

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SILPADA DESIGNS, INC.,

Plaintiff,

v.

**TIMOTHY R. O'MALLEY and
SHIRLEY O'MALLEY, d/b/a
MRSHIRLEYS,**

Defendants.

CIVIL ACTION

No. 04-2302-CM

ORDER

On April 19, 2006, this court held a hearing to determine the amount of damages plaintiff sustained as a result of defendants' conduct. Defendants appeared in person, *pro se*, at the hearing. They cross-examined plaintiff's witnesses and presented argument on their own behalf. After the hearing, defendant Shirley O'Malley filed a post-trial brief and a Motion for New Damages Hearing (Doc. 51). In her motion, defendant argues that she was not given time to properly review the exhibits presented at the hearing. She asserts that although plaintiff previously offered to let her review her eBay and PayPal records, she did not see the need to review her own records.

The court denies defendant's request for a new hearing. First, defendant has chosen not to participate in this lawsuit despite being given numerous opportunities. Second, plaintiff provided defendant with a copy of the exhibit notebook before the hearing. The materials within the notebook were developed from documents which were either in the possession of defendant, or documents which defendant could have inspected earlier if she chose to do so. Third, defendant did not request a continuance at or before

the hearing. The court would have considered a timely motion to continue the hearing if defendant had so requested based on her contention that she did not have adequate time to prepare. And finally, the court finds that defendant will not suffer undue prejudice if the court denies her request. Defendant has filed a post-trial brief, although plaintiff asks the court to disregard it. If the court elects to consider defendant's post-trial brief, defendant will effectively have her arguments before the court that she otherwise could have presented in a new damages hearing.

IT IS THEREFORE ORDERED that defendant Shirley O'Malley's Motion for New Damages Hearing (Doc. 51) is denied.

Dated this 27th day of July 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge