

EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff,

-against-

**MATHEW K. HIGBEE, Esq.,
NICK YOUNGSON,
RM MEDIA, LTD.,
and HIGBEE & ASSOCIATES,**

Defendants.

Docket No.: 18-cv-3353 (ADS) (ARC)

**MOTION FOR
DEFAULT JUDGMENT**

Plaintiff Meyer, Suozzi, English & Klein, P.C. ("Plaintiff") hereby moves the Court pursuant to Federal Rule of Civil Procedure 55(b) and Local Civil Rule 55.2 to enter default judgment in favor of Plaintiff and against Defendants Nick Youngson and RM Media, Ltd. (together, the "RM Defendants") on the grounds that the RM Defendants failed to answer or otherwise defend against the complaint, and a Certificate of Default has been duly issued by the Clerk of this Court.

Dated: Garden City, New York
March 4, 2019

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

By: _____ /s/

Kevin Schlosser (kschlosser@msek.com)

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Attorneys for Plaintiff (Pro Se)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff,

-against-

**MATHEW K. HIGBEE, Esq.,
NICK YOUNGSON,
RM MEDIA, LTD.,
and HIGBEE & ASSOCIATES,**

Defendants.

Docket No.: 18-cv-3353 (ADS) (ARC)

**DECLARATION IN
SUPPORT OF MOTION
FOR DEFAULT JUDGMENT**

KEVIN SCHLOSSER declares the following pursuant to 28 U.S.C. § 1746:

1. I am a member of the plaintiff in this action, Meyer, Suozzi, English & Klein, P.C. (“Plaintiff”).

2. This action was commenced pursuant to 22 U.S.C. §§ 2201 and 2202 (declaratory judgment) and New York General Business Law § 349 (deceptive business practices).

3. The time for Defendants Nick Youngson and RM Media, Ltd. (together, the “RM Defendants”) to answer or otherwise move with respect to the Complaint herein has expired. A copy of the Complaint is annexed hereto as “Exhibit 1” and incorporated herein by reference.

4. The RM Defendants have not answered or otherwise moved with respect to the Complaint, and the time for the RM Defendants to answer or otherwise move has not been extended.

5. The RM Defendants’ default has been noted by the Clerk of Court. A copy of the Certificate of Default is annexed hereto as “Exhibit 2.”

6. The basis of liability against the RM Defendants is the following:

a. The photo that is the subject of the RM Defendants’ claim of copyright infringement (the “Image”) was freely made available to users under a “license,” which

precludes the RM Defendants' claim of copyright infringement and simply renders the use subject to a mere alleged claim of breach of the "license," for which no "statutory damages" are available and for which no actual damages can be proven. Plaintiff is therefore entitled to a declaration that (a) Plaintiff's use of the Image under license does not constitute copyright infringement as a matter of law, and (b) the RM Defendants are entitled to no damages.

b. The RM Defendants engaged in deceptive business practices when they made the Image and other photos freely available to the public for no charge, where the pictures were offered under "license," as a way to trick unwitting users, such as Plaintiff, into using the pictures without attribution and then falsely accuse them of copyright infringement and extort, or attempt to extort, completely unjustified sums of money (statutory damages that are not applicable) from them by way of harassment and scare tactics. The RM Defendants are therefore jointly and severally liable to Plaintiff under New York General Business Law § 349.

7. A proposed form of default judgment is annexed hereto as "Exhibit 3."

WHEREFORE, Plaintiff respectfully requests that a default judgment be entered in favor of Plaintiff and against the RM Defendants.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

Dated: Garden City, New York
March 4, 2019

s/ Kevin Schlosser
KEVIN SCHLOSSER

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,

Plaintiff,

-against-

MATHEW K. HIGBEE, ESQ.,
NICK YOUNGSON,
RM MEDIA, LTD.,
AND HIGBEE & ASSOCIATES,

Defendants.
-----X

SPATT, District Judge.

On June 7, 2018, the Plaintiff filed the instant action against defendants Nicholas “Nick” Youngson, RM Media, Ltd., Mathew K. Higbee, Esq., and Higbee & Associates for a declaratory judgment and violations of N.Y. Gen. Bus. L. § 349.

On February 20, 2019, the Clerk of the Court issued a Certificate of Default, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, against RM Media Ltd. and Nick Youngson.

On March 4, 2019, the Plaintiff moved for a default judgment against RM Media Ltd. and Nick Youngson.

The Court hereby refers this matter to United States Magistrate Judge Arlene R. Lindsay for a recommendation as to whether the motion for default judgment should be granted, and if so, what relief, if any, should be awarded. The Clerk of the Court is respectfully directed to note the referral.

FILED
CLERK

10:41 am, Mar 05, 2019

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

REFERRAL ORDER

2:18-cv-03353 (ADS) (ARL)

SO ORDERED.

Dated: Central Islip, New York

March 5, 2019

/s/ Arthur D. Spatt

ARTHUR D. SPATT
United States District Judge