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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Body by Jake Global, LLC,  
Plaintiff,  
v.  
Susanto,  
Defendant.

NO. C 11-03216 JW

**ORDER DENYING PLAINTIFF’S  
MOTION FOR DEFAULT JUDGMENT**

Presently before the Court is Body by Jake Global, LLC’s (“Plaintiff”) Motion for Default Judgment.<sup>1</sup> Plaintiff alleges that Susanto (“Defendant”), an Indonesian entity, sold counterfeit exercise equipment bearing Plaintiff’s trademarked logo on the eBay website. The Court finds it appropriate to take the Motion under submission without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court DENIES Plaintiff’s Motion.

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<sup>1</sup> (Plaintiff’s Notice of Application and Application for Entry of Default Judgment and Permanent Injunction by the Court Against Defendant John Rigby & Co. (Gunmakers) [sic], Ltd., hereafter, “Motion,” Docket Item No. 17.)

1 **A. Background**

2 In a Complaint<sup>2</sup> filed on June 29, 2011, Plaintiff alleges as follows:

3 Plaintiff is a limited liability company with its principal place of business in Los  
 4 Angeles, California.<sup>3</sup> (Complaint ¶ 3.) Plaintiff manufactures, sells, distributes, advertises  
 5 and licenses various types of fitness products and services worldwide under its Body by Jake  
 6 and Tower 200 brands. (Id. ¶ 5.) Plaintiff is the owner of federally registered trademarks,  
 7 including the Body by Jake marks. (Id. ¶ 22.) Plaintiff is the exclusive owner of the Tower  
 8 200 Copyrights. (Id. ¶ 81.)

9 Defendant is an Indonesian entity, with its primary place of business in Indonesia.  
 10 (Complaint ¶ 4.) Defendant markets and sells counterfeit exercise equipment under the  
 11 names Body by Jake and Tower 200 in violation of Plaintiff's trademarks and copyrights.  
 12 (Id. ¶ 13.) Defendant conducts business in California and is conducting the specific business  
 13 complained of in California. (Id. ¶ 4.) Defendant has advertised its goods using Body by  
 14 Jake marks on the Internet, and in particular on eBay. (Id. ¶ 14.)

15 On the basis of the allegations outlined above, Plaintiff alleges seven causes of action: (1)  
 16 Federal Trademark Infringement, 15 U.S.C. § 1114; (2) California Trademark Infringement, Cal.  
 17 Bus. & Prof. Code § 14320; (3) Federal Unfair Competition, 15 U.S.C. § 1125(a); (4) California  
 18 Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, *et seq.* and 17500; (5) Federal Trademark  
 19 Dilution, 15 U.S.C. § 1125(c); (6) California Trademark Dilution, Cal. Bus. & Prof. Code § 14330;  
 20 and (7) Copyright Infringement, 17 U.S.C. §§ 101, *et seq.*

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 24 <sup>2</sup> (Complaint for Federal Trademark Infringement; State Trademark Infringement; Federal  
 25 Unfair Competition; State Unfair Competition; Federal Trademark Dilution; State Trademark  
 Dilution; and Copyright Infringement, hereafter, "Complaint," Docket Item No. 1.)

26 <sup>3</sup> The Court observes that Plaintiff's Complaint alleges both: (1) that Plaintiff's principal  
 27 place of business is "within this judicial district"; and (2) that its principal place of business is in  
 "Los Angeles California," which is, in fact, in the Central District of California. (Complaint ¶ 3.)

1 On July 23, 2011, Plaintiff attempted to serve Defendant by mailing the Summons,  
2 Complaint and civil cover sheet via Certified Mail Return Receipt Requested.<sup>4</sup> On October 11,  
3 2011, Plaintiff requested an entry of default against Defendant. (See Request for Default.) On  
4 October 17, 2011, the Clerk of Court entered default as to Defendant. (See Docket Item No. 12.)

5 Presently before the Court is Plaintiff's Motion for Default Judgment.

6 **B. Standards**

7 Pursuant to Fed. R. Civ. P. 55(b)(2), a party may move the court for an entry of default  
8 judgment. The grant of a default judgment is within the discretion of the court. Draper v. Coombs,  
9 792 F.2d 915, 924 (9th Cir. 1986). In the Ninth Circuit, the district court must consider which of  
10 seven factors supports the entry of a default judgment: (1) the possibility of prejudice to the plaintiff;  
11 (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of  
12 money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether  
13 the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of  
14 Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.  
15 1986).

16 **C. Discussion**

17 Plaintiff moves for default judgment against Defendant and asks the Court to award Plaintiff:  
18 (1) a permanent injunction enjoining Defendant from producing or selling products bearing  
19 Plaintiff's trademarked logos; and (2) attorney fees under 15 U.S.C. § 1117(a).<sup>5</sup> As a preliminary  
20 matter, however, the Court must determine that it has jurisdiction over Defendant. See United States  
21 v. Berke, 170 F.3d 882, 883 (9th Cir. 1999). To determine its jurisdiction, the Court first considers  
22 whether Defendant was properly served.

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25 <sup>4</sup> (Request for Entry of Default, hereafter, "Request for Default," Ex. 1, Declaration of  
Michael P. Martin ¶ 3, hereafter, "Martin Decl.," Docket Item No. 9.)

26 <sup>5</sup> (Memorandum or [sic] Points and Authorities Submitted in Support of Plaintiff's Notice of  
27 Application and Application for Entry of Default Judgment and Permanent Injunction by the Court  
Against Defendant at 5-7, Docket Item No. 17-1.)

1 Service upon corporations outside of the United States may be accomplished by any of the  
2 methods provided in Federal Rule of Civil Procedure 4(f). See Fed. R. Civ. P. 4(h). If there is no  
3 internationally agreed-upon means of service for a given country, Rule 4(f) allows a plaintiff to  
4 serve a defendant either: (1) “as prescribed by the foreign country’s law for service in that country in  
5 an action in its courts of general jurisdiction”;<sup>6</sup> or (2) by “using any form of mail that the clerk  
6 addresses and sends to the individual and that requires a signed receipt.” Fed. R. Civ. P.  
7 4(f)(2)(C)(ii). Service under this second option must be mailed by the clerk of court, and not by the  
8 plaintiff.<sup>7</sup>

9 Indonesia is not a member of the Hague Convention; nor does it appear to have an  
10 internationally agreed-upon means of service.<sup>8</sup> In Indonesian courts, service by mail by private  
11 parties is not allowed, though service may be acceptable if effected by a bailiff.<sup>9</sup> Here, Plaintiff’s  
12 counsel declares that he served Defendant by Certified Mail himself, and did not have service  
13 effected by the Clerk of Court. (See Martin Decl. ¶ 3.) Because mail sent by a private party is not  
14 an acceptable method of service under Indonesian law,<sup>10</sup> the Court finds that Rule 4(f)(2)(A) is not  
15 satisfied. Further, because service was mailed by Plaintiff’s counsel and not by the Clerk of Court,  
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20 <sup>6</sup> See Fed. R. Civ. P. (4)(f)(2)(A).

21 <sup>7</sup> See Brockmeyer v. May, 383 F.3d 798, 804-05 (9th Cir. 2004) (explaining that this rule  
22 “authorizes service abroad by mail for which a signed receipt is required, *when such mail is*  
23 *addressed and mailed by the clerk of the federal district court in which the suit is filed*”) (emphasis  
added).

24 <sup>8</sup> See, e.g., Exp.-Imp. Bank of U.S. v. Asia Pulp & Paper Co., Ltd., No.  
03Civ.8554(LTS)(JCF), 2005 WL 1123755, at \*2 (S.D.N.Y. May 11, 2005); see also Indonesia  
25 Judicial Assistance, [http://travel.state.gov/law/judicial/judicial\\_651.html](http://travel.state.gov/law/judicial/judicial_651.html) (last visited May 2, 2012).

26 <sup>9</sup> See Brockmeyer, 383 F.3d at 808 (discussing cases involving service of process by  
international mail to Indonesia); Asia Pulp & Paper Co., Ltd., 2005 WL 1123755, at \*3-4.

27 <sup>10</sup> See Asia Pulp & Paper, 2005 WL 1123755, at \*3; Brockmeyer, 383 F.3d at 808.

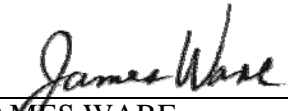
1 as discussed above, Rule 4(f)(2)(C)(ii) is not satisfied. See Brockmeyer, 383 F.3d at 805. Thus, the  
 2 Court finds that service was improper.<sup>11</sup>

3 Accordingly, the Court DENIES Plaintiff's Motion for Default Judgment on the basis of  
 4 improper service of process.<sup>12</sup>

5 **D. Conclusion**

6 The Court DENIES Plaintiff's Motion for Default Judgment without prejudice. The Court  
 7 further strikes the Clerk's entry of default. Plaintiff shall properly serve Defendant within thirty (30)  
 8 days.<sup>13</sup> Upon completion of proper service consistent with the terms of this Order, Plaintiff may  
 9 once again apply for an entry of default.

10  
 11 Dated: May 2, 2012

  
 12 JAMES WARE  
 13 United States District Chief Judge

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 15 <sup>11</sup> Plaintiff contends that service was sufficient on the ground that Fed. R. Civ. P. 4(e) allows  
 16 service by "following state law for serving a summons in an action brought in courts of general  
 17 jurisdiction in the state where the district court is located or where service is made," and service by  
 18 Certified Mail Return Receipt Requested is acceptable under California law. (Request for Default at  
 2-3.) However, the Court finds that this contention is misguided. Rule 4(e) only applies to "serving  
 an individual within a judicial district of the United States." Insofar as Indonesia is not "within a  
 judicial district of the United States," service upon Indonesian entities is governed by Rule 4(f)  
 rather than Rule 4(e).

19 <sup>12</sup> While improper service of process alone is sufficient to deny Plaintiff's Motion, the Court  
 20 also has concerns regarding both its personal jurisdiction over Defendant and whether venue is  
 21 proper in the Northern District of California. Due process requires that a defendant have "certain  
 22 minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional  
 23 notice of fair play and substantial justice.'" Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)  
 (citations omitted). While the use of eBay to sell products into a forum state may be sufficient to  
 24 establish jurisdiction, this is only the case where a defendant's eBay business is substantial enough  
 25 to satisfy the International Shoe standard; a single sale or maintenance of a passive site is not  
 26 sufficient. See Boschetto v. Hansing, 539 F.3d 1011, 1018-19 (9th Cir. 2008). Here, while Plaintiff  
 alleges that Defendant advertised infringing products on eBay, the Complaint is silent as to the  
 number of alleging sales or the amount of activity conducted within California. (Complaint ¶ 14.)  
 Should Plaintiff renew its Motion for Default Judgment after properly serving Defendant, Plaintiff  
 shall provide additional information to the Court regarding Defendant's activities within the  
 Northern District of California.

27 <sup>13</sup> In light of this Order, the Court VACATES the Case Management Conference scheduled  
 28 for May 7, 2012.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Michael Power Martin mmartin@fpplaw.com

3 **Dated: May 2, 2012**

**Richard W. Wieking, Clerk**

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5 **By:           /s/ JW Chambers**  
6 **Susan Imbriani**  
7 **Courtroom Deputy**

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