

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Boost Worldwide, Inc.,

Case No.: 2:13-cv-490

Plaintiff

Judge Graham

v.

Magistrate Judge Kemp

**Cell Station Wireless, Inc. d/b/a
Cell-U-Express,**

Defendant.

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Motion for Default Judgment (doc. 9) against, the Defendant, Cell Station Wireless, filed on August 1, 2013. As part of its Motion, the Plaintiff seeks a judgment for attorney's fees and costs in the prosecution of the instant action. Pl.'s Mot. for Default J. at 8–9, doc. 9. The Plaintiff seeks attorney's fees and expenses totaling \$3,960.32. Id. at 9. To support its request, the Plaintiff cites the affidavit of Marc Youngelson, national counsel for the Plaintiff, and the exhibits accompanying Mr. Youngelson's affidavit purportedly detailing the Plaintiff's attorney fees. Id. Specifically, the Plaintiff cited Exhibit D to Mr. Youngelson's affidavit as supporting its request for attorney's fees and expenses. Id. In his affidavit, Mr. Youngelson attests that the Plaintiff incurred \$3,960.62 in attorney's fees and costs and cites to Exhibit D as evidence of the Plaintiff's attorneys fees. Youngelson Aff. ¶ 6.

The Court reviewed the Plaintiff's evidence and determined that the Plaintiff had failed to submit "Exhibit D" or any itemized billing detailing its attorney's fees and expenses. Consequently, the Court contacted the Plaintiff and requested that it submit such information to assist in the Court's resolution of the Motion for Default Judgment. On October 8, 2013, the

Plaintiff submitted a Supplemental Memorandum (doc. 10) in support of its Motions for Default Judgment and an invoice (doc. 11) for \$3,500.00 from Mr. Youngelson to Sprint Legal dated October 7, 2013. Presumably, the Plaintiff submitted this invoice as evidence of its attorney's fees in this case.

An applicant for attorney's fees bears the burden of establishing entitlement to an attorney-fee award and documenting the appropriate hours expended and hourly rates. See Hensley v. Eckerhart, 461 U.S. 424, 437 (1983); see also Graceland Fruit Inc. v. KIC Chems., Inc., 320 F. App'x 323, 328 (6th Cir. 2008). In addition, the applicant bears the burden of proving that the requested monetary award is reasonable. See United States v. Ohio, 474 F. Supp. 2d 916, 920 (S.D. Ohio 2007) (citing Reed v. Rhodes, 179 F.3d 453, 472 (6th Cir. 1999)). The Plaintiff must provide the Court with documentation containing "sufficient detail and probative value to enable the court to determine with a high degree of certainty that such hours were actually and reasonably expended in the prosecution of the litigation." Imwalle v. Reliance Medical Prods., Inc., 515 F.3d 531, 553 (6th Cir. 2008) (quoting United Slate, Local 307 v. G.M. Roofing & Sheet Metal Co., 732 F.2d 495, 502 n.2 (6th Cir. 1984)). The invoice presented by the Plaintiff does not meet this standard. It contains no information about the number of hours expended by counsel or counsel's hourly rates. Nor does it detail the type of work performed by counsel in prosecuting this action.

The Court **ORDERS** the Plaintiff to submit itemized billing records detailing the type of work performed, the number of hours expended, and counsel's hourly rate within fourteen (14) days of this Order being issued. Once the Plaintiff submits such itemized billing records, the Court will consider its Motion for Default Judgment and determine if this is the type of "exceptional case" that warrants the award of attorney's fees under the Lanham Act, 15 U.S.C. §

1117(a). Failure to comply with this Order will result in the denial of the Plaintiff's request for attorney's fees.

IT IS SO ORDERED.

S/ James L. Graham
James L. Graham
UNITED STATES DISTRICT JUDGE

Date: December 4, 2013