

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

J & J SPORTS PRODUCTIONS, INC.,

Plaintiff,

v.

Civil Action No. 3:13-cv-305-DJH

YILLIAM E. PEREIRA, individually and
doing business as CAFETERIA EL
REGRESO,

Defendant.

* * * * *

MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff J & J Sports Production Inc.'s status report (Docket No. 19) and affidavits (D.N. 19, 20), which amount to a verified claim for damages. The Court entered a default against Defendant Yiliam E. Pereira for the unauthorized use of communications in violation of 47 U.S.C. §§ 605, et seq., and ordered J & J Sports to submit a verified claim for damages. (D.N. 1, 16) J & J Sports has submitted their claim, which asks for statutory damages—including additional damages for willful violations under § 605(e)(3)(c)(ii)—attorney fees, and court costs. The Court finds that an award of \$1,400 for statutory damages, \$1,207.50 for attorney fees, and \$401.60 for court costs is proper.

The action arose from an unauthorized telecast of the March 12, 2011 championship boxing match between Miguel Cotto and Ricardo Mayorga. (D.N. 20-1, PageID # 69) Pereira broadcast the fight in his restaurant, Cafeteria El Regreso, without paying for the right to do so. (Id., PageID # 70) That night, a J & J Sports investigator observed the boxing match on three televisions in Cafeteria El Regreso. (D.N. 20-2, PageID # 79) He determined that the location could hold approximately 60 people; he made three separate head counts and counted ten, ten, and nine patrons respectively. (Id., PageID # 80) There was no cover charge to get in. (Id.,

PageID # 79) To legally broadcast this fight, Cafeteria El Regreso should have purchased a commercial sublicense fee for sixty occupants for \$1,200. (D.N. 20-1, PageID # 78)

Based on these facts, J & J Sports asks the Court to award statutory damages between \$1,200 and \$3,000, plus enhanced damages at the maximum statutory allowance, as well as attorneys' fees and costs. (D.N. 20-1, PageID # 72; D.N. 20, PageID # 66) But awarding the statutory maximum would be excessive. In a similar case from this district, J & J Sports received \$1,000, the statutory minimum, under nearly identical circumstances. J & J Sports Productions, Inc. v. El Rey Mexican Restaurant, LLC, No. 3:10CV-730-S, 2014 WL 5500501, at *1 (W.D. Ky. Oct. 30, 2014).

In El Rey, the defendant illegally televised a fight for six individuals. *Id.* There was no cover charge, advertising, or promotional activity. The Court found that the plaintiff's evidence of willfulness was weak and did not support a finding that the underlying violation was undertaken for commercial advantage or private financial gain, a necessity under § 605(e)(3)(C)(ii). *Id.*

Similarly, in Joe Hand Promotions, Inc. v. Tip Off, Inc., No. 3:08CV-600-S, 2013 WL 441989, at *1 (W.D. Ky. Feb. 5, 2013), another case in this district, the Court awarded slightly more than the statutory minimum and found no showing of willfulness. The Court analyzed § 553 instead of § 605, and based its determination on “the (1) absence of a cover charge, (2) patronage of 35 to 40 people, (3) the broadcast on one of two televisions on the premises, and (4) a lack of information concerning commercial gain by the violator.” *Id.*


There is no material distinction between those cases and this one. Like the offending establishments in El Rey and Tip Off, Cafeteria El Regreso did not charge for entry, and did not advertise or promote the broadcast. (See D.N. 20-1, PageID # 72-73) There were few patrons.

(Id.) And like the defendants in *El Rey* and *Tip Off*, Cafeteria El Regreso did not broadcast the fight for commercial advantage or private financial gain. Thus, Pereira was not a willful violator under § 605(e)(3)(C)(ii). But Pereira did violate § 605, resulting in a \$1,200 loss for J & J Sports. (D.N. 37, 38) The Court considers an award of \$1,400 to be reasonable and consistent with the purposes of the statute.

J & J Sports also asks for attorney fees and costs, which it is entitled to under § 605(e)(3)(B)(iii). The Court finds that J & J Sports' requested attorney fees figure (\$1,207.50) (D.N. 21-1, PageID # 85) directly corresponds with the requisite Lodestar figure, which is determined first by "multiply[ing] the number of hours reasonably expended on the litigation by a reasonable hourly rate," and, second, adjusting "the award upward or downward to achieve a reasonable result." *Geier v. Sundquist*, 372 F.3d 784, 792 (6th Cir. 2004) (quoting *Hensley*, 461 U.S. at 434 (1983)). The number of hours expended, 6.9, is reasonable, and the hourly rate, \$175, is commensurate to an hourly rate found reasonable by other judges in this district. See *El Rey*, 2014 WL 5500501; *Tip Off*, 2013 WL 441989. No adjustment is necessary.

In sum, the Court finds that a statutory award of \$1,400 is just, and that attorney fees of \$1,207.50 and costs of \$401.60 are reasonable. A separate order and judgment will be entered this date in accordance with this opinion.

January 13, 2016


David J. Hale, Judge
United States District Court