

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00419-PAB-CBS

U2LOGIC, INCORPORATED,

Plaintiff,

v.

AMERICAN AUTO SHIELD, LLC,

Defendant.

MINUTE ORDER

Entered by Judge Philip A. Brimmer

This matter is before the Court on plaintiff's Notice of Dismissal with Prejudice of Claims Regarding U2Weblink [Docket No. 55], which the Court converted to a motion to amend the final pretrial order. Docket No. 56. Through its motion, plaintiff seeks to amend the final pretrial order to delete the "U2Weblink claims" as described in Count Two of Plaintiff's First Amended Complaint [Docket No. 10]. Defendant has filed an objection, which states, in part:

Defendant AAS does not object to amending the Final Pretrial Order in order to delete all claims related to the U2Weblink software in general. However, AAS files this Limited Objection in order to reserve the right to seek recovery of attorney fees and costs incurred by AAS regarding U2's claims related to U2Weblink pursuant to 17 U.S.C. § 505.

Docket No. 61 at 2, ¶ 3. Plaintiff replied, arguing neither party is entitled to statutory attorneys' fees because plaintiff did not register the copyrighted works before defendant infringed and the Copyright Act "precludes an award of attorneys' fees if the copyrighted work is not registered prior to the commencement of the infringement." Docket No. 63 at 1 (quoting *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 701-02 (9th Cir. 2008) (citing 17 U.S.C. § 412(2)).

The Court is not convinced that plaintiff is correct. See, e.g., *Latin Am. Music Co. v. Am. Society of Composers, Authors and Publishers* (ASCAP), 642 F.3d 87, 90 (1st Cir. 2011) ("As a matter of law, [§ 412] does not apply to a defendant who is successful in defending claims that it infringed."). Nonetheless, the Court finds that it would be inappropriate to rule on defendant's entitlement to statutory attorneys' fees on the current record. Defendant remains free to raise this issue in a post-trial motion. The Court will grant plaintiff's request to amend the final pretrial order to delete the U2Weblink claims. It is further

ORDERED that plaintiff's motion to amend the final pretrial order [Docket No. 55] is **GRANTED**. It is further

ORDERED that the Final Pretrial Order [Docket No. 52] will be amended to delete plaintiff's claims related to the U2Weblink software. The parties may jointly file an Amended Final Pretrial Order reflecting the above amendment on or before Tuesday, February 17, 2015.

DATED February 11, 2015.