

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

J&J SPORTS PRODUCTIONS, INC.

CIVIL ACTION

VERSES

THE BOIL & ROUX KITCHEN, LLC  
D/B/A BOIL & ROUX AND MAURICE  
WALKER

NO.: 17-00276-BAJ-EWD

RULING AND ORDER

Before the Court is the **Motion for Default Judgment (Doc. 10)** filed by Plaintiff, J & J Sports Productions, Inc. Defendants, The Boil & Roux Kitchen, LLC and Maurice Walker did not file an opposition to the motion. Jurisdiction is proper pursuant to 28 U.S.C. § 1331. For the reasons that follow, Plaintiff's motion is **GRANTED**.

**I. BACKGROUND**

Plaintiff owns and owned the exclusive rights to the closed circuit television event, *"The Fight of the Century" Floyd Mayweather, Jr. v. Manny Pacquiao Championship Fight Program* (the "Program"). (Doc. 10-1 at p. 1). Defendants are an LLC, which operates a restaurant and bar, and its member that allegedly broadcast the Program on May 2, 2015, without first purchasing a \$3,000 business license from Plaintiff. (*Id.* at pp. 2–3). According to Plaintiff's investigator, Defendants advertised on Facebook that they would show the Program, charge a \$20 cover, and broadcast the Program on six television. (Doc. 10-6 at p. 1). Approximately 100 people were in the venue at the time of the fight. (*Id.*).

As a result, Plaintiff filed suit seeking statutory damages and attorneys' fees pursuant to 47 U.S.C. §§ 605, which provides a private right of action for the interception and publishing of radio communications; § 553(c), which prohibits the interception or reception of communications offered over a cable system; and 18 U.S.C. §§ 2511, 2520, which prohibit and provide a private right of action for the interception or reception of a wire, oral, or electronic communications. (Doc. 1 p. 8, 11). Plaintiffs properly served summons on Defendants on May 23, 2017. (Docs. 5, 6). Defendants did not respond, and accordingly, the Clerk of Court entered a default in this action. (Doc. 8).

## II. LEGAL STANDARD

The service of a summons triggers a duty to respond to a complaint and a failure to respond may result in the entry of default or default judgment under Federal Rule of Civil Procedure 55. *Rogers v. Hartford Life & Accident Ins. Co.*, 167 F.3d 933, 937–39 (5th Cir. 1999). When a party establishes by affidavit or some other method that there has been a default, the Clerk of Court will enter the default. *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). Once there has been an entry of default, the plaintiff may apply to the Court for a default judgment. *Id.*

Default judgments are usually disfavored under the Federal Rules of Civil Procedure. *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989). A default judgment is considered to be a drastic remedy that should only be available “when the adversary process has been halted because of an essentially unresponsive party.” *Id.* (quoting *H.F. Livermore Corp. v.*

*Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970)). Therefore, a party is not entitled to a default judgment, even where the defendant is technically in default. *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996).

In determining whether a default judgment should be entered, the Fifth Circuit has developed a two-part test. *Taylor v. City of Baton Rouge*, 39 F. Supp. 3d 807, 813 (M.D. La. 2014). First, the Court must determine whether the entry of default judgment is appropriate under the circumstances. *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998). Factors relevant to this determination include: (1) whether there are material issues of fact at issue; (2) whether there has been substantial prejudice; (3) whether the grounds for default have been clearly established; (4) whether the default was caused by excusable neglect or good faith mistake; (5) the harshness of default judgment; and (6) whether the court would think itself obliged to set aside the default on a motion by Defendant. *Id.* Second, the Court must assess the merits of Plaintiff's claims and find a viable claim for relief. *Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F. 2d 1200, 1206 (5th Cir. 1975).

### III. DISCUSSION

#### A. Appropriateness of Default Judgment

The Court finds that default judgment is appropriate under the circumstances of this case and that Plaintiff has stated a viable claim for relief. Default Judgment is appropriate because Defendants failed to file a proper and timely answer and have failed to produce evidence to show that the failure to file an answer resulted from "good faith mistake or excusable neglect." *See Lindsey*, 161 F. 3d at 893. Additionally,

Defendants' failure to file an opposition to the motion or otherwise defend the instant suit for more than eight months mitigates the harshness of a default judgment. Lastly, the Court is not aware of any facts that would constitute "good cause" to set aside default judgment if Defendants filed a motion requesting such.

### **B. Viable Claim for Relief**

The Court finds that Plaintiff's uncontested statement of material facts (Doc. 10-1) and attached supporting documents (Docs. 10-3 through 10-18) establish a viable claim for relief. Specifically, the Court finds that despite failing to acquire a business license for the Program, Defendants not only showed the fight, but also advertised that they would broadcast the Program and charge a cover on the day of the Program. (Doc 10-6 at p. 1; Doc. 10-14 at pp. 1-2)

The Fifth Circuit has noted that 47 U.S.C. § 553 and § 605 make different types of conduct unlawful. *J & J Sports Prods., Inc. v. Mandell Family Ventures, L.L.C.*, 751 F.3d 346, 351 (5th Cir.2014). In *Mandell*, the Fifth Circuit held that while both § 553 and § 605 prohibit the interception of communications, "[a] logical reading of the two provisions reveals a clear demarcation whereby § 605 deals with communications traveling through the air (via radio), [and] § 553 covers communications traveling over cable wire." *Id.* at 352-53 (internal quotations omitted). Where, because of the defendant's failure to respond, a plaintiff has been unable to determine the method through which the defendant accessed the unauthorized communication, district courts have awarded default judgments in favor of the plaintiff. *See e.g., J & J Sports Prods., Inc. v. Tiger Paw Daiquiris & Grill*,

*LLC*, No. 14-268, 2015 WL 1800619, at \*4 (M.D. La. Apr. 16, 2015) (Jackson, J.) (awarding damages under § 553 where, because of Plaintiff's failure to respond, it could not be established how the plaintiff received the broadcast); *J & J Sports Prods., Inc v. Wine Bistro LLC*, No: 13-6369, slip op. at 8-9 (E.D.La. July 30, 2014) (same). Although the manner in which Plaintiffs intercepted the cable signal for the Program is not clear, the Court will nonetheless award damages under § 553.<sup>1</sup>

### **C. Remedies**

Plaintiffs seek a total of \$25,000 in damages, based on the alleged violation of § 553. (Doc. 10-5). Based on the facts of this case and other, similar cases, *see e.g.*, *J&J Sports Prods., Inc. v. Onyx Ultimate Bar & Grill LLC*, No. 17-00589, 2018 WL 344964, at \*4 (M.D. La. Jan. 9, 2018) (Jackson, J.), the Court finds this amount reasonable.

#### **1. Statutory Damages**

The Court finds that an amount twice the licensing fee, or \$6,000, is reasonable for statutory damages under § 553. *See Onyx*, 2018 WL 344964, at \*4; *Tiger Paw* 2015 WL 1800619, at \*4.

#### **2. Enhanced Statutory Damages**

Further, if the court finds that “that the violation [of § 553] was committed willfully and for purposes of commercial advantage or private financial gain” the Court may increase the damage award by up to \$50,000. § 553(c)(3)(B). Defendants’

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<sup>1</sup> Although Plaintiffs aver that they bring claims under 18 U.S.C. §§ 2511 and 2520, it is a much closer question whether Plaintiffs have shown a violation of those statutes. However, because Defendants’ violation of 18 U.S.C. § 553 standing alone justifies an award that compensates Plaintiffs for the full amount they are seeking to recover (*see* Doc. 10-5), the Court need not address this issue.

advertisement of the Program and their cover charge on the day of the program establish that the violation was willful. *See, e.g., Onyx*, 2018 WL 344964, at \*4. Considering the conduct in this case and the conduct in similar cases, enhanced damages of \$19,000 are more than reasonable. *Onyx*, 2018 WL 344964, at \*4 (awarding a \$24,000 enhancement for a willful violation for a restaurant and bar that charged a cover and had approximately 90 patrons); *J&J Sports Prods., Inc. v. KCK Holdings, LLC*, No. CIV.A. 14-00269, 2015 WL 4656714, at \*1 (M.D. La. Aug. 5, 2015) (Jackson, J.) (awarding three times the statutory damages for a willful violation where the defendant did not charge an admission fee and had only 25 patrons).

### ***3. Costs and Attorneys' Fees***

The Court, in its discretion, may award the prevailing party reasonable attorney's fees and costs under § 553(c)(2)(C). Based on the affidavit of Plaintiff's attorney, Ronnie J. Berthelot, and his attached billing records (*see* Docs. 10-16, 10-17), the Court finds an hourly rate of \$250 is appropriate. After calculating the lodestar and considering the applicable factors, *see Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998), the Court finds that attorneys' fees in the amount of \$2,500 are reasonable under the circumstances. Further, the Court taxes all costs to Defendants.

## **IV. CONCLUSION**

Accordingly,

**IT IS ORDERED** that Plaintiffs' Motion for Default Judgment (Doc. 210) is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiffs are awarded statutory damages in the amount of \$6,000 and enhanced statutory damages of \$19,000, for a total of \$25,000.

**IT IS FURTHER ORDERED** that Plaintiffs' costs, including reasonable attorneys' fees in the amount \$2,500 are taxed to Defendants.

Baton Rouge, Louisiana, this 26<sup>th</sup> day of February, 2018.

A handwritten signature in blue ink, appearing to read "Brian A. Jackson", written over a horizontal line.

**BRIAN A. JACKSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**