

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Minden Pictures Inc.,

Plaintiff,

-against-

PanaGenius Inc. d/b/a Face2Face Africa,

Defendant.

**USDC SDNY**  
**DOCUMENT**  
**ELECTRONICALLY FILED**  
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1:21-cv-02312 (SDA)

ORDER

**STEWART D. AARON, United States Magistrate Judge:**

Pending before the Court is Plaintiff's motion for partial summary judgment based upon Defendant's failure to respond to Plaintiff's requests for admissions (Pl.'s 10/29/21 Mot., ECF No. 28), and Defendant's cross-motion to withdraw admissions. (Def.'s 11/8/21 Cross-Mot., ECF No. 35.)

While it is true that, under the rule, "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection," Fed. R. Civ. P. 36(a)(3), the rule also allows the Court to permit the withdrawal or amendment of an admission if (1) "it would promote the presentation of the merits of the action," and (2) "the court is not persuaded that it would prejudice" the party who requested the admission. Fed. R. Civ. P. 36(b). Given that (1) Defendant filed an affirmation and memorandum of law setting forth possible defenses to infringement (*see Michelen Aff.*, ECF No. 36, ¶¶ 14-16; Def.'s Mem., ECF No. 37, at 6),<sup>1</sup> and (2) Plaintiff never asked the Court to compel a response to the admissions requests in accordance with the Court's Individual Rules (even though

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<sup>1</sup> The Court declines to engage in a merits analysis at this stage, given that discovery is not yet complete. (*See* 9/17/21 Order, ECF No. 25 (setting December 12, 2021 as deadline to complete discovery).)

Plaintiff asked the Court to compel responses to its interrogatories and document requests (see Pl.'s 10/22/21 Ltr. Mot., ECF No. 26)<sup>2</sup>), the Court declines to find that Defendant admitted copyright infringement for purposes of partial summary judgment.

Thus, Plaintiff's motion for partial summary judgment (ECF No. 28) is DENIED and Defendant's cross-motion to withdraw admissions (ECF No. 35) is GRANTED.

**SO ORDERED.**

Dated: New York, New York  
November 18, 2021



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STEWART D. AARON  
United States Magistrate Judge

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<sup>2</sup> On October 28, 2021, the Court granted Plaintiff's motion to compel responses to interrogatories and document requests after Defendant failed to timely respond to that motion. (See 10/28/21 Order, ECF No. 27.)