[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

_____

No. 12-15083

_____

D.C. Docket No. 1:11-cv-21900-CMA

DREW ESTATE HOLDING COMPANY LLC,

Plaintiff - Counter Defendant -Appellee,

versus

FANTASIA DISTRIBUTION, INC.,

Defendant - Third Party Plaintiff
Counter Claimant - Counter Defendant –Appellant.

_____

Appeal from the United States District Court
for the Southern District of Florida

_____

(November 8, 2013)

Before MARTIN, JORDAN, and SUHRHEINRICH,[*] Circuit Judges.

JORDAN, Circuit Judge:

---

[*] Honorable Richard F. Suhrheinrich, United States Circuit Judge for the Sixth Circuit, sitting by designation.

In this appeal Fantasia Distribution, Inc. challenges the district court's award of profits to Drew Estate Holding Company LLC, on its trademark infringement claim under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A). Among other things, Fantasia argues that the district court erred in not holding an evidentiary hearing on Drew Estate's motion for an award of profits under 15 U.S.C. § 1117(a). After this appeal was filed, the district court issued an indicative ruling, stating to us that it would hold an evidentiary hearing on profits if the matter were remanded. *See* Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1. After having heard oral argument, we believe the best course is to remand the case to the district court to hold the requested evidentiary hearing and then enter a new judgment—whatever that may be—based upon its findings.

Accordingly, the case is remanded to the district court with instructions to hold an evidentiary hearing on the issue of profits and to enter an amended final judgment based upon what transpires at the hearing. [1] This appeal is now closed. Any party may, of course, file a timely appeal from the amended final judgment.

REMANDED WITH DIRECTIONS.

---

[1] In light of our decision, Fantasia's pending motion to take judicial notice is denied as moot.