

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

GS Holistic, LLC v. King's Smoke Shop & Vape, et al.

GS Holistic · No. 2:23-cv-00351 KJM CKD · Decided August 18, 2025

SUMMARY

The United States Magistrate Judge recommends denying GS Holistic, LLC’s motion for default judgment against King’s Mini Mart d/b/a King Smoke Shop and Hameedullah Nooristani. The recommendation concludes that the amended complaint insufficiently pleads trademark infringement, counterfeiting, false designation of origin, and likelihood of confusion, and recommends dismissal without prejudice with 30 days to amend.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 18, 2025
DOCKET	2:23-cv-00351 KJM CKD
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff moved for default judgment on trademark counterfeiting, trademark infringement, false designation of origin, and unfair competition claims after defendants failed to respond and the clerk entered default. The magistrate judge issued findings and recommendations recommending denial of default judgment, dismissal of the First Amended Complaint without prejudice, and leave to amend.
STANDARD OF REVIEW	Default judgment is discretionary and is evaluated under the seven Eitel factors. Upon entry of default, well-pleaded factual allegations are generally taken as true except allegations concerning damages, but legally insufficient claims and facts that are not well pleaded are not established by default.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; final effect depends on adoption by the assigned district judge.

TOPICS

default judgment

trademark infringement

trademark law

service of process

civil procedure

PRACTICE AREAS

Trademark

Civil procedure

Commercial litigation

Remedies

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to default judgment under Federal Rule of Civil Procedure 55 despite defendants' failure to respond.
2. Whether the First Amended Complaint adequately pleaded trademark infringement and counterfeiting claims under 15 U.S.C. §§ 1114 and 1116.
3. Whether the First Amended Complaint adequately pleaded false designation of origin and unfair competition under 15 U.S.C. § 1125(a).
4. Whether the complaint alleged sufficient facts to establish defendants' use of plaintiff's marks and a likelihood of consumer confusion.

HOLDINGS

1. A defendant's default does not automatically entitle a plaintiff to a court-ordered default judgment; the court must exercise discretion under Federal Rule of Civil Procedure 55 and evaluate the relevant Eitel factors.
2. Default establishes well-pleaded factual allegations other than damages, but it does not establish legal conclusions, facts omitted from the pleadings, or legally insufficient claims.
3. The First Amended Complaint did not adequately plead defendants' use of plaintiff's marks or a counterfeiting theory because it failed to identify the mark affixed to the inspected product, explain its similarity to a registered mark, and provide facts supporting the broader allegations of multiple infringing products and marks.
4. The First Amended Complaint did not allege sufficient facts from which the court could infer a likelihood of confusion under the applicable Sleekcraft factors.

KEY QUOTATIONS

"However, "a defendant's default does not automatically entitle the plaintiff to a court-ordered judgment.""
(at 2)

"necessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default." (at 3)

"Plaintiff's failure to explain what its agent did to inspect the infuser, including how that inspection could differentiate a counterfeit Stündenglass infuser from a bona fide Stündenglass infuser, combined with a boilerplate confirmation of the infuser's counterfeit status, falls short of showing that its mark was infringed."
(at 6)

FACTUAL BACKGROUND

GS Holistic alleged that it owned three federally registered Stüden glass trademarks and that King Smoke Shop sold an inspected glass infuser bearing a Stüden glass mark to an investigator. The complaint alleged that Hameedullah Nooristani authorized, directed, or participated in the sale. The court found that the complaint did not explain what the mark looked like, which registered mark it resembled, how the product was determined to be counterfeit, or facts supporting a likelihood of confusion.

PROCEDURAL HISTORY

GS Holistic filed its First Amended Complaint on August 30, 2023. Defendants were served but did not respond, and the clerk entered default. Plaintiff moved for default judgment seeking \$150,000 in statutory damages, an injunction, and costs. The court took the motion under submission and recommended denying it because the complaint did not adequately plead defendants' use of the marks or a likelihood of confusion, dismissing the complaint without prejudice, and allowing thirty days to amend.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The motion for default judgment is recommended to be denied. The First Amended Complaint is recommended to be dismissed without prejudice, with plaintiff granted thirty days to file an amended complaint. The recommendations were submitted to the assigned district judge under 28 U.S.C. § 636(b)(1), with fourteen days to object.

CASES CITED

- PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002)
- Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)
- Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam)
- Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)
- Fair Housing of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002)
- Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992)
- Danning v. Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978)
- DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007)
- Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004)
- In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999)
- GS Holistic, LLC v. Mr Vape Smoke Shop, No. 1:23-cv-00282-DJC-SCR, 2024 WL 4545885, at *3-5 (E.D. Cal. Oct. 22, 2024)

- GS Holistic, LLC v. Shinwar, No. 2:23-cv-0355-CSK, 2024 WL 3890082, at *7-8 (E.D. Cal. Aug. 20, 2024)
- GS Holistic, LLC v. Muthanna, No. 2:24-cv-01641-CSK, 2025 WL 2099314, at *5-6 (E.D. Cal. 2025)
- GS Holistic, LLC v. J's Smoke Shop, et al., No. 1:23-00286-KJM-KJN, 2024 WL 1054899, at *2-5 (E.D. Cal. Mar. 11, 2024)
- Applied Info. Scis. Corp. v. eBay, Inc., 511 F.3d 966, 969-70 (9th Cir. 2007)
- Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., 658 F.3d 936, 946 (9th Cir. 2011)
- Y.Y.G.M. SA v. Redbubble, Inc., 75 F.4th 995, 1004 (9th Cir. 2023)
- Wolf Designs, Inc. v. DHR Co., 322 F. Supp. 2d 1065, 1072 (C.D. Cal. 2004)
- Davis v. Metro Prods., Inc., 885 F.2d 515, 524 (9th Cir. 1989)
- Lodestar Anstalt v. Bacardi & Co. Ltd., 31 F.4th 1228, 1252 (9th Cir. 2022)
- AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-54 (9th Cir. 1979)
- Mattel, Inc. v. Walking Mountain Prods., 353 F.3d 792 (9th Cir. 2003)
- Freecycle Network, Inc. v. Oey, 505 F.3d 898, 902 (9th Cir. 2007)
- Jada Toys, Inc. v. Mattel, Inc., 518 F.3d 628, 632 (9th Cir. 2008)
- Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp., 174 F.3d 1036, 1046 (9th Cir. 1999)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

GS Holistic, LLC v. King's Mini Mart

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 GS HOLISTIC, LLC, No. 2:23-cv-00351 KJM CKD

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 KING'S SMOKE SHOP & VAPE, et al., 15 Defendants. 16 17 Presently pending before the Court is plaintiff GS Holistic, LLC's ("plaintiff's") motion for 18 default judgment against two defendants: King's Mini Mart d/b/a King Smoke Shop and 19 Hameedullah Nooristani ("defendants"). (ECF No. 37.) This action proceeds on the first 20 amended complaint ("FAC") filed August 30, 2023. (ECF No. 23.) Plaintiff filed this motion on

21 February 12, 2025, and set the motion for a March 26, 2025 hearing. (ECF No. 37.) On March 22 20, 2025, the Court vacated the motion hearing took the matter under submission pursuant to 23 Local Rule 230(c) and (g). (ECF No. 39.) To date, defendants have not opposed plaintiff's 24 motion or otherwise made appearances in this action. 25 For the reasons set forth below, the Court will recommend that plaintiff's motion for 26 default judgment be denied and the FAC dismissed with leave to amend. 27 //// 28 //// 1 I. Background 2 Plaintiff is a Delaware company with its

principle place of business in California. (FAC, ¶ 5.) 3 Plaintiff makes and sells smoking products and is the registered owner of three “Stündenglass” 4 trademarks: 5 • U.S. Trademark Registration Number 6,633,884 for the standard character mark “Stündenglass” in association with goods further 6 identified in registration in international class 011. 7 • U.S. Trademark Registration Number 6,174,292 for the design plus words mark “S” and its logo in association with goods further 8 identified in the registration in international class 034. 9 • U.S. Trademark Registration Number 6,174,291 for the standard character mark “Stündenglass” in association with goods further 10 identified in registration in international class 034. 11 (Id. at ¶¶ 8, 9, 11.) 12 Plaintiff alleges that, on October 25, 2022, defendant King Smoke Shop sold a glass 13 infuser affixed with a Stündenglass Mark to plaintiff’s investigator. (Id., ¶¶ 29-30.) “Upon 14 receipt, images and/or the physical unit of the product were inspected by [plaintiff’s] agent to 15 determine its authenticity.” (Id., ¶ 31.) Upon inspection, plaintiff determined that the glass 16 infuser “was a Counterfeit Good with an Infringing Mark affixed to it.” (Id.) Plaintiff alleges 17 that defendant Nooristani authorized, directed, or participated in King Smoke Shop’s sale of “the 18 counterfeit goods.” (Id., ¶ 32.) Plaintiff does not allege specific facts explaining how the marks 19 affixed to products sold by King Smoke Shop were identical or substantially indistinguishable 20 from one or more trademarks, or why plaintiff believes the products were counterfeit goods. 21 The FAC asserts claims of trademark counterfeiting and infringement (15 U.S.C. § 1114 22 and § 1116) and false designation of origin and unfair competition (15 U.S.C. § 1125(a)). 23 Defendants were served but failed to respond, after which the clerk entered default. (ECF Nos. 24 25, 31, 33 & 34.) Plaintiff moved for default judgment on February 12, 2025, seeking statutory 25 damages of \$150,000.00, an injunction, and costs of \$1,505.82. (ECF No. 37 at 24-27; see ECF

26 No. 37-7.) Defendants have not appeared nor filed any response.

27 //// 28 //// 1 II. Legal Standard—Default Judgment 2 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party against 3 whom a judgment for affirmative relief is sought who fails to plead or otherwise defend against 4 the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not automatically 5 entitle the plaintiff to a court-ordered judgment.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 6 1172, 1174 (C.D. Cal. 2002) (citing *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986)); 7 see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead, the decision to 8 grant or deny an application for default judgment lies within the district court’s sound discretion. 9 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). 10 In making this determination, the court may consider the following factors: (1) the 11 possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the 12 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a 13 dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) 14 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the 15 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are 16 ordinarily disfavored. Id. at 1472. 17 As a general rule, once default is entered,

well-pleaded factual allegations in the operative 18 complaint are taken as true, except for those allegations relating to damages. *TeleVideo Sys., Inc. 19 v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. 20 Group*, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also *Fair Housing of Marin v. 21 Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded allegations in the complaint 22 are admitted by a defendant's failure to respond, "necessary facts not contained in the pleadings, 23 and claims which are legally insufficient, are not established by default." *Cripps v. Life Ins. Co. 24 of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 25 (9th Cir. 1978)); accord *DIRECTV, Inc. v. Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) ("[A] 26 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law") 27 (citation and quotation marks omitted); *Abney v. Alameida*, 334 F.Supp.2d 1221, 1235 (S.D. Cal. 28 2004) ("[A] default judgment may not be entered on a legally insufficient claim."). 1 III. Analysis 2 A. Jurisdiction 3 When default judgment is sought, the "district court has an affirmative duty to look into its 4 jurisdiction over both the subject matter and the parties." *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 5 1999) (citations omitted). The Court has subject matter jurisdiction over this action pursuant to 28 6 U.S.C. § 1331 because it arises under federal trademark law, 15 U.S.C. § 1051, et seq. The Court 7 has personal jurisdiction over defendant King Smoke Shop because it is allegedly incorporated in 8 California and has its principal place of business in Carmichael, California. (FAC, ¶¶ 3, 5.) The 9 Court has personal jurisdiction over defendant Nooristani, who allegedly owned, managed, and/or 10 operated King Smoke Shop and is allegedly a California resident. (FAC, ¶¶ 3, 7.) 11 B. Default Judgment 12 1. Service of Complaint 13 In reviewing a motion for default judgment, the Court must determine whether defendants 14 were properly served with the summons and complaint. Fed. R. Civ. P. 4(c).

15 Rule 4(h) of the Federal Rules of Civil Procedure allows for service of a corporation by 16 "delivering a copy of the summons and the complaint to an officer, a managing or general agent, 17 or any agent authorized . . . to receive service of process" on behalf of the corporation. Fed. R. 18 Civ. P. 4(h)(1)(B). On April 25, 2024, a third-party process server served a copy of the FAC and 19 summons on Camran Smith, the store manager and an agent/employee of defendant King's 20 Smoke Shop. (ECF No. 25.)

21 Rule 4(e) allows for service of an individual by "delivering a copy of the summons and of 22 the complaint to the individual personally" or "leaving a copy of each at the individual's dwelling 23 or usual place of abode with someone of suitable age and discretion who resides there[.]" Fed. R. 24 Civ. P. 4(e)(2)(A)-(B). On October 7, 2024, a third-party process server served a copy of the 25 FAC and summons on Monisa Nooristani, described as the mother and co-resident of defendant 26 Nooristani. (ECF No. 31.) 27 //// 28 //// 1 2. Eitel Factors 2 "Before evaluating the Eitel factors, the undersigned notes that Plaintiff has brought 3 many similar, if not identical, claims concerning the Stüdeglass Marks against other 4 defendants." *GS Holistic, LLC v. Mr Vape Smoke Shop*, No. 1:23-cv-00282-DJC-SCR, 2024 5 WL 4545885, *3 (E.D. Cal. Oct.

22, 2024) (collecting cases). “[M]ost judges have found 6 Plaintiff’s allegations vague and conclusory, and therefore insufficient to satisfy the standard for 7 default judgment.” Id. (collecting cases). See also *GS Holistic, LLC v. Shinwar*, No. 2:23-cv- 8 0355-CSK, 2024 WL 3890082, *8 (E.D. Cal. Aug. 20, 2024) (“Numerous courts in the Ninth 9 Circuit have found vague and conclusory allegations made by Plaintiff to be insufficient to grant 10 default judgment.”) (collecting cases). 11 As in a near-identical case brought by plaintiff1, the undersigned recommends denying 12 plaintiff’s motion for default judgement because plaintiff has not satisfied the second and third 13 Eitel factors, i.e., the merits of plaintiff’s substantive claim and the sufficiency of the complaint. 14 See *Eitel*, 782 F.2d at 1471-72. See also *GS Holistic, LLC v. Muthanna*, No. 2:24-cv-01641- 15 CSK, 2025 WL 2099314, **5-6 (denying default judgment due to complaint’s lack of necessary 16 facts and vague and conclusory allegations, “as other courts have noted”) (collecting cases); 17 *Abney*, 334 F. Supp. 2d at 1235 (“[A] default judgment may not be entered on a legally 18 insufficient claim.”). 19 Plaintiff alleges trademark counterfeiting and infringement under 15 U.S.C. § 1114 and 20 §1116. To state an infringement claim, plaintiff must adequately allege 1) the existence of a valid 21 trademark, 2) the defendant used the mark, and 3) the defendant’s use of the mark is likely to 22 cause confusion. *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007). 23 For trademark counterfeiting, a plaintiff must allege that “the mark in question [is] (1) a 24 non-genuine mark identical to the registered, genuine mark of another, where (2) the genuine 25 mark was registered for use on the same goods to which the infringer applied the mark[.]” *Louis 26 Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936, 946 (9th Cir. 2011) (citing 15 27 1 *GS Holistic, LLC v. J’s Smoke Shop, et al.*, No. 1:23-00286-KJM-KJN, 2024 WL 1054899 28 (E.D. Cal. March 11, 2024). 1 U.S.C. § 1116(d)). Additionally, “[l]ike trademark infringement claims, trademark counterfeiting 2 requires the plaintiff to show a likelihood of confusion.” *Y.Y.G.M. SA v. Redbubble, Inc.*, 75 3 F.4th 995, 1004 (9th Cir. 2023). The Lanham Act defines “counterfeit” as “a spurious mark 4 which is identical with, or substantially indistinguishable from, a registered mark.” 15 U.S.C. § 5 1127. 6 Plaintiff also alleges false designation of origin and unfair competition under 15 U.S.C. § 7 1125(a). To establish a claim for false designation of origin under 15 U.S.C. § 1125(a), a plaintiff 8 must show the defendant used a false designation of origin in interstate commerce that is likely to 9 cause confusion, mistake, or deception as to the origin, sponsorship, or approval of defendants’ 10 goods or services. *Freecycle Network, Inc. v. Oey*, 505 F.3d 898, 902 (9th Cir. 2007). Claims for 11 false designation of origin, as a type of unfair competition claim, are analyzed similarly to 12 infringement claims because the “ultimate test” for these claims are the same: the public’s 13 likelihood of confusion. *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 632 (9th Cir. 2008) (using 14 the same likelihood of confusion test to analyze trademark infringement and false designation of 15 origin claims); see also *Brookfield Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1046 16 (9th Cir. 1999) (considering false designation of origin claim as one of “unfair competition”). 17 a. Existence of a Valid Trademark 18 Registration of a mark “on the Principal

Register in the Patent and Trademark Office 19 constitutes prima facie evidence of the validity of the registered mark and of [the registrant's] 20 exclusive right to use the mark on the goods and services specified in the registration." Applied 21 Info., 511 F.3d at 970 (internal citation omitted). Here, plaintiff has sufficiently alleged that it has 22 three valid, protectable trademarks. (FAC, ¶ 11.) Because the complaint sufficiently alleges that 23 three trademarks are federally registered to plaintiff, the first prong of trademark infringement is 24 adequately pleaded. 25 b. Defendants' Use of the Mark 26 Plaintiff's complaint lacks sufficient factual allegations regarding defendants' use of the 27 trademark. The complaint alleges that defendants sold a glass infuser affixed with "a 28 Stündenglass Mark." (FAC, ¶ 30.) Yet, the FAC alleges that defendants sell products affixed 1 with "marks" (plural) that are "identical with, or substantially indistinguishable from" plaintiff's 2 trademarks. (FAC, ¶ 28; see FAC, ¶¶ 29, 33, 35, 36, 37, 43 (alleging defendants' misuse of the 3 "marks")). 4 The FAC does not explain what the mark affixed to the inspected glass infuser looked 5 like, which of the three registered trademarks it resembled, or how the alleged inspection of one 6 glass infuser bearing one mark supports the FAC's broader allegations of multiple items for sale 7 bearing more than one registered mark. See, e.g., *GS Holistic, LLC v. J's Smoke Shop*, 2024 WL 8 1054899 at *2 ("it is unclear to the court whether the glass diffuser sold bore one mark, or all 9 three marks"); *GS Holistic, LLC v. Mr Vape Smoke Shop*, 2024 WL 4545885, *4 (complaint 10 references three registered marks, but "uses only the singular 'a Stündenglass Mark' when 11 describing the infuser purchased by Plaintiff's investigator") (emphasis in original). Moreover, 12 [p]laintiff's failure to explain what its agent did to inspect the infuser, including how that inspection could differentiate a counterfeit 13 Stündenglass infuser from a bona fide Stündenglass infuser, combined with a boilerplate confirmation of the infuser's counterfeit 14 status, falls short of showing that its mark was infringed. If, as other courts have noted, Defendant is merely reselling Plaintiff GS 15 Holistic's products, this would not be infringement. 16 17 *Id.* at *5 (internal quotation marks and citations omitted).² Nor has plaintiff adequately pleaded a 18 counterfeiting theory. See *GS Holistic, LLC v. J's Smoke Shop*, 2024 WL 1054899 at *5 ("Mere 19 assertions that the infuser sold [at defendant shop] is a 'counterfeit good with an infringing mark' 20 are conclusory statements, which are not taken as true."). 21 Moreover, the FAC "does not allege when [the allegedly infringing] use began—much 22 less provide any other details about [defendants'] allegedly infringing actions. The Court cannot 23 supply necessary facts that are omitted from the Complaint." *GS Holistic, LLC v. Muthanna*, 24 2025 WL 2099314, *5 (collecting cases). 25 Finally, as in a similar case, 26 2 While plaintiff attaches photos to the motion for default judgment purporting to show that "the 27 trademarks on the counterfeit product are almost identical to" plaintiff's three registered trademarks (ECF No. 37 at 18; see ECF No. 37-6), these are not part of the operative complaint 28 and do not go to the sufficiency of the complaint. 1 [T]he Court is troubled by Plaintiff's conclusory assertions that [defendant Nooristani is] personally liable for the asserted damages. 2 . . . [C]ases in the Ninth Circuit imputing personal liability on 3 corporate officers "have typically involved instances where the defendant was the

‘guiding spirit’ behind the wrongful conduct” or 4 “the ‘central figure’ in the challenged corporate activity.” *Wolf Designs, Inc. v. DHR Co.*, 322 F. Supp. 2d 1065, 1072 (C.D. Cal. 5 2004) (quoting *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 524 (9th Cir. 1989)). 6 7 *GS Holistic, LLC v. Shinwar*, 2024 WL 3890028, *7. 8 For these reasons, the second element is insufficiently pled, and plaintiff has not established 9 success on the merits of its claims. See *Eitel*, 782 F.2d at 1471. 10 c. Likelihood of Confusion 11 Plaintiff has not adequately shown the third element, likelihood of confusion. Courts 12 determine the likelihood of confusion by considering: (1) the strength of the mark; (2) the 13 proximity of the goods; (3) the similarity of the marks; (4) the evidence of actual confusion; (5) 14 the marketing channels used; (6) the type of goods and degree of care consumers are likely to 15 exercise in purchasing them; (7) the intent of the defendant in selecting the mark; and (8) the 16 likelihood that the parties will expand their product lines. *Lodestar Anstalt v. Bacardi & Co. Ltd.*, 17 31 F.4th 1228, 1252 (9th Cir. 2022) (citing *AMF Incorporated v. Sleekcraft Boats*, 599 F.2d 341, 18 348-54 (9th Cir. 1979), abrogated on other grounds by *Mattel, Inc. v. Walking Mountain Prods.*, 19 353 F.3d 792 (9th Cir. 2003)). 20 Here, the FAC does not allege sufficient facts from which the court can infer a likelihood 21 of confusion under the Sleekcraft factors. “While plaintiff’s motion makes passing reference to 22 the Sleekcraft factors, plaintiff makes little to no effort to apply the applicable legal standard to 23 the sparse facts of this case.” *GS Holistic, LLC v. J’s Smoke Shop*, 2024 WL 1054899 at *3. 24 Accordingly, the Court finds that plaintiff’s allegations in the FAC are insufficient for the 25 purposes of default judgment. 26 Accordingly, IT IS HEREBY RECOMMENDED THAT: 27 1. Plaintiff’s motion for default judgment (ECF No. 37) be denied; 28 2. The First Amended Complaint (ECF No. 23) be dismissed without prejudice; and 1 3. Plaintiff be granted thirty (30) days to file an amended complaint. 2 These findings and recommendations are submitted to the United States District Judge 3 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 4 || after being served with these findings and recommendations, any party may file written 5 || objections with the court and serve a copy on all parties. Such a document should be captioned 6 || “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections 7 || within the specified time may waive the right to appeal the District Court’s order. *Martinez v. 8 | Ylst*, 951 F.2d 1153 (9th Cir. 1991). 9 | Dated: August 18, 2025 □□ I / dip Ze 10 CAROLYN DELANEY 11 UNITED STATES MAGISTRATE JUDGE 12 13 14 15 16 || 2/eshol0352.f8r.CIRA 17 18 19 20 21 22 23 24 25 26 27 28