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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.,)	1:10-cv-01694-AWI-GSA
)	
Plaintiff,)	ORDER RE: MOTION FOR
)	PARTIAL SUMMARY
v.)	JUDGMENT
)	
SANTIAGO MORALES, individually)	(Docs. 14)
and d/b/a DOMINIC’S BAR)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff J & J Sports Productions, Inc., has filed a motion for partial summary judgment against defendant Santiago Morales. Having reviewed the pleadings of record and all competent and admissible evidence submitted, the Court finds there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law. Accordingly, the motion shall be granted.

II. FACTS AND PROCEDURAL BACKGROUND

On September 16, 2010, plaintiff J & J Sports Productions, Inc. (hereinafter referred to as “Plaintiff”) filed its complaint against defendant Santiago Morales, individually and d/b/a Dominic’s Bar

1 (hereinafter referred to as “Defendant”), asserting causes of action for (1) violation of 47 U.S.C. §
2 605, (2) violation of 47 U.S.C. § 553, (3) conversion and (4) violation of California’s Unfair
3 Competition Law (UCL), California Business and Professions Code Sections 17200 et seq. In the
4 complaint, Plaintiff alleged as follows:

5 “9. Pursuant to contract, Plaintiff J & J Sports Productions, Inc., was granted the
6 exclusive nationwide commercial distribution (closed-circuit) rights to ‘*Number*
7 *One*’: *The Floyd Mayweather, Jr. v. Juan Manuel Marquez Championship Fight*
8 *Program*, telecast nationwide on Saturday, September 19, 2009 (this included all
9 under-card bouts and fight commentary encompassed in the television broadcast of
10 the event, hereinafter referred to as the ‘Program’). [¶] 10. Pursuant to contract,
11 Plaintiff J & J Sports Productions, Inc., entered into subsequent sublicensing
12 agreements with various commercial entities throughout North America, including
13 entities within the State of California, by which it granted these entities limited
14 sublicensing rights, specifically the rights to publicly exhibit *the Program* within
15 their respective commercial establishments in the hospitality industry (i.e., hotels,
16 racetracks, casinos, bars, taverns, restaurants, social clubs, etc.). [¶] 11. As a
17 commercial distributor and licensor of sporting events, including *the Program*,
18 Plaintiff J & J Sports Productions, Inc., expended substantial monies marketing,
19 advertising, promoting, administering, and transmitting *the Program* to its customers,
20 the aforementioned commercial entities.”

21 Plaintiff further alleged:

22 “[¶] 12. With full knowledge that *the Program* was not to be intercepted, received,
23 published, divulged, displayed, and/or exhibited by commercial entities unauthorized
24 to do so, each and every of the above named Defendant and/or agents, servants,
25 workmen or employees did unlawfully intercept, receive, publish, divulge, display,
26 and/or exhibit *the Program* at the time of its transmission at commercial
27 establishment in Madera, California . . . [¶] 13. Said unauthorized interception,
28 reception, publication, divulgence, display, and/or exhibition by each of the
Defendant was done willfully and for purposes of direct and/or indirect commercial
advantage and/or private financial gain.”

On October 22, 2010, Defendant answered the complaint, asserting a denial of the allegations. On
September 30, 2011, Plaintiff moved for partial summary judgment pursuant to Federal Rule of Civil
Procedure 56(a), seeking a judgment only as to Defendant’s liability for the section 605, section 553
and conversion claims.¹ Defendant did not file a written opposition. On November 16, 2011, the
Court issued an order directing Plaintiff to provide supplemental briefing in support of its motion
for partial summary judgment. On December 5, 2011, Plaintiff filed its supplemental brief.

¹Plaintiff does not request judgment on the UCL cause of action.

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3 **III. LEGAL STANDARD**

4 “A party may move for summary judgment, identifying each claim or defense – or the part of each
5 claim or defense – on which summary judgment is sought. The court shall grant summary judgment
6 if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled
7 to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the initial burden
8 of “informing the district court of the basis for its motion, and identifying those portions of ‘the
9 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
10 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.”
11 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); see Fed. R. Civ.
12 P. 56(c)(1)(A). “Where the non-moving party bears the burden of proof at trial, the moving party
13 need only prove that there is an absence of evidence to support the non-moving party’s case.” *In re*
14 *Oracle Corp. Securities Litigation*, 627 F.3d 376, 387 (2010) (citing *Celotex, supra*, at p. 325). If
15 the moving party meets its initial burden, the burden shifts to the non-moving party to present
16 evidence establishing the existence of a genuine dispute as to any material fact. See *Matsushita Elec.*
17 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 89 L.Ed.2d 538. A
18 court ruling on a motion for summary judgment must construe all facts and inferences in the light
19 most favorable to the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255,
20 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Even if the motion is unopposed, the movant is not
21 absolved of the burden to show there are no genuine issues of material fact (*Henry v. Gill Industries,*
22 *Inc.*, 983 F.2d 943, 949-50 (9th Cir. 1993)), although the court may assume the movant’s assertions
23 of fact to be undisputed for the purposes of the motion and grant summary judgment if the facts and
24 other supporting materials show the movant is entitled to it. See Fed. R. Civ. P. 56(e)(2), (3).

25 **IV. DISCUSSION**

1 televisions. According to Gagliardi, the Katsidis-Escobedo fight was *the Program*'s undercard bout.

2 The fact that Plaintiff retained the commercial exhibition licensing rights to *the Program* is
3 demonstrated by *the Program*'s rate card, which is attached as an exhibit to Gagliardi's affidavit.

4 The rate card states on its face: "Closed Circuit Information [¶] All commercial locations that have
5 been licensed to carry this event must have a valid license agreement from the OFFICIAL CLOSED-
6 CIRCUIT PROVIDER, G&G Closed Circuit Events Inc. There is NO OTHER LEGAL LICENSOR.

7 Any location that has not been licensed by this provider will be considered a PIRATE and
8 TREATED ACCORDINGLY." Gagliardi testifies that Plaintiff uses G&G Closed Circuit Events
9 to sell closed-circuit licenses to commercial locations throughout the United States, and for that
10 reasons, it was G&G Closed Circuit Events – rather than Plaintiff – that prepared the rate card
11 evidencing the commercial licensing fees applicable to *the Program*.

12 Based on the foregoing, the Court finds Plaintiff has met its initial burden of showing that
13 (1) Defendant did not obtain a license from Plaintiff to receive the signal for *the Program* at
14 Dominic's, (2) *the Program* was unlawfully received and exhibited at Dominic's on September 19,
15 2009 and (3) Plaintiff is a "person aggrieved" under section 605. Defendant has not filed a written
16 opposition and has therefore failed to raise a genuine issue of material fact. Accordingly, Plaintiff's
17 motion for partial summary judgment must be granted as to the section 605 claim.

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19 ***B. The section 553 claim*** – Plaintiff's second cause of action asserts Defendant's
20 unauthorized interception and exhibition of *the Program* violated section 553 of the Federal Cable
21 Communications Policy Act of 1992, as amended. Section 553(a) provides in pertinent part: "(1)
22 No person shall intercept or receive or assist in intercepting or receiving any communications service
23 offered over a cable system, unless specifically authorized to do so by a cable operator or as may
24 otherwise be specifically authorized by law." 47 U.S.C. § 553(a)(1). "Any person aggrieved by a
25 violation of subsection (a)(1)" may bring a civil action for actual or statutory damages for each
26 violation. 47 U.S.C. § 553(c)(3)(A). Consistent with the analysis of Plaintiff's section 605 claim

1 above, the Court finds Plaintiff has met its initial burden of showing that (1) Defendant received *the*
2 *Program* at Dominic's on September 19, 2009, (2) *the Program* was offered over a cable system and
3 (3) Defendant was not specifically authorized to receive *the Program* by law and (4) Plaintiff is a
4 "person aggrieved" under section 553. Again, Defendant has not filed a written opposition and has
5 therefore failed to raise a genuine issue of material fact. Accordingly, Plaintiff's motion for partial
6 summary judgment must be granted as to the section 553 claim.

7
8 **C. *The conversion claim*** – The third cause of action asserts Defendant's alleged
9 misappropriation of *the Program* constituted conversion. In California, conversion is "the wrongful
10 exercise of dominion over" property belonging to another. *Burlesci v. Petersen*, 68 Cal.App.4th
11 1062, 1066, 80 Cal.Rptr.2d 704 (1998). The elements of conversion are "(1) the plaintiff's
12 ownership or right to possession of personal property, (2) the defendant's disposition of the property
13 in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages."
14 *Fremont Indemnity Co. v. Fremont General Corp.*, 148 Cal.App.4th 97, 119, 55 Cal.Rptr.3d 621
15 (2007). Intangible personal property such as television signals may be the subject of a conversion
16 action. See *Don King Productions/Kingvision v. Lovato*, 911 F.Supp. 419, 423 (N.D.Cal. 1995).
17 Having reviewed the pleadings of record and all competent and admissible evidence submitted, the
18 Court finds Plaintiff has met its initial burden of establishing the elements of conversion. Again,
19 Defendant has failed to raise a genuine issue of material fact. Accordingly, Plaintiff's motion for
20 partial summary judgment must be granted as to the conversion claim.

21 **V. DISPOSITION**

22 Based on the foregoing, the motion of Plaintiff J & J Sports Productions, Inc., for partial
23 summary judgment is GRANTED.

24 IT IS SO ORDERED.

25 Dated: December 21, 2011

26 
CHIEF UNITED STATES DISTRICT JUDGE