

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

GRASSHOPPER HOUSE, LLC, a
California limited liability company
doing business as Passages Malibu;
PASSAGES SILVER STRAND, LLC, a
California limited liability company,

Plaintiffs,

Civil No. 09-778-HA

v.

ORDER

ACCELERATED RECOVERY CENTERS,
LLC, a Georgia limited liability company;
RENAISSANCE MALIBU FOUNDATION,
a California non-profit corporation; and
BALDWIN RESEARCH INSTITUTE, INC.,
a New York non-profit corporation,

Defendants.

HAGGERTY, District Judge:

Plaintiffs Grasshopper House, LLC and Passages Silver Strand, LLC allege that defendants used their trademarks and trade dress in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125, and that defendants' acts constitute unlawful, unfair, and fraudulent business practices pursuant to California Business & Professions Code § 17200. Plaintiffs obtained a Default Judgment [48] and a permanent injunction against defendant Renaissance Malibu Foundation (defendant). Plaintiffs seek an order finding defendant, associated entities, and defendant's chief executive officer in contempt of court for violating the permanent

injunction. Defendant filed a Motion to Vacate the Default Judgment and Dismiss for Lack of Personal Jurisdiction [59]. An evidentiary hearing was held on July 15, 2010. For the following reasons, defendant's Motion to Vacate the Default Judgment and Dismiss for Lack of Personal Jurisdiction is GRANTED.

BACKGROUND

Plaintiffs operate an alcohol and drug addiction treatment facility in California. Plaintiffs have been doing business as "Passages" and "Passages Malibu" for many years and have used "Passages" and "Passages Malibu" as their trademark. Defendant is a non-profit corporation affiliated with plaintiffs' competitors. Those affiliated competitors and their officers allegedly use plaintiffs' trademarks and trade dress in their internet advertising campaigns. From evidence adduced at the evidentiary hearing, it appears defendant itself does nothing. Defendant was established as a 501(c)(3) charitable organization established in California, but it has never carried out its mission statement and exists entirely on paper and as a part of an affiliate's website.

STANDARDS

Under Federal Rule of Civil Procedure 55(c), a district court "may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b)." Rule 60(b) allows a court to set aside a default judgment "for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . (4) the judgment is void . . . (6) any other reason that justifies relief." Although there is a policy in favor of the finality of judgments, under Rule 60(b)(6), courts can "vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949). "It is well-established that

judgment entered without personal jurisdiction over the [defendant] is void." *Thomas P.*

Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247, 1255 (9th Cir. 1980) (citations omitted).

To determine whether personal jurisdiction exists, the court may consider the pleadings and evidence presented through affidavits, and may also order limited discovery to develop jurisdictional facts. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001); *Data Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

Plaintiffs bear the burden of establishing that this court has personal jurisdiction over defendant. *See Fireman's Fund Ins. Co. v. Nat'l Bank of Coop.*, 103 F.3d 888, 893 (9th Cir. 1996) (nonmoving party has burden of establishing personal jurisdiction). Plaintiffs need only make a *prima facie* showing of facts that support exercising jurisdiction over defendant. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1168 (9th Cir. 2006).

Personal jurisdiction over a non-resident defendant is tested under a two-prong analysis: the exercise of jurisdiction must: (1) satisfy the requirements of the long arm statute of the state in which the district court sits; and (2) comport with principles of federal due process. *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 559 (9th Cir. 1995); *Ziegler v. Indian River Cty.*, 64 F.3d 470, 473 (9th Cir. 1995).

The due process clause of the United States Constitution protects persons from being subject to the binding judgments of a forum with which they have "established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (citing *Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 319 (1945)). Due process requires that a defendant have "minimum contacts with the forum state such that the exercise of personal

jurisdiction does not offend traditional notions of fair play and substantial justice." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 839 (9th Cir. 1986) (citing *Int'l Shoe Co.*, 326 U.S. at 316). Minimum contacts encompasses two types of jurisdiction: general and specific. See *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990).

For a defendant to be subject to general personal jurisdiction, the defendant must have such "continuous and systematic contacts with the forum that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." *Reebok Intern. Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995). The standard for general jurisdiction is high, requiring that the contacts in the forum "approximate physical presence." *Tuazon*, 42 F.3d at 1169.

Alternatively, specific jurisdiction exists where: (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself or herself of the privileges of conducting activities in the forum; (2) the claim arises out of, or results from, the defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable. *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). If the plaintiffs meet the first and second elements, the burden shifts to the defendant to present a compelling case that the exercise of jurisdiction would be unreasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (citing *Burger King*, 471 U.S. at 476-78)).

In analyzing whether a defendant purposefully availed itself to a forum, the Ninth Circuit has used the "Calder effects test." *Schwarzenegger*, 374 F.3d at 803. Under the "Calder effects test" a plaintiff must demonstrate that the defendant (1) committed an intentional act, (2)

expressly aimed at the forum state, (3) causing harm that defendant knows is likely to be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 803 (citing *Calder v. Jones*, 465 U.S. 783 (1984)).

To determine whether an internet site contributes to the establishment of minimum contacts, courts use a "sliding scale" analysis. *Millennium Enterprises, Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 916-17 (D. Or. 1999). Under this sliding scale, "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet." *Id.* at 915 (citing *Zippo Mfg. Co. v. Zippo Dot Com*, 33 F. Supp. 2d 1119, 1124 (W.D. Pa. 1997)). In *Millennium*, this court declined to adopt a "broad view of personal jurisdiction" regarding internet sites, and instead recognized that there should be a deliberate action within the forum state "in the form of transactions between the defendant and residents of the forum or conduct of the defendant purposefully directed at the residents of the forum state." *Id.* at 921 (citing *Calder*, 465 U.S. at 788-90). Because the *Millennium* defendant did not have a substantial connection with Oregon, and did not "purposefully target its activities at Oregon," the court concluded that the exercise of personal jurisdiction was improper. *Id.* at 921-22.

DISCUSSION

The tenuous connection defendant has with Oregon is that its corporate officers, on behalf of associated companies (not named as defendants), have aimed some of their advertising at Oregon. Defendant itself, however, has done nothing in Oregon. Aside from creating a mission statement in California, it has done nothing at all. This court concludes that it lacks personal jurisdiction over defendant pursuant to Fed. R. Civ. P. 12(b)(2). Accordingly, the

Default Judgment against defendant, and the permanent injunction, are void and must be vacated. Because this court lacks personal jurisdiction over defendant, this case must be dismissed.

CONCLUSION

For the reasons provided, this court GRANTS defendants' Motion to Vacate the Default Judgment and Dismiss for Lack of Personal Jurisdiction [59]. The Default Judgment [48] and permanent injunction are vacated. This case is dismissed without prejudice.

IT IS SO ORDERED.

DATED this 19 day of July, 2010.

/s/ Ancer L. Haggerty

Ancer L. Haggerty
United States District Court