

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL CHEN : CIVIL ACTION  
: :  
v. : :  
: :  
HEWLETT-PACKARD CO. : NO. 04-03878

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 15, 2004

Plaintiff, who is not represented by counsel, is suing Hewlett-Packard Co. because of problems he has experienced in a notebook computer which he purchased from the defendant. His complaint asks for "judgment against defendant in the sum of one billion U.S. dollars punitive damages on behalf of HP notebook owners of various models that have similar power supply design and an injunction halting production of such models."

Plaintiff has now filed a motion for default judgment, asserting that he served the summons and complaint on the defendant on September 9, 2004, and that no response has been forthcoming. There are, however, several problems: the only proof of service is to the effect that plaintiff mailed the summons and complaint by certified mail, yet there is no proof of receipt. Moreover, the mailing was addressed, not to the defendant, but to "Carly Fiorina - CEO."

An even more serious difficulty is that Fed. R. Civ. P. 4 states that service may be made only by an individual who is

not a party to the action. Since plaintiff is, obviously, a party to the lawsuit, he was not authorized to make service of process.

It should also be noted that plaintiff may be acting on the assumption that he can bring suit, not only on his own behalf, but on behalf of all other purchasers of similar products. In order to succeed on behalf of anyone other than himself, plaintiff would have to obtain a ruling from this court certifying the case as a class action. But such certification would require a determination by the court that plaintiff is an adequate representative of the proposed class, and a plaintiff who is not represented by counsel and who has no legal training himself cannot be regarded as an adequate representative of a class.

Accordingly, before a default judgment can be entered in this case, plaintiff must first establish that the summons and complaint have been validly served upon the defendant. If, after such service is achieved, the defendant fails to respond, plaintiff can then cause the Clerk of this Court to note the default, and can file a motion for default judgment. But, as provided in Fed. R. Civ. P. 55, a motion for default judgment must be accompanied by an affidavit which establishes the amount of damages alleged to have been sustained.

For all of the foregoing reasons, plaintiff's motion for default judgment will be denied without prejudice.

