

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOE HAND PROMOTIONS, INC.,

Plaintiff,

v.

RYAN M. SCHULTZ d/b/a POLACK INN,

Defendant.

OPINION AND ORDER

12-cv-587-wmc

On December 21, 2012, the clerk of court entered default against defendant Ryan M. Schultz, d/b/a Polack Inn, pursuant to Federal Rule of Civil Procedure 55(a). (Dkt. #7.) Plaintiff Joe Hand Promotions, Inc. (“Joe Hand”) has since filed a motion for default judgment. (Dkt. #8.)

Plaintiff Joe Hand filed this action alleging that defendant knowingly and willfully violated certain provisions of the Communications Act of 1934, 47 U.S.C. § 605, and the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 553, by unlawfully intercepting and exhibiting the *Ultimate Fighting Championship 118: “Frankie Edgar v. BJ Penn 2”* television broadcast on August 28, 2010 (“the Broadcast”).

Because default was entered against defendant, the court accepts as true all of the factual allegations in the Complaint, except those relating to damages. *In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). Joe Hand was granted the right to distribute the Broadcast via closed circuit television and encrypted satellite signal. (Compl. (dkt. #1) ¶ 9.) Joe Hand entered into subsequent sub-licensing agreements with various commercial entities throughout North America to publically exhibit the Broadcast. (*Id.* at ¶ 11.) Defendant, without authorization from Joe Hand, received and published the Broadcast in violation of 47 U.S.C. § 553, 605. (*Id.* at ¶¶ 13, 14, 20-23). Defendant did so

willfully and for the purposes of direct or indirect commercial advantage or private financial gain. (*Id.* at ¶¶ 13, 20, 22.)

Plaintiff has alleged violations of both Section 553 (which applies to cable line broadcasts) and Section 605 (which applies to satellite broadcasts) in its complaint, but concedes that it may not simultaneously pursue relief under both sections. *United States v. Norris*, 88 F.3d 462, 468 (7th Cir. 1996). Accordingly, plaintiff has elected to proceed under Section 605 -- not surprisingly, because 605 provides for greater potential recovery.

Under 47 U.S.C. § 605(e)(3)(C)(i)(II), the court may award statutory damages ranging from a minimum of \$1,000 to a maximum of \$10,000. Additionally, “[i]n any case in which the court finds that the violation was committed willfully and for the purposes of direct or indirect commercial advantage or private financial gain,” the court has the discretion to award enhanced damages up to \$100,000. 47 U.S.C. § 605(3)(3)(C)(ii). Plaintiff requests (1) \$10,000 in statutory damages pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II); (2) \$100,000 in enhanced damages pursuant to 47 U.S.C. § 605(e)(C)(ii); and (3) \$1,250 in attorney’s fees and \$391.75 in costs pursuant to 47 U.S.C. § 605(e)(B)(iii). (Affidavit of Carl L. Dubin (“Dubin Aff.”) (dkt. #10) ¶ 7.)

The defendant having failed to appear at a hearing regarding plaintiff’s motion on January 23, 2013, the court will award a substantially reduced damage award for the reasons that follow. In support of its motion for default judgment, plaintiff submitted an affidavit from Jesse D. Nelson dated August 29, 2010, attesting that on August 28, 2010, he observed the Broadcast being displayed at the Polack Inn. (Dubin Aff., Ex. B (dkt. #10-2) at 1-2.) Nelson further attests that at the time he observed the bar there were

approximately 25 to 30 customers present. (*Id.*) Nelson also attests that the capacity of the establishment in the main bar area is approximately 100 people. (*Id.*) Plaintiff also submitted its “Rate Card” for the Ultimate Fighting Championship. (Dubin Aff., Ex. A (dkt. #10-1) at 1.) For an establishment with a capacity of between 50-100 people, the price for the Broadcast was \$1,100.

In other default judgment actions involving violations of 47 U.S.C. § 605, this court and others have awarded damages of approximately \$55 per patron. *See, e.g., Joe Hand Promotions, Inc. v. SCK Mgmt Serv’s, LLC*, No. 12-cv-590-wmc (W.D. Wis. Jan. 9, 2013); *Joe Hand Promotions, Inc. v. Dewey’s Roadhouse, LLC*, No. 11-cv-486-wmc (W.D. Wis. Mar. 21, 2012); *J & J Sports Prod., Inc. v. Montero*, No. 10-cv-757-wmc (W.D. Wis. Mar. 16, 2011); *J & J Sports Productions, Inc. v. Aguilera*, No. 09-cv-4719, 2010 WL 2362189, at *2 (N.D. Ill. June 11, 2010); *J & J Sports Production, Inc. v. Ramirez*, No. 08 C 3354, Minute Order at 1-2 (N.D. Ill. Sept. 18, 2008). Based on the Nelson affidavit that approximately 30 individuals were at the bar when he left Polack Inn, the court will award \$1,650 in statutory damages and additional enhanced damages in the same amount for a total of \$3,300.

Plaintiff also seeks attorneys’ fees in the amount of \$1,250, which counsel avers represents 5 hours of fees at \$250/hour, which the court finds reasonable. In addition, plaintiff seeks its costs in the amount of \$391.75, which consists of the \$350 filing fee and \$41.75 in service and related fees. The court also finds reimbursement of these costs appropriate. Accordingly, the court will also award a total of \$1,641.75 in attorneys’ fees and costs. This makes the total amount of damages awarded to Joe Hand Promotions, Inc. the sum \$4,941.75.

IT IS ORDERED that plaintiff's motion for default judgment is GRANTED and the clerk of court is directed to enter a default judgment in the total amount of \$4,941.75 against defendant Ryan M. Schultz, d/b/a Polack Inn.

Entered this 23rd day of January, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge