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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRATERS & FREIGHTERS, a Colorado
corporation,

Plaintiff - Appellee,

v.

FRED BENZ; KATHY BENZ,

Defendants - Appellants,

and

DAISYCHAIN ENTERPRISES, a
California corporation,

Defendant.

No. 10-16004

D.C. No. 4:09-cv-04531-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia A. Wilken, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fred and Kathy Benz appeal pro se from the district court's default judgment in this action alleging trademark infringement, copyright infringement, and related claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the issue of whether a party has waived a defense, *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001), and we affirm.

The district court properly concluded that the Benzes waived their defense of insufficient service of process based on their litigation conduct. *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1317-18 (9th Cir. 1998) (defenses, such as lack of personal jurisdiction, may be waived as a result of a party's litigation conduct, including when the party raises the defense but does not pursue it further until an adverse decision on the merits).

The Benzes' remaining contentions are unavailing.

AFFIRMED.