

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**ZUFFA, LLC, d/b/a THE ULTIMATE
FIGHTING CHAMPIONSHIP (UFC),**

Plaintiff,

**ATTORNEY AFFIDAVIT IN SUPPORT
OF DEFAULT AND COSTS AND FEES**

Civil Action No. 3:10-CV-02278-M

-against-

THOMAS JOSEPH CATHCART and **MANUEL P.
OLIVAREZ**, Individually, and as officers, directors,
shareholders, and/or principals of OLICAT GROUP
LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a
HOOLEY'S TAVERN,

and

OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN
AND GRILL, a/k/a HOOLEY'S TAVERN,

Defendants.

STATE OF NEW YORK :

: SS.:

COUNTY OF ULSTER :

JULIE COHEN LONSTEIN, being duly sworn, deposes and says:

1. That I am the attorney for Plaintiff, ZUFFA, LLC, d/b/a THE ULTIMATE
FIGHTING CHAMPIONSHIP (UFC), in the above referenced matter and I am admitted to practice
in this Court. I am fully familiar with all the facts, circumstances and proceedings heretofore had
herein.

2. I make this affidavit in support of Plaintiff's motion for default judgment and damages,
costs and fees.

3. Plaintiff, ZUFFA, LLC, d/b/a THE ULTIMATE FIGHTING CHAMPIONSHIP (UFC), (hereinafter referred to as "Plaintiff"), brought this action on November 10, 2010, alleging that Defendants, THOMAS JOSEPH CATHCART, Individually, and as officer, director, shareholder, and/or principal of OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, and OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, hereto knowingly and willfully violated the Communications Act of 1934, as amended, 47 U.S.C. §553 and 605. Thereafter, Plaintiff filed a First Amended Summons and Complaint alleging that Defendants, THOMAS JOSEPH CATHCART and **MANUEL P. OLIVAREZ**, Individually, and as officers, directors, shareholders, and/or principals of OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, and OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, hereto knowingly and willfully violated the Communications Act of 1934, as amended, 47 U.S.C. §553 and 605. On or about December 14, 2010, by Order of this Court, Defendant, THOMAS JOSEPH CATHCART, was dismissed from this matter via ECF document number 10.

As the Affidavit of Plaintiff's Vice President and General Counsel, Ike Lawrence Epstein, reveals, Plaintiff owns the distribution rights to the **UFC #114** May 29, 2010 program, which was broadcast either by closed circuit television or by encrypted satellite signal. For a fee, commercial establishments could legitimately receive an unscrambled signal, enabling them to view the program by contracting with the Plaintiff. **MANUEL P. OLIVAREZ**, Individually, and as officer, director, shareholder, and/or principal of OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, and OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, (hereinafter referred to collectively as "Defendants")

unlawfully intercepted and exhibited the **UFC #114** boxing event on May 29, 2010, (hereafter referred to as the “Program”), within their commercial establishment located at 7340 Highway 78 Ste. 1400, Sachse, TX 75048 at the time of its transmission on May 29, 2010, without obtaining authorization from Plaintiff, or its authorized agent, willfully, and for purposes of direct or indirect commercial advantage or private financial gain.

4. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331, which states that the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. This action is brought pursuant to 47 U.S.C. §§ 553 or 605.

5. Plaintiff has been unable to conduct discovery in this matter as Defendants have failed to appear. The Complaint clearly alleges that the Defendants pirated the subject event in violation of 47 U.S.C. §605. Further, based upon Defendants’ default, the facts alleged in the complaint are deemed admitted. Therefore, Plaintiff seeks damages under 47 U.S.C. §605 as defendants, through their default, have admitted that, without authorization from Plaintiff, they illegally intercepted the scrambled transmissions of the Program and knowingly and wilfully offered it to patrons of their commercial establishment for private financial gain or commercial advantage.

6. This Court has personal jurisdiction over the Defendants in this action. Defendants to this action had or have an agent or agents who has or have independently transacted business in the State of Texas and certain activities of Defendants giving rise to this action took place in the State of Texas; more particularly, Defendants’ acts of violating federal laws and the proprietary rights of Plaintiff, as distributor of the satellite programming transmission signals, which took place within the Northern District of Texas. Moreover, Defendants have their principal place

of business within the State of Texas. Copies of the First Amended Summons and Complaint were served on Defendants, MANUEL P. OLIVAREZ, Individually, and as officer, director, shareholder, and/or principal of OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, and OLICAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, on December 29, 2010 as set forth in the proofs of service which were filed with the Court on January 4, 2011 ECF Document Numbers 11 and 12. Thus, this Court has personal jurisdiction over the Defendants.

7. Defendants are not infants or incompetents.

8. The Clerk of the Court signed and stamped a certificate of default stating that the Defendants were properly served and have failed to answer or appear.

9. Plaintiff's litigation expenses as associated with the formation, pleading and filing of the above captioned matter are as outlined below:

- a. Filing Fees - \$ 350.00
- b. Service of Process - \$260.00
Attached hereto as Exhibit "A," please find copy of the invoice, reflecting the cost of service upon the Defendants.
- c. Attorney Costs-\$ 2,100.00
See below

Total Litigation Expenses(\$ 2,710.00)

<u>Date</u>	<u>Action</u>	<u>(in hours)</u>	<u>Fee</u>	
06/16/2010	Factual Research and Development	.75	\$150.00	Atty
06/24/2010	Claim Ltrs Issued	.40	\$30.00	Para
07/01/2010	Tcs with Defendant	.15	\$30.00	Atty

07/02/2010- 07/12/2010	TC with Defendant	.15	\$30.00	Atty
07/12/2010	Email to Defendant	.10	\$20.00	Atty
07/13/2010- 07/16/2010	TCs to and with Defendant	.13	\$26.00	Atty
07/19/2010	Receipt and Review of Fax from Deft, TCs and emails with Defendant	.25	\$50.00	Atty
07/21/2010	TCs and email with Defendant	.15	\$30.00	Atty
07/26/2010- 08/13/2010	TCs and email with Defendant	.25	\$50.00	Atty
09/07/2010- 09/13/2010	TCs and email with Defendant	.15	\$30.00	Atty
09/13/2010	Forwarded letter to Defendant	.25	\$18.75	Para
11/08/2010	Prepared Summons and Complaint	.75	\$150.00	Atty
11/10/2010	Filed Summons & Complaint etc.	.5	\$37.50	Para
11/18/2010	Arranged Service	.30	\$22.50	Para
12/02/2010	Drafted First Amended Summons And Complaint	.75	\$150.00	Atty
12/03/2010	Filed Amended Summons & Complaint	.50	\$37.50	Para
12/03/2010	Issued Summons	.10	\$20.00	Atty
12/06/2010	Filed Motion to dismiss Cathcart	.25	\$18.75	Para
12/07/2010	Reissued Summons	.10	\$20.00	Atty
12/14/2010	Arranged Service of Amended S&C	.30	\$22.50	Para
12/14/2010	Review Order - ECF doc. No. 10	.10	\$20.00	Atty
01/03/2011	Review Service	.15	\$30.00	Atty

01/04/2011	Filed Proofs of Service	.25	\$18.75	Para
01/24/2011	Prepared Notice of Intention to Move for Default	.25	\$50.00	Atty
01/25/2011	Filed NID	.25	\$18.75	Para
02/18/2011	Prepared Request for Entry of Default	.6	\$120.00	Atty
02/25/2011	Filed and mailed RFD	.5	\$37.50	Para
03/01/2011	Review Clerk's Entry of Default	.12	\$25.00	Atty
02/18/2011	Prepared Motion for Default	4.0	\$800.00	Atty
03/09/2011	Filed and Mailed Motion for Default	.50	\$37.50	Para
		Hours	Fee	
		Atty 9.00	\$ 1,800.00	
		Para 4.00	\$ 300.00	
Total			\$2,100.00	

10. The above summary of hours expended was produced based upon a compilation of contemporaneous time records kept in the regular course of business.

11. It is respectfully submitted that the rates herein requested are appropriate for the services rendered herein and the prevailing rates within this District. Judge William J. Haynes, Jr. and Judge Gregory L. Frost both held that \$200 per hour was an appropriate rate for counsel in connection with work performed in a case of this nature and was within the customary prevailing rates for this type of services within this District. See Directv, Inc. v. Plummer et al., Case 3:09-cv-00098 (MDTN, September 9, 2009), Document number 15; and J&J Sports Productions, Inc. v Morales et al., Case 2:10-cv-00748-GLF-TPK (SDOH, October 25, 2010) Document number 16.

12. We respectfully request that judgment be entered in favor of Plaintiff and against

the Defendants in the manner stated herein.

WHEREFORE, your deponent respectfully requests that this Court in its discretion grant judgment by default under 605(a) on COUNT I of the Plaintiff's complaint against the Defendants jointly and severally as follows:

Against, MANUEL P. OLIVAREZ, Individually, and as officer, director, shareholder, and/or principal of OLCAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, a total award of TWENTY SEVEN THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO (\$27,710.00) consisting of:

- 1) TEN THOUSAND DOLLARS (\$10,000.00) pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II) and
- 2) FIFTEEN THOUSAND DOLLARS (\$15,000.00) pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), for Defendant's willful violation of 47 U.S.C. § 605(a); and
- 3) Costs and Attorney's fees of TWO THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO CENTS (\$2,710.00) pursuant to 47 U.S.C. § 605(e)(3)(B)(iii);

and further,

Against, OLCAT GROUP LLC, d/b/a HOOLEY'S TAVERN AND GRILL, a/k/a HOOLEY'S TAVERN, a total award of TWENTY SEVEN THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO (\$27,710.00) consisting of:

- 1) TEN THOUSAND DOLLARS (\$10,000.00) pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II) and
- 2) FIFTEEN THOUSAND DOLLARS (\$15,000.00) pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), for Defendant's willful violation of 47 U.S.C. § 605(a); and
- 3) Costs and Attorney's fees of TWO THOUSAND SEVEN HUNDRED TEN DOLLARS AND NO CENTS (\$2,710.00) pursuant to 47 U.S.C. § 605(e)(3)(B)(iii).

Dated: March 8, 2011
Ellenville, NY 12428

By: /s/ Julie Cohen Lonstein
Julie Cohen Lonstein, Esq.
Bar Roll No. JL8521
Attorney for Plaintiff

1 Terrace Hill; PO Box 351
Ellenville, NY 12428
Telephone: 845-647-8500
Facsimile: 845-647-6277

Sworn to before me this 9th
day of March 2011.

/s/ April Draganchuk

April Draganchuk

Notary Public State of New York

Registration No. 4945872

Residing in Ulster County

My Commission Expires Jan. 27, 2015

Exhibit A

Mountain Support Services

1 Terrace Hill
P.O. Box 615
Ellenville, NY 12428

Invoice

Date	Invoice #
12/22/2010	2180

Bill To
Lonstein Law Office, P.C. 1 Terrace Hill, P.O. Box 351 Ellenville, NY 12428

Description	Amount
Zuffa vs. Manuel P. Olivarez, et al Premise Name: Hooley's Tavern CV#: 3:10-CV-02278-M YOUR FILE # 10-15TX-N02v INDIVIDUAL SERVICE ON Manuel P. Olivarez	130.00
CORPORATE SERVICE ON Olicat Group, LLC d/b/a Hooley's Tavern and Grill, a/k/a Hooley's Tavern	130.00
Total	\$260.00