

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROCK AND ROLL RELIGION, INC., a  
California corporation,  
  
Plaintiff/Counter-defendant,  
  
vs.  
  
CELS ENTERPRISES, INC. a New York  
corporation; ROBERT GOLDMAN, an individual,  
  
Defendants/Counterclaimants.

CASE NO. CV 09-5258-R (PLAx)

ORDER

CELS ENTERPRISES, INC. a New York  
corporation; ROBERT GOLDMAN, an individual,  
  
Counterclaimants,  
  
vs.  
  
ROCK AND ROLL RELIGION, INC., a  
California corporation; DEFIANCE USA, INC.,  
a California corporation; and DOES 1 through 10  
inclusive,  
  
Counterdefendants.

Plaintiff/Counterdefendants have moved to recover attorneys' fees pursuant to 15 United States Code section 1117(a). For the following reasons, the Court grants Plaintiff/Counterdefendants' Motion.

1 15 United States Code section 1117(a) provides that, in trademark cases, “[t]he court in  
2 exceptional cases may award reasonable attorney fees to the prevailing party.”

3 Plaintiffs/Counterdefendants are undoubtedly the prevailing parties in this litigation. And this is an  
4 exceptional case within the meaning of section 1117(a).

5 Pursuant to *Gracie v. Gracie*, 217 F.3d 1060 (9th Cir. 2000), a case is exceptional where it is  
6 groundless, unreasonable, vexatious, or pursued in bad faith. Here, the counterclaims were groundless  
7 and pursued in bad faith. Defendants/Counterclaimants made three attempts to properly allege their  
8 counterclaims against Plaintiff/Counterdefendants. The problem that prevented  
9 Defendants/Counterclaimants from properly pleading their counterclaims – and ultimately resulted in  
10 this Court granting summary judgment – is that the claim that there is a likelihood of confusion among  
11 the marks is entirely without merit and groundless. Defendant/Counterclaimants argued, *inter alia*, that  
12 the use of the word “laundry” together with a two-syllable word of national origin made the marks  
13 similar enough that they might be confused. However, as in *SG Services Inc. v. God’s Girls, Inc.*, 2007  
14 U.S. Dist. LEXIS 61970 (C.D. Cal. May 9, 2007), “the mere fact that both marks contain the word  
15 [“laundry”] does not create a likelihood of confusion because the prefatory words – [“English” and  
16 “Chinese”] – have very distinct sounds and meanings.” *Id.* at \*18. And, for the reasons indicated in this  
17 Court’s Summary Judgment Order, virtually none of the other *Sleekcraft* factors weigh in favor of a  
18 finding of likelihood of confusion.

19 Furthermore, the groundlessness of the counterclaims, and Defendants/Counterclaimants’ pursuit  
20 of them in bad faith, is evidenced by their representations to the United States Patent and Trademark  
21 Office that “laundry-formatives” are common in the clothing field, and that “laundry” is reasonably  
22 considered highly suggestive of clothing and “weak” in determining likelihood of confusion.

23 As such, Plaintiff/Counterdefendants’ Motion for attorneys’ fees pursuant to 15 United States  
24 Code section 1117(a) is granted.

25 “When it sets a fee, the district court must . . . determine the presumptive lodestar figure by  
26 multiplying the number of hours reasonably expended on the litigation by the reasonable hourly rate.”

1 *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir.1993). In determining the reasonable hourly  
 2 rate, the Court must select a rate "in line with those prevailing in the community for similar services by  
 3 lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 896  
 4 n. 11 (1984). The Court finds that the attorneys' reasonable hourly rates are as follows: Shawn A.  
 5 McMillian – \$400; Stephen D. Daner – \$200; Samuel Park – \$200; James I. McMillian – \$350; and Shu  
 6 Hwa Cheng – \$65.

7 Additionally, the Court is only awarding attorneys' fees for work performed in relation to the  
 8 counterclaims. The Court has reviewed the detailed billing records and determined which time entries  
 9 do not relate at all to the counterclaims, which relate exclusively to the counterclaims, and which relate  
 10 to the cross-motions for summary judgment. Because the cross-motions for summary judgment involved  
 11 both Plaintiff/Counterdefendants' original claims and Defendants/Counterclaimants' counterclaims, the  
 12 Court will only award fees for half of the time spent on the cross-motions for summary judgment. As  
 13 such, the Court finds that the reasonable number of hours worked by Plaintiff/Counterdefendants'  
 14 attorneys is as follows:

Attorney	Hours Not Related to the Counterclaims	Hours Related Exclusively to the Counterclaims	One Half of Hours Related to the Cross-Motions for Summary Judgment	Total Reasonable Hours Expended Related to Counterclaims
Shawn A. McMillian	<b>37.66</b>	<b>37.13</b>	$121.96/2 = 60.98$	<b>98.11</b>
Stephen D. Daner	<b>26.28</b>	<b>175.22</b>	$338.30/2 = 169.15$	<b>344.37</b>
Samuel Park	<b>6.31</b>	0.0	$1.33/2 = .665$	<b>.665</b>
James I. McMillan	<b>5.5</b>	0.0	$20/2 = 10$	<b>10</b>
Shu Hwa Cheng	<b>1.13</b>	0.0	$23.95/2 = 11.97$	<b>11.97</b>

1 As such, at the reasonable hourly rates indicated above, the fees awarded are: Shawn A.  
2 McMillian – \$39,244; Stephen D. Daner – \$68,874; Samuel Park – \$133; James I. McMillian – \$3,500;  
3 and Shu Hwa Cheng – \$778.05. The total fee award is thus \$112,529.05

4  
5 DATED: June 8, 2010.



---

6  
7  
8 MANUEL L. REAL  
9 UNITED STATES DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28