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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

S

D.A.D.S. DENIM, INC., a
California corporation,

Plaintiff,

v.

LILLIAN RAMIREZ, an
individual; GIRLIE GIRL
PRODUCTIONS, a California
corporation; RADISSON HOTELS
INTERNATIONAL, INC., a
Delaware corporation,

Defendants.

Case No. CV 05-01869 DDP (CT)
**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES**

[Motion filed on November 1,
2006]

THIS DOCUMENT CONTAINS NOTICE OF ENTRY
AS REQUIRED BY FEDERAL RULE 77(d)

This matter comes before the Court on the plaintiff's motion
for attorneys' fees. After reviewing and considering the materials
submitted herein and hearing oral argument, the Court grants the
plaintiff's motion.

I. Background

In the underlying action, plaintiff D.A.D.S. Denim, Inc.
("DADS") sued defendant Lillian Ramirez alleging that Ramirez sold
counterfeit jeans at clothing sales at the Radisson Hotel,
infringing on plaintiff's copyright and trademark. At trial, DADS

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1 presented evidence that Ramirez conducted at least three clothing
2 sales during 2004 and 2005. Plaintiff also presented evidence
3 that, at the sale where the infringement occurred, Ramirez had
4 hundreds of pairs of jeans for sale. Ramirez argued that she was
5 unaware that the jeans were counterfeit because she purchased the
6 jeans from an outlet, and that she bought the clothing for her
7 personal use. Ramirez produced one receipt documenting a sale for
8 four pairs of jeans but she was unable to produce any additional
9 receipts or documentation from the sales events.

10 On October 11, 2006, following a jury trial, the jury returned
11 a verdict in favor of DADS and against Lillian Ramirez, finding
12 that Ramirez willfully infringed on DADS' Dylan Skylar design
13 copyright and intentionally infringed DADS' Citizens of Humanity
14 trademark. The jury awarded DADS \$30,000 in statutory damages.

15 In this motion, plaintiff seeks \$104,779.50 in attorneys'
16 fees. However, in plaintiff's reply in support of this motion,
17 plaintiff now seeks \$87,177 in attorneys' fees, as this amount
18 represents the fees that DADS incurred in litigating directly
19 against Ramirez, with the fees incurred while litigating with co-
20 defendant Radisson Hotel International subtracted.

21

22 **II. Discussion**

23 **A. Legal Standard**

24 Under the Lanham Act, the court may award reasonable
25 attorneys' fees to the prevailing party in "exceptional" cases. 15
26 U.S.C. § 1117(a). A trademark case is considered "exceptional" for
27 purposes of an award of attorneys' fees when the infringement is
28 malicious, fraudulent, deliberate, or willful. See Stephen W.

1 Boney, Inc. v. Boney Serv., Inc., 127 F.3d 821, 826 (9th Cir.
2 1997).

3 Section 505 of the Copyright Act (the "Act") provides that the
4 court may award a reasonable attorneys' fee to the prevailing party
5 in a civil action under the Act. 17 U.S.C. § 505. The Ninth
6 Circuit will not reverse such an award absent an abuse of
7 discretion. Transgo, Inc. v. Ajac Transmission Parts Corp., 768
8 F.2d 1001, 1027 (9th Cir. 1985).

9 In considering motions for attorneys' fees under § 505 of the
10 Act, the district court should "seek to promote the Copyright Act's
11 objectives." Historical Research v. Cabral, 80 F.3d 377, 378-79
12 (9th Cir. 1996). The Ninth Circuit has enumerated certain factors
13 which the district court should consider, including: (1) the degree
14 of success obtained; (2) frivolousness; (3) motivation; (4)
15 objective unreasonableness; and (5) "the need in particular
16 circumstances to advance considerations of compensation and
17 deterrence." Jackson v. Axton, 25 F.3d 884, 890 (9th Cir. 1994).
18 There is no precise rule or formula for making these
19 determinations, but instead equitable discretion should be
20 exercised in light of the considerations the Supreme Court has
21 identified. Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 (1994).

22

23 B. Analysis

24 1. Attorneys' Fees Under the Trademark Act

25 The Court finds that DADS is entitled to reasonable attorneys'
26 fees under the Lanham Act because of the "exceptional
27 circumstances" presented in this case. A trademark infringement
28 case is considered "exceptional" when the defendant "acted

1 maliciously, fraudulently, deliberately, or willfully." Earthquake
2 Sound Corp. v. Bumper Industries, 353 F.3d 1210, 1216 (9th Cir.
3 2003). In this case, the jury found that Ramirez intentionally and
4 willfully infringed on DADS' trademark. Accordingly, DADS is
5 entitled to attorneys' fees on its trademark claim.

6 2. Attorneys' Fees Under the Copyright Act

7 The jury rendered a verdict in DADS' favor and against Lillian
8 Ramirez. Thus, DADS is the "prevailing party" and the court has
9 the discretion to award attorney's fees under the Copyright Act.
10 The Court considers each factor in turn.

11 a. Degree of Success Obtained

12 Plaintiff contends that it was completely successful in
13 obtaining relief on its copyright claim because the jury found that
14 Ramirez willfully and intentionally infringed plaintiff's
15 copyright. On the other hand, the defendant contends that, if the
16 Court were to award an off-set of the judgment, the plaintiff will
17 only recover a nominal award and, therefore, the extent of success
18 would be minimal.

19 Here, based on Ramirez's willful and intentional infringement,
20 the jury awarded statutory damages against Ramirez in the amount of
21 \$30,000 and issued an injunction against Ramirez to prevent future
22 attempts to sell counterfeited goods. The plaintiff prevailed on
23 all her claims against Ramirez and was completely successful.
24 Accordingly, this factor weighs in favor of granting the
25 plaintiff's motion.

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1 b. Frivolousness, Motivation, and Reasonableness
2 of Defense

3 Plaintiff argues that Ramirez's defense was frivolous and in
4 bad faith because plaintiff argued that hundreds of pairs of jeans
5 that she sold at sample sales were for her personal use. Plaintiff
6 also argues that Ramirez's defenses were in bad faith because she
7 claimed that she lost money at the sample sale events and yet she
8 continued to hold them. Ramirez also had minimal records of the
9 events and could only produce one receipt for four pairs of jeans
10 sold. In Ramirez's Opposition, Ramirez contends that she did not
11 present an unreasonable defense. Rather, she merely argued that
12 she had legitimately purchased the jeans from an outlet store and
13 resold them, never knowing that they were counterfeit.

14 Ramirez's defense was unreasonable given the evidence
15 presented. Ramirez's claim that she bought the jeans from an
16 outlet store and resold them believing them to be authentic was not
17 corroborated by any evidence such as receipts or credit card
18 records. Furthermore, Ramirez's contention that the jeans were for
19 personal use is unreasonable given the quantity of jeans she sold
20 at the sample sales and the number of events that she held.
21 Accordingly, this factor also weighs in favor granting the
22 plaintiff's motion.

23 c. Need to Advance Considerations of Compensation
24 and Deterrence

25 Plaintiff contends that there is a need to compensate the
26 plaintiff beyond the \$30,000 damage award because plaintiff was
27 forced to spend \$87,177 in attorneys' fees to protect its
28 copyright. Plaintiff argues that the defendants needlessly dragged

1 out this litigation, forcing the plaintiff to expend substantial
2 attorneys' fees. As a result, plaintiff contends that the \$30,000
3 damage award does not compensate DADS for the harm done. In the
4 defendant's opposition, defendant's counsel contends that the fees
5 expended in this case were excessive, that the plaintiff is
6 responsible for incurring such substantial fees because the
7 plaintiff was unwilling to settle earlier in the case, and that the
8 plaintiff over-litigated this case.

9 Serving the goals of compensation and deterrence is consistent
10 with the purposes of the Copyright Act. See Fogerty v. Fantasy
11 Inc., 510 U.S. 517, 533 (1994) (noting that nonexclusive factors
12 that guide courts' discretion in awarding attorney's fees,
13 including the goals of compensation and deterrence, are consistent
14 with the purposes of the Copyright Act).

15 Here, the goals of compensation and deterrence would be served
16 because the plaintiff has spent attorney's fees in excess of the
17 damages award in order to protect its copyright. Copyright law
18 ultimately serves the purpose of enriching the general public
19 through access to creative works. Id. at 518. By compensating the
20 plaintiff for its reasonable attorneys' fees, this provides
21 similarly situated copyright holders with a greater incentive to
22 protect their creative works. In addition, Ramirez and possible
23 future infringers, facing the prospect of paying the plaintiff's
24 attorney's fees, will be deterred from infringing on copyrights in
25 the future. In exercising its equitable discretion, the court
26 awards to the plaintiff \$87,177 in attorneys' fees. This amount
27 represents the attorneys' fees that DADS expended litigating
28 directly against Ramirez.

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d. Reasonableness of Attorney's Fees


The grant of \$87,177 in attorney's fees is reasonable given the jury's findings of willful and intentional infringement, the frivolousness of some of Ramirez's defenses, and the goals of compensation and deterrence of the Copyright Act. Ramirez contends that the attorney's fees are unreasonable and excessive, citing the 150 hours of time spent preparing for trial and certain attorneys' billing rates. However, when the attorneys and paralegals hourly rates are "blended" in this case, the "blended billing rate" is approximately \$356,84. The Court finds this billing rate to be reasonable. See In re Heritage Bond Litigation, 2005 WL 1594389, *16 (C.D. Cal. 2005) (holding "blended rate" of \$366 to be reasonable). Furthermore, this Court does not find any of the attorneys' time spent during this litigation to be excessive.

III. Conclusion

For the foregoing reasons, the Court grants plaintiff's motion for attorneys' fees in the amount of \$87,177.00

IT IS SO ORDERED.

Dated: 12-4-06


DEAN D. PREGERSON
United States District Judge