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CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SACHIKO MUROMURA; MINAKO TAKENO)	Case No. CV 12-09263 DDP (AGRx)
)	
Plaintiffs,)	ORDER DENYING DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS
)	
v.)	
)	[Dkt. No. 55]
RUBIN POSTAER AND)	
ASSOCIATES, a California)	
corporation; AMERICAN HONDA)	
MOTOR CO., INC., a Delaware)	
corporation,)	
)	
Defendants.)	
)	
_____)	

This matter comes before the Court on Defendants' Motion for Attorneys' Fees pursuant to 17 U.S.C. § 505. After reviewing the materials submitted by the parties and considering the parties' contentions, the Court denies the Motion for Attorneys' Fees.

I. Background

Sachiko Muromura and Minako Takeno (collectively "Plaintiffs") brought an action against Rubin Postaer and Associates and American Honda Motor Co. (collectively "Defendants") for copyright infringement. This Court granted Defendants' Motion to Dismiss for

1 Failure to State a Claim on May 31, 2013. Plaintiffs filed a First
2 Amended Complaint ("FAC") on July 1, 2013. This Court granted
3 Defendants' Motion to Dismiss the FAC on September 16, 2014.
4 Plaintiffs filed a Second Amended Complaint ("SAC") October 14,
5 2014, and this Court granted Defendants' Motion to Dismiss the SAC
6 on April 15, 2015.

7 On April 29, 2015, Defendants filed the present motion for
8 attorney fees and costs under the Copyright Act.

9 **II. Discussion**

10 Section 505 of the Copyright Act of 1976 provides that "the
11 court may . . . award a reasonable attorney's fee to the prevailing
12 party as part of the costs" in an action for copyright
13 infringement. 17 U.S.C. § 505. Though copyright registration is a
14 prerequisite for a plaintiff to be awarded attorney's fees under
15 section 505, a plaintiff's registration is not required for a
16 defendant to be awarded attorney's fees. See Stern v. Does, 978
17 F.Supp.2d 1031, 1050 n. 13, 1052 (C.D. Cal 2011) (finding that
18 defendants were entitled to attorney's fees under the Copyright Act
19 even when the plaintiff did not properly register his work prior to
20 the alleged infringement). The awarding of costs and attorney's
21 fees under section 505 is left to the court's discretion. Fogerty
22 v. Fantasy, Inc., 510 U.S. 517, 523 (citing H.R.Rep. No. 94-1476,
23 p. 163 (1976)). The use of the word "may" in section 505 clearly
24 connotes discretion, and "[t]he automatic awarding of attorney's
25 fees to the prevailing party would pretermit the exercise of that
26 discretion." Id. at 533.

27 When determining whether to award attorney's fees, the court
28 may consider factors such as (1) the degree of success obtained;

1 (2) frivolousness; (3) motivation; (4) the objective
2 unreasonableness of the losing party's factual and legal arguments;
3 and (5) the need, in particular circumstances, to advance
4 considerations of compensation and deterrence. Entm't Research
5 Grp., Inc. v. Genesis Creative Grp., Inc., 122 F.3d 1211, 1229 (9th
6 Cir. 1997) (citing Fogerty, 510 U.S. at 534 n. 19). Courts must
7 remain "faithful to the purposes of the Copyright Act" when
8 applying these factors. Fogerty, 510 U.S. at 534 n. 19)

9 Defendants are not held to a more stringent standard than
10 plaintiffs and are not required to show that the suit was
11 "frivolous or brought in bad faith." Fogerty, 510 U.S. at 520-21,
12 534-35. "Exceptional circumstances" are also not required.
13 Historical Research v. Cabral, 80 F.3d 377, 378 (9th Cir. 1996).
14 The "pivotal criterion," however, is faithfulness to the purposes
15 of the Copyright Act. Fantasy, Inc. v. Fogerty, 94 F.3d 553, 558
16 (9th Cir. 1996). "[T]he question is whether a successful *defense* of
17 the action furthered the purposes of the Act, not whether a *fee*
18 *award* would do so." Mattel, Inc. v. Walking Mountain Prod., 353
19 F.3d 792, 816 (9th Cir. 2003) (emphasis in original).

20 Here, Defendants argue that the Court should award them
21 attorney's fees because (1) their defense of Plaintiffs' claims
22 furthered the purposes of the Copyright Act; (2) Plaintiffs
23 unreasonably filed successive complaints that failed to state a
24 claim; (3) an award of attorney's fees would deter future actions;
25 and (4) Plaintiffs' lawsuit was contrary to the purposes of the
26 Copyright Act.

27 Copyright law "enrich[es] the general public through access to
28 creative works." Fogerty, 510 U.S. at 527. "The primary objective

1 of the Copyright Act is to encourage the production of original
2 literary, artistic, and musical expression for the good of the
3 public." Id. at 524. Defendants should be encouraged to litigate
4 meritorious copyright defenses to the same extent that plaintiffs
5 are encouraged to bring meritorious infringement claims. Fogerty,
6 510 U.S. at 527. Unlike the defendant in Mattel, however, who
7 appealed a decision on the merits to the Ninth Circuit, Defendants
8 here succeeded on their motions to dismiss, and were not required
9 to litigate to the same extent to protect their interests.

10 "[I]t is not the purpose of the Copyright Act 'to deter
11 litigants from bringing potentially meritorious claims, even though
12 those claims may be ultimately unsuccessful.'" Minden Pictures,
13 Inc. v. John Wiley & Sons, Inc., No. C-12-4601 EMC, 2014 WL 1724478
14 at *8 (N.D. Cal. Apr. 29, 2014) (quoting Thompkins v. Lil' Joe
15 Records, Inc., 2008 WL 896898, at *6 (S.D. Fla. Mar. 31, 2008)).
16 Plaintiffs brought their copyright infringement action with a
17 belief that the ferrofluid works were "original expression" had
18 "independent copyrightable properties." (See Kodama Decl. 2, May
19 19, 2015.) Plaintiffs had obtained a copyright registration on the
20 video "Protrude, Flow 2001" (Pls. FAC Ex. 1) and had no knowledge
21 of similar other works using ferrofluid. (Kodama Decl. 3:5-6.) "A
22 claim or defense is not frivolous if it is brought in good faith,
23 in an unsettled area of law, or with a reasonable likelihood of
24 success." Mattel, Inc. v. Walking Mountain Prod., 2004 WL 1454100
25 at *2 (C.D. Cal. June 21, 2004) (citing Lotus Dev. Corp. v. Borland
26 Int'l, 140 F.3d 70, 74 (1st Cir. 1998)). It appears that Plaintiffs
27 brought the action in a good faith attempt to protect what they
28 believed to be their original work. Although the Court concluded

1 that Plaintiffs did not adequately identify the protectable
2 elements of their work, Plaintiffs' position was not unreasonable,
3 particularly given the awkwardness of the extrinsic test framework
4 as applied to art. See Swirsky v. Carey, 376 F.3d 841, 848 (9th
5 Cir. 2004).

6 Furthermore, Plaintiffs relied on counsel to develop a legal
7 strategy for them using their non-native language in a foreign
8 country with unfamiliar procedure. (Opp'n to Mot. of Defs. For
9 Att'y Fees 5:12-14, 6:21, 7:1-3.) Plaintiffs are non-native English
10 speakers and Plaintiffs' counsel is a non-native Japanese speaker,
11 which contributed to difficulties in preparing the complaints.
12 (Makman Decl. 1:12-14, May 18, 2015.) To the extent that
13 Plaintiffs' good faith attempts to protect their works resulted in
14 improperly pleaded claims, those deficiencies are not fairly
15 attributable to Plaintiffs themselves.

16 **III. Conclusion**

17 For the reasons explained above, Defendant's Motion for
18 Attorneys' Fees is DENIED.

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20 IT IS SO ORDERED.

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23 Dated: September 17, 2015

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DEAN D. PREGERSON
United States District Judge