

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SEABOARD STAMFORD :  
INVESTOR ASSOC., INC., :  
Plaintiff, :  
 :  
-vs- : Civil No. 3:03cv1110 (PCD)  
 :  
THINKDIRECTMARKETING, INC.:  
F/K/A DIGITAL ASSET :  
MANAGEMENT, INC. :  
Defendant. :

**RULING ON DEFENDANT’S MOTION TO VACATE DEFAULT**

Defendant moves to vacate the entry of default. For the reasons stated herein,

Defendant’s motion is **denied**.

The Court presumes familiarity with previous rulings in this case. Most notably, in the Ruling on Plaintiff’s Motion for Default Judgment, it was noted that

On September 11, 2003, Plaintiff’s motion for default for failure to plead was granted, and default was entered against Defendant [Doc. No. 6]. The endorsement entering default clearly stated that “dismissal will enter” pursuant to FED. R. CIV. P. 41(a) if Plaintiff did not file a motion for default judgment within 30 days [Doc. No. 6]. On October 14, 2003, Defendant filed its belated answer [Doc. No. 8]. On October 17, 2003, the Court entered an Order of Dismissal because Plaintiff failed to file a motion for default judgment within 30 days of the entry of default [Doc. No. 9]. The case was closed, and Plaintiff promptly filed a motion for relief from the Order dismissing the case [Doc. No. 10]. The Court construed such as a motion to reopen, granted the motion and vacated the Order of Dismissal, and clearly stated that “the default entered on September 11, 2003, 2003 will stand as not vacated by the filing of an answer by the appearing Defendant” [Doc. No. 12]. On November 18, 2003, Plaintiff moved for default judgment [Doc. No. 13]. Defendant has not opposed Plaintiff’s motion.

[Doc. No. 18, p. 1-2]. In a footnote, the Court clearly stated that

On December 8, 2003, Defendant’s motion to vacate default for failure to answer was denied without prejudice for failure to comply with the service/filing

requirements of this Court's Supplemental Order [Doc. No. 17]. The docket does not indicate that Defendant filed a certificate of service reflecting that it has renewed this motion in compliance with the Supplemental Order. Moreover, as noted above, Defendant has not filed an opposition to Plaintiff's motion for default judgment.

[Doc. No. 18, p.2 n.1]. Plaintiff's motion for default judgment was granted in part and denied in part.

Now, Defendant has filed a motion to vacate default for failure to answer, contending that "twenty-one (21) days have past [sic] since the original filing of this motion to vacate and Plaintiff's counsel has not objected." Def. Mot. to Vac. at 1. However, Defendant's motion was filed on January 6, 2004, and Defendant does not provide a certificate of service indicating that it had previously served Plaintiff as required by the Supplemental Order [See Doc. No. 3]. Defendant does not explain why it failed to file a response to Plaintiff's motion for default judgment. In addition, this case was closed on December 29, 2003.

Defendant's motion to vacate [Doc. No. 20] is **denied** for failure to comply with the service/filing requirements of this Court's Supplemental Order. In any further effort to resurrect this case, Defendant shall show any valid justification for the failure to answer the complaint on time, to answer the complaint when the motion for entry of default was filed, for filing a purported answer without moving to open the default, for moving (now twice) to open the default without complying with the Supplement Order, and for failing to file a response to Plaintiff's motion for default judgment.

SO ORDERED.

Dated at New Haven, Connecticut, January \_\_\_\_, 2004.

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Peter C. Dorsey  
United States District Judge