Rather costs are typically those costs listed under 28 U.S.C. § 1920 and Local Rule 54-3. Consequently, the Court awards the costs of the filing fee, the fee for the business search, and the fees for service of the summons and complaint.

Consequently, the Court awards \$750.79 in costs.

D. Injunctive Relief

Sundesa renews its application for a permanent injunction against Giant. (Renewed

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Appl. 8–11.)

To obtain a permanent injunction, a plaintiff must demonstrate:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

As set forth in the prior order, the Court finds that Giant is liable for infringement of certain patents. Further, Giant has been nonresponsive to this litigation, indicating that Sundesa may require a permanent injunction to stop Giant’s infringement. An injunction would also pose little additional hardship to Giant because it would simply enjoin Giant from engaging in further infringement.

When infringement of an intellectual property right has been adjudged, there is no express presumption of irreparable injury. See Robert Bosch LLC v. Pylon Mfg. Corp., 659 F.3d 1142, 1148-49 (Fed. Cir. 2011) (acknowledging that eBay abolished the Federal Circuit’s general rule that an injunction will issue when a patent is found to have been valid and infringed); Perfect 10, Inc. v. Google, Inc., 653 F.3d 976, 981 (9th Cir. 2011) (presumption of irreparable harm following a showing of reasonable likelihood of success on the merits of a copyright claim is irreconcilable with eBay). Nevertheless, Sundesa has now adequately supported its contention of irreparable injury.

Sundesa submits the amended declaration of “the Executive Assistant to Steve and Kim Sorensen at Sundesa, LLC.” (Amended Eckel Decl. Supp. P.’s Appl. Default J. Re Irreparable Harm ¶ 1, Docket No. 35.) The Court notes that the declarant supports her declaration with the foundation that she has duties at Sundesa, such as “oversight of Sundesa’s intellectual property work done by the law firm Maschoff Brennan Laycock Gilmore Israelsen & Wright and its attorneys.” (Id. ¶ 1.)

Declarant further states that Sundesa has experienced price erosion in the shaker cup market. (Id. ¶ 13.) Sundesa’s declarant states that Sundesa offers its products for \$9.99, that Giant offered its products for \$2.99, and retailers of Sundesa’s products point

