

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

Joe Hand Promotions, Inc.,

Plaintiff,

v.

Case No. **11-CIV-171-RAW**

Victor E. Kunkel, individually and doing business as Flea Flickers Sports Bar & Grill;
Jessica S. Kunkel, individually and doing business as Flea Flickers Sports Bar & Grill;
and **Flea Flicker, LLC**, an Oklahoma Limited Liability Corporation doing business as Flea Flickers Sports Bar & Grill,

Defendants.

ORDER

Before the court is Plaintiff's Motion for Default against Flea Flicker LLC [Docket No. 27], and Plaintiff's Motion for Summary Judgment against Victor E. Kunkel and Jessica S. Kunkel [Docket No. 30]. A Notice of Settlement was filed on February 7, 2012 [Docket No. 35]. On April 3, 2012, Plaintiff filed a Motion to Vacate Order/Judgment and Motion to Reopen Case [Docket No. 37], which was granted [Docket No. 38]. On July 24, 2012, Plaintiff filed a Motion for Judgment and to Deem the Motions Confessed [Docket No. 39], which was also granted [Docket No. 40].* Defendants Victor E. Kunkel and Jessica S. Kunkel filed a pro se answer on August 31, 2011 [Docket No. 19]. To date,

* In its Order dated July 24, 2012 [Docket No. 40], the court stated that Plaintiff "may file a separate motion regarding attorney fees incurred in pursuit of this motion." The court has again reviewed Plaintiff's brief in support of motion for summary judgment [Docket No. 31] and the accompanying time records and statement of costs. The court reconsiders that portion of its order dated July 24, 2012, and will issue its ruling on attorney fees and costs at this time.

Defendants have failed to effect the settlement agreement reached by the parties in February 2012, and have failed to respond to any of the pleadings since that date.

Plaintiff requests the maximum amount of statutory and enhanced damages pursuant to 47 U.S.C. § 605, which authorizes a court to impose up to \$10,000 in statutory damages and up to \$100,000 in enhanced damages if the defendant acted willfully to intercept the broadcast. A court must determine what amount of damages would compensate Plaintiff and punish Defendants for any illegal conduct.

Plaintiff provided the affidavit of an investigator who entered the premises during the night of the broadcast [Docket No. 33]. The investigator states that Defendants did not request a cover charge to enter the premises, that approximately 27-31 people were present at the time, and that the program was displayed on three televisions and one 8' projection screen.

Courts should consider several factors to determine whether a defendant's willful conduct justifies increased damages: (1) repeated violations over an extended period of time; (2) substantial unlawful monetary gains; (3) advertising of the broadcast; (4) charging of a cover charge or premiums for food and drinks; or (5) plaintiff's significant actual damages. Zuffa, LLC v. Al-Shaikh, 2011 WL 1539878, *8 (S.D. Ala. Apr. 21, 2011). Further, a court must "strike a balance between deterring other incidents of piracy by these defendants and others, and not making the award such that it will put a small business out of business (at least for a first offense)." Id.

Plaintiff's Motion for Default against Flea Flicker LLC [Docket No. 27], and Plaintiff's Motion for Summary Judgment against Victor E. Kunkel and Jessica S. Kunkel [Docket No. 30] are GRANTED. Plaintiff is awarded statutory damages against each Defendant in the amount of \$7,500.00, as well as \$7,500.00 for enhanced damages.

IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT be entered against Defendant Victor E. Kunkel and in favor of Joe Hand Promotions, Inc. for violations of 47 U.S.C. §§ 605(e)(3)(c)(i)(II) & (c)(ii) in the amount of **\$15,000.00 plus costs in the amount of \$446.00 and attorneys' fees in the amount of \$3,984.38** pursuant to 47 U.S.C. § 605(e)(3)(B)(iii).

IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT be entered against Defendant Jessica S. Kunkel and in favor of Joe Hand Promotions, Inc. for violations of 47 U.S.C. §§ 605(e)(3)(c)(i)(II) & (c)(ii) in the amount of **\$15,000.00 plus costs in the amount of \$446.00 and attorneys' fees in the amount of \$3,984.38** pursuant to 47 U.S.C. § 605(e)(3)(B)(iii).

IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT be entered against Defendant Flea Flicker, LLC and in favor of Joe Hand Promotions, Inc. for violations of 47 U.S.C. §§ 605(e)(3)(c)(i)(II) & (c)(ii) in the amount of **\$15,000.00 plus costs in the amount of \$446.00 and attorneys' fees in the amount of \$3,984.38** pursuant to 47 U.S.C. § 605(e)(3)(B)(iii).

IT IS SO ORDERED this 3rd day of August, 2012.

Dated this 3rd day of August, 2012.



Ronald A. White
United States District Judge
Eastern District of Oklahoma