

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

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

Plaintiff,

-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.

TABLE OF CONTENTS

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

Facts.....	1
Nature of Default.....	4
Damages.....	7
Fees and Costs.....	13
Conclusion.....	13

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

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

Plaintiff,

-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.

TABLE OF AUTHORITIES

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

STATUTES AND RULES

47 U.S.C. §553	2, 5, 6
47 U.S.C. §605	2, 5, 6, 7, 8, 9, 10, 12, 13, 14
Federal Rule of Civil Procedure 54(b).....	13
Federal Rule of Civil Procedure 55(a).....	4

CASES

<u>2182 La Caridad Rest., Inc., 2002 U.S. Dist. LEXIS 6934, 2002 WL 654137, at *2</u>	9
<u>Cablevision Sys. N.Y. City Corp. v. Lokshin,.....</u>	10
980 F. Supp. 107, 114 (E.D. N.Y. 1997)	
<u>Don King/Kingvision v. Lovato, 911 F. Supp 419 (N.D. Cal. 1995).....</u>	7

<u>Entertainment by J&J, Inc. v. Al-Waha Enterprises, Inc.,</u>	6, 9, 13
219 F. Supp. 2d 769, 2002 U.S. Dist. LEXIS 16247 (S.D. Tx. 2002)	
<u>Entertainment by J&J v. Mama Zee</u>	8
2002 U.S. Dist. LEXIS 13686 (E.D.N.Y.)	
<u>Garden City Boxing Club v Avisah,</u>	
2004 U.S. Dist. LEXIS 7687 (SDNY).....	13
<u>Garden City Boxing Club v Guzman,</u>	
2005 U.S. Dist. LEXIS 7954 (SDNY).....	13
<u>Garden City Boxing Club, Inc. v Luis Polanco and Luischia Rest. Corp.,</u>	
2006 U.S. Dist. LEXIS 5010 at *15-*17 (SDNY February 7, 2006).....	10, 11
<u>Garden City Boxing Club, Inc. v. Vinson et al.,</u>	
2003 U.S. Dist. LEXIS 26180 (ND Tex. 2003).....	5, 6, 8, 13
<u>Greyhound Exhibitgroup v. E.L.U.I. Realty Group,</u>	
973 F. 2d 155 (2 nd Cir. 1992).....	5
<u>Interforever Sports Inc. v Rivera,</u> 2006 U.S. Dist. LEXIS 89991 (SDTX 2006).....	13
<u>International Cablevision v. Sykes,</u> 75 f.3d 123 (2 nd Cir. 1996).....	5, 6
<u>J&J Sports Productions, Inc. v El Bocado, Inc., et al.</u>	
2010 U.S. Dist. LEXIS 56677 (SDTX, June 8, 2010).....	5
<u>J&J Sports Productions, Inc. v Papania, et al.,</u>	
2010 U.S. Dist. LEXIS 29154 (W.D. LA, March 26, 2010).....	6, 12
<u>Joe Hand Promotions, Inc. v. Cat's Bar, Inc. et al.</u>	10
2009 U.S. Dist. LEXIS 20961 (C.D. Ill., March 16, 2009)	
<u>Joe Hand Promotions, Inc. v Garcia,</u>	
2008 U.S. Dist. LEXIS 3279 (W.D. Tex, 2008).....	6
<u>Joe Hand Promotions, Inc. v. Lloyd, et al.,</u>	
4:10-cv-00111-Y (NDTX, September 2, 2010)	12
<u>Joe Hand Promotions, Inc. v Rodriguez, et al.,</u>	
Civ. No. H-07-1542 (SDTX, October 29, 2007).....	11
<u>Kingvision Pay-Per-View, Ltd. v Jasper Grocery,</u>	
152 F. Supp. 2d 438, 442 (SDNY 2001).....	9

<u>Kingvision Pay Per View Corp. v. Scott E’s Pub, Inc., 146 F. Supp 2d 955</u>	7
(E.D. Wis. 2001)	
<u>Kingvision Pay-Per-View Corp. v Papacito Lidia Luncheonette,</u> 2001 U.S. Dist. LEXIS 19968, 2001 WL 1558269, at 2* (2001).....	9
<u>Prostar v. Massachi, 239 F.3d 669, 2001 U.S. App. LEXIS 572,</u> 29 Media L. Rep. (BNA) 1270 (5 th Cir. 2001).....	5
<u>Time Warner Cable of New York City v. Googies Luncheonette, Inc.,</u>	10
77 F. Supp. 2d 485 (S.D.N.Y. 1999)	
<u>TransWorld Airlines v. Thurston, 469 U.S. 111, 127 (1985)</u>	10
<u>Twist & Shout Music v. Longneck Express,</u> N.P., 441 F. Supp. 2d 782, 2006 U.S. Dist. LEXIS 43898 (E.D. TX 2006).....	5
<u>United States v. Norris, 88 F.3d 462, 468-69 (7th Cir. 1996)</u>	6

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

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

Plaintiff,

-against-

**PLAINTIFF'S MEMORANDUM OF
LAW**

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

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.

Plaintiff submits the following in support of its request for an award of damages against
the 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.

FACTS

The relevant facts can be briefly stated and are fully set forth in the accompanying
exhibits and Plaintiff's underlying Complaint. 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. The First Amended Summons and Complaint, ECF document No. 5, alleges that the Defendants, unlawfully intercepted and exhibited the UFC #114 pay-per-view program on May 29, 2010 (hereafter 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, willfully, and for purposes of direct or indirect commercial advantage or private financial gain.

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, (hereafter referred to collectively as "Defendants") 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.

As the First Amended Complaint and the Affidavit of Plaintiff's Vice President and General Counsel, Ike Lawrence Epstein, both submitted simultaneously 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 or broadband. (See Applications for Certificates of Registration attached to the Plaintiff's Affidavit, Appendix 1, page numbers 7-14). Plaintiff thereafter marketed the broadcast to commercial establishments in the State of Texas and elsewhere for a fee. Therefore, for a fee, commercial establishments could legitimately receive the broadcast, enabling them to view the program by contracting with the Plaintiff or its authorized agent for commercial distribution, Joe Hand Promotions, Inc.

In order for a commercial establishment to obtain lawful authority to exhibit the Program, a license would have to be issued by Plaintiff or its exclusive commercial distributor, Joe Hand Promotions, Inc. However, through deliberate and willful acts, potential purchasers, such as the Defendants herein, illegally obtained programs without paying the Plaintiff for the rights to exhibit said event.

In order to combat such piracy, Plaintiff hired auditors to visit various bars and restaurants in the Sachse area on the night of May 29, 2010 to determine whether these establishments were intercepting and publicly displaying the program without authorization from, or payment to, Plaintiff.

The auditors visited numerous locations on May 29, 2010. Among the locations the auditors visited was that of the Defendants, Hooleys Tavern and Grill, who was displaying the Program as verified by auditor Lacey Horton. Ms. Horton's affidavit is attached to the Plaintiff's Affidavit, Appendix 1, page numbers 56-58. Ms. Horton entered the Defendant establishment

and observed thirteen (13) television sets, ten (10) of which were exhibiting a portion the encrypted broadcast to approximately 110 individuals in an establishment with a fire code occupancy of 201. The exhibition most likely led to an increased number of patrons and, thus, an increase in profits from food and beverages, all to the financial detriment of Plaintiff and its legitimate customers. During the course of her visit to the Defendant establishment on May 29, 2010, Lacey Horton also video recorded the exhibition of the program within the establishment. The video is attached to Appendix 1, page number 59.

Due to the fact that defendants have failed to appear, plaintiff is unable to determine exactly how defendants intercepted plaintiff's signal, i.e. via coaxial cable or satellite. However, plaintiff can determine that Defendants did unlawfully exhibit its event within their commercial establishment to patrons without lawfully purchasing the event from Plaintiff, who is the owner of the rights to said program (*See Applications for Certificates of Registration attached to Plaintiff's Affidavit, Appendix 1, page numbers 7-14*) or Plaintiff's authorized commercial distributor.

After proper service, the Defendants herein did not answer or otherwise appear in a timely manner, nor did they request an extension of time to file. Said Defendants are not infants or incompetents. Upon information and belief, the Defendants are not presently in the military service of the United States.

NATURE OF DEFAULT

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiff has sought and obtained entry of default against the 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 via ECF document number 18. Given Defendants' failure to answer the complaint, "the court has the authority to accept all well-pleaded facts in plaintiff's complaint as true and to award the relief sought by Plaintiff." J&J Sports Productions, Inc. v. El Bocado, Inc. et al., 2010 U.S. Dist. LEXIS 56677 (S.D.TX, June 8, 2010); *See also* Greyhound Exhibitgroup v. E.L.U.L. Realty Group, 973 F.2d 155 (2nd Cir. 1992), Twist & Shout Music v. Longneck Xpress, N.P., 441 F. Supp. 2d 782, 2006 U.S. Dist. LEXIS 43898 (E.D. Tex. 2006). Plaintiff's complaint establishes the elements of liability required to state a claim under both 47 U.S.C. 553 and 47 U.S.C. 605. Under 553(a)(1) liability exists if a person intercepts or receives or assists in receiving any communication service over a cable system without authorization. Under 605(a) liability hinges on the interception of radio communications and its divulgence to any person. Defendants herein, by their default, have admitted that, without authorization from Plaintiff, they illegally intercepted the scrambled transmissions of the "program". Defendants have also admitted to knowingly and wilfully intercepting the programming, and offering it to patrons of the establishment for private financial gain or commercial advantage.

The event in question originated via a satellite uplink and was subsequently re-transmitted to cable systems and satellite companies via satellite signal. Under Cablevision v. Sykes, 75 F.3d 123 (2nd Cir. 1996) piracy of a signal originating this way is a violation of 605(a). Because Plaintiff distributed the event via closed circuit cable television, piracy of their signal is also a violation of 553(a)(1). Cablevision v. Sykes, 997 F.2d 998 (2nd Cir. 1993), Prostar v. Massachi, 239 F. 3d 669, 2001 U.S. App. LEXIS 572, 29 Media L. Rep. (BNA) 1270 (5th Cir. 2001); Garden City Boxing Club, Inc. V. Vinson, 2003 U. S. Dist. LEXIS 26180 (N.D. Tex. 2003).

It should be noted that Federal courts are divided as to whether and to what extent §605 of the FCA applies to the unauthorized interception and broadcast of cable transmissions. Compare International Cablevision, Inc. v. Sykes, 75 F.3d 123, 131-33 (2d Cir.), cert. denied, 519 U.S. 929, 136 L. Ed. 2d 217, 117 S. Ct. 298 (1996) (§605 applies to interceptions of satellite signals even after the signals have been picked up by coaxial cables) with United States v. Norris, 88 F.3d 462, 468-69 (7th Cir. 1996) (unauthorized interception of television programming transmitted by satellite is governed by section 605, whereas unauthorized interception of programming transmitted through cable network is governed by section 553 of the FCA).

Although the Fifth Circuit has recognized and discussed this split of authority, it has not yet addressed the issue. Garden City Boxing Club, Inc. v. Patricia Annvinson, et al, 2003 U.S. Dist. LEXIS 26180 (N.D. Tex, Sept. 3, 2003). However, a Court in a neighboring District recently addressed the issue in Joe Hand Promotions, Inc. v. Garcia 2008 U.S. Dist. LEXIS 3279 (W.D. Tex, 2008). Therein, the Court held that it would follow the reasoning in Sykes, that §605 applies to interceptions of satellite signals even after the signals have been picked up by coaxial cables. Also within this Circuit, Judge James T. Trimble, Jr., recently followed the Sykes opinion and proceeded with its damages analysis under §605. J&J Sports Productions, Inc. v Papania et al., 2010 U.S. Dist. LEXIS 29154 (W.D. LA, March 26, 2010). Moreover, a Court within the Southern District of Texas followed Sykes as well. Entm't by J & J v. Al-Waha Enters, 219 F. Supp.2d 769, 774 (S.D. Tex. 2002). Plaintiff's counsel respectfully urges that the Court follow the Sykes opinion.

There are multiple illegal methods of accessing programing. Splicing an additional coaxial cable line or redirecting a wireless signal, from an adjacent residence and onto a business establishment, commercial misuse of cable or satellite by registering same as a residence when it

is in fact, a business or taking a lawfully obtained box or satellite receiver from a private residence and into a business. All these methods could permit Defendants to access programming unlawfully.¹

Without the benefit of Discovery, it is impossible for Plaintiff to ascertain how the Defendants obtained access to Plaintiff's programming for exhibition in their establishment, without obtaining the proper commercial license. While Plaintiff cannot determine how its event was pirated, (i.e. if Defendants pirated the event through a cable system or satellite system) Plaintiff can determine that Defendants did unlawfully exhibit its event without lawfully purchasing the event; thus Defendants must have pirated the event using one of the methods described herein. Courts have held in similar actions that Plaintiff has to be given the opportunity through discovery to determine whether the illegal reception was via airborne device or coaxial cable. Don King/Kingvision v. Lovato, 911 F. Supp 419 (N.D. CAL. 1995); Kingvision Pay Per View Corp v. Scott E's Pub, Inc., 146 F. Supp 2d 955 (E.D. Wis. 2001). In this action, Plaintiff has been unable to conduct discovery as Defendants have failed to appear. It should also be noted that the Complaint clearly alleges that the Defendants pirated the event in violation of 47 U.S.C. §605. Further, through Defendants' default, they have admitted the allegations that it violated 47 U.S.C. §605. Based upon the likelihood that the event was pirated via satellite, it is Plaintiff's position that section 605 is the appropriate statute for liability. As such, Defendants' liability for violation of said statute has been established.

DAMAGES UNDER 47 U.S.C. §605

¹ In addition, emerging technologies, such as broadband or internet broadcast as well as "slingbox" technology, which allows a consumer to literally sling programming from their personal home cable or satellite systems and into their computers, can allow commercial misuse of residential broadcasting feeds through the internet from anywhere in the world.

When a Defendant is liable under both sections of the Federal Communications Act, Plaintiff can recover under only one section. Garden City Boxing Club, Inc. v. Annvinson, 2003 U.S. Dist. LEXIS 26180 (N.D. Tex. 2003). Plaintiff elects to recover under 605(a). A claimant who has established liability under 605(a) may elect between actual or statutory damages under 605(e)(3)(C)(i). Plaintiff elects for statutory damages pursuant to 605(e)(3)(D)(i)(II). Under 605(e)(3)(C)(ii) enhanced damages are available where the violation was willful and was committed for direct or indirect commercial advantage or private financial gain. As the Defendants exhibited the event in a commercial establishment, Plaintiff has pleaded the elements to establish a willful violation. Entertainment by J&J v. Mama Zee, 2002 U.S. Dist. LEXIS 13686 (E.D.N.Y.).

Congress in its legislative wisdom has decreed that substantial monetary damages be available as a deterrent to future unlawful behavior. Each decision to violate the law is a financial one. A Defendant who believes he can violate the law with impunity and never pay for his misdeeds, will continue to do so. Rampant piracy of events like the one in question will continue until Defendants realize it is just too expensive to keep stealing. As long as Defendants can attract patrons by exhibiting these events, and the cost of doing so is low, they will continue to be pirates. Although Plaintiff has not submitted evidence of the exhibition of another event in this establishment, for most defendants, once the technology or plan is in place to pirate these events, they do so again and again. The Defendants' willful refusal to respond to the lawsuit hampers the Plaintiff in demonstrating how the event was stolen and how many additional events have been stolen in a similar manner. Defendants should not benefit from their refusal to participate in this lawsuit.

Pursuant to 47 U.S.C. §605(e)(3)(C)(i)(II), Defendants are indebted to Plaintiff for the

unlawful exhibition for commercial advantage of the closed circuit television signal of the May 29, 2010 Program, in the sum of up to \$10,000.00 in the discretion of the Court. Courts have developed a couple of approaches for determining statutory damages under §605. One method is to award a flat sum for damages. See, e.g., 2182 La Caridad Rest., Inc., 2002 U.S. Dist. LEXIS 6934, 2002 WL 654137, at *2 (awarding \$20,000); Kingvision Pay-Per-View Corp. v. Papacito Lidia Luncheonette, 2001 U.S. Dist. LEXIS 19968, 2001 WL 1558269, at *2 (2001) (awarding \$20,000); Kingvision Pay-Per-View, Ltd. v. Jasper Grocery, 152 F. Supp. 2d 438, 442 (S.D.N.Y. 2001) (awarding \$5,000). Entm't by J & J v. Al-Waha Enters, 219 F. Supp.2d 769, 774 (S.D. Tex. 2002) awarded a flat sum of \$5,000.00 in a similar type action.

In addition, pursuant to 47 U.S.C. §605(e)(3)(C)(ii) Plaintiff is entitled to an additional statutory damage amount of up to \$100,000.00 in the discretion of the Court for the intentional unlawful interception of the closed circuit television signal of the May 29, 2010 Program.

The Court in Entertainment by J&J, Inc. v. Al-Waha Enterprises, Inc., 219 F. Supp. 2d 769, 2002 U.S. Dist. LEXIS 16247 (S.D. TX. 2002), noted that deterrence is one of the goals of 47 U.S.C. §605 and that to require the offending establishment to pay the price it would have paid had it legally contracted to exhibit the event "would do nothing to accomplish this objective of the statute." Id. at 776. The Court further addressed willfulness in its opinion, awarding enhanced damages:

Based on the limited methods of intercepting closed circuit broadcasting of pay-per-view events and the low probability that a commercial establishment could intercept such a broadcast merely by chance, however, courts have held conduct such as that of [defendant] in this case to be willful and for the purposes of direct or indirect commercial advantage or private financial gain.

Id. at 776 (citations omitted). The Court noted that "willfulness has been defined by the Supreme

Court as ‘disregard for the governing statute and an indifference for its requirements.’”

Cablevision Sys. N.Y. City Corp. v. Lokshin, 980 F. Supp. 107, 114 (E.D.N.Y. 1997) (quoting Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 126, 83 L. Ed. 2d 523, 105 S. Ct. 613 at 613027 (1985)). As such, the court awarded Plaintiff \$15,000 in enhanced damages.

The Southern District of New York has held that “[s]ignals do not descramble spontaneously, nor do television sets connect themselves to cable distributions systems.” Time Warner Cable of New York City v. Googies Luncheonette, Inc., 77 F. Supp. 2d 485 (S.D.N.Y. 1999). As described herein, intentional acts are required to pirate a closed-circuit broadcast; the unscrambled airwaves or cable transmission do not just happen. Joe Hand Promotions, Inc. v. Cat’s Bar, Inc. et al., 2009 U.S. Dist. LEXIS 20961 (C.D.I.L, March 16, 2009). “Additionally, Defendant is a commercial establishment, so commercial advantage or financial gain can fairly and reasonably be inferred from the facts.” *Id.* It is respectfully submitted that for these reasons, the violation meets the statutory definition of “willful” under 47 U.S.C. 605. *Id.*

After a recent trial, Judge Chin of the Southern District of New York stated the following:

“ Some courts considering similar facts have imposed damages based on a fixed amount per patron. See, e.g., *Garden City Boxing Club, Inc. v. Salcedo*, 2005 U.S. Dist. LEXIS 26478, No. 04 Civ. 5027, 2005 WL 2898233 (S.D.N.Y. Nov. 3, 2005) (\$300.00 per patron); *Time Warner Cable v. Goodies Luncheonette, Inc.*, 77 F. Supp. 2d 485 (S.D.N.Y. 1999) (\$50.00 per patron). Others have awarded a flat sum. See, e.g., *Garden City Boxing Club, Inc. v. Guzman*, 2005 U. S. Dist. LEXIS 7954, No. 03 Civ. 8776, 2005 WL 1153728 (S.D.N.Y. Apr. 26, 2005) (\$5,000.00); *Kingvision Pay-Per-View, ltd. v. New Paradise Rest.*, 2000 U. S. Dist. LEXIS 8792, No. 99 Civ. 10020, 2000 WL 378053 (S.D.N.Y. Apr. 11, 2000) (\$20,000). On motions for entry of default in cases involving this plaintiff and this fight I have awarded statutory damages of \$5,000.00 for a violation of *Section 605 (e)(3)(C)(i)(II)* and an additional \$5,000.00 for violations that were willful and for commercial gain. See, e.g. *Garden City Boxing Club v. Rosa*, No. 05 Civ. 6233 (DC); *Garden City Boxing Club v. Ruiz*, 05-Civ. 3408

(DC).

Here, the commercial rights for the de la Hoya/Hopkins fight would have cost Luischia approximately \$2,000.00. In addition, I find that, more likely than not, one of the reasons defendants exhibited the fight was to realize increased profits from the sale of food and beverages, which profits should be disgorged. Finally, plaintiff is entitled to an enhancement of damages due to my finding that the defendants' conduct was willful and for commercial gain, although I am mindful that defendants run a small business, their profit from exhibition of the fight was likely minimal, and, although the amount of damages should be an adequate deterrent, the violation is not so serious as to warrant putting the restaurant out of business. Accordingly, I find that an award of an additional \$10,000.00 (for a total of \$12,000.00) is fair and just, in light of all the circumstances.”

See Garden City Boxing Club, Inc., v. Luis Polanco and Luischia Restaurant Corp., 2006 U. S. Dist. LEXIS 5010 at *15-*17 (S.D.N.Y. February 7, 2006).

In a recent Decision within the Southern District, Judge Rosenthal awarded \$10,000.00 in statutory damages and an additional \$50,000.00 in enhanced damages. See Joe Hand Promotions, Inc. v. Rodriguez, et al, Civ. No. H-07-1542 (S.D.TX, October 29, 2007). Therein the Judge listed several factors it considered in granting the maximum statutory award including the following: the record established that defendant broadcast the event and failed to appear in the suit; the record established the use of an unlawful device, making the violations willful; the difficulty in detecting unlawful interception, the widespread problem of piracy, the projected loss to plaintiff, and the need for an award sufficient to deter future piracy by the defendant and others. Id. In addition, Judge Rosenthal granted enhanced damages in the amount of \$50,000.00 as he found the violation was committed willfully and for the purpose of direct or indirect commercial advantage or private financial gain based upon the following: the record showed the establishment contained seating for approximately 100 people and approximately 27 people were present.

In a recent Decision within the Western District of Louisiana, Judge James T. Trimble, Jr., awarded \$10,000.00 in statutory damages and an additional \$50,000.00 in enhanced damages as well as costs and attorneys fees. See J&J Sports Productions, Inc. v. Papania, et al, 2010 U.S. Dist. LEXIS 29154 W.D. LA, March 26, 2010). Therein, the record showed that the defendant exhibited the program without authority to approximately 58 patrons.

In a recent Decision within this District, Judge Terry R. Means, awarded \$5,000.00 in statutory damages and an additional \$15,000.00 in enhanced damages as well as costs and attorneys fees. See Joe Hand Promotions, Inc. v. Lloyd, et al, 4:10-cv-00111-Y (NDTX, September 2, 2010), document number 15. Therein, the record showed that the defendant exhibited the program without authority to approximately 63 patrons.

Furthermore, the record shows that the defendants broadcast the program in its establishment to approximately 110 patrons and had no lawful authority to do so. Their actions were clearly willful and done for direct or indirect commercial advantage or private financial gain. In order for the defendants to have shown this Program in their establishment lawfully, it would have had to pay a minimum fee of \$1,600.00 to the plaintiff based upon an occupancy of 201. See Rate Card attached hereto as Exhibit "A". Therefore, the defendants have enjoyed an interest free loan and very likely increased their business on May 29, 2010 due to the showing of the Program in their establishment to an increased number of patrons. Furthermore, these defendants have likewise failed to appear in this action.

Plaintiff urges that the maximum amount of statutory damages under 605(e)(3)(C)(i)(II), \$10,000.00 be awarded in this case. Plaintiff further urges that substantial enhanced damages be added to it pursuant to 605(e)(3)(C)(ii) of \$15,000.00. In deference to Plaintiff Counsel's obligation to zealously represent its client, the prayer below includes a prayer for the said

statutory amounts available to the Plaintiff.

FEES AND COSTS

The Federal Communications Act provides that full costs, including attorney fees shall be awarded to an aggrieved party who prevails. ZUFFA, LLC, d/b/a THE ULTIMATE FIGHTING CHAMPIONSHIP (UFC) is an aggrieved party in this case because it had a proprietary interest in the intercepted communications. Garden City Boxing Club v. Avisah, 2004 U.S. Dist. 7687 (S.D.N.Y.) Plaintiff, as an exclusive licensee of closed-circuit distribution rights is an “aggrieved person” under 47 U.S.C. section 605(a) and can bring a private right of action for either actual damages or statutory damages. Garden City Boxing Club, Inc. v. Patricia Annvinson, et al, 2003 U.S. Dist. LEXIS 26180 (N.D. Tex, Sept. 3, 2003). Plaintiff has expended filing fees, service of process costs, attorney fees, pursuing this case. Garden City Boxing Club v. Guzman, 2005 U.S. Dist. LEXIS 7954 (S.D.N.Y.), Entm't by J & J v. Al-Waha Enters, 219 F. Supp.2d 769, 774 (S.D. Tex. 2002), Interforever Sports Inc. v. Rivera, 2006 U.S. Dist. LEXIS 89991 (S.D. Tex. 2006).

CONCLUSION

Plaintiff is entitled to a default judgment against Defendants holding them liable for a sum, in the amount of \$25,000.00 for violation of 605(a). Plaintiff is also entitled to full litigation costs including investigative and attorney fees, and post-judgment interest. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there is no just reason for delay in these default judgments as the interest of justice require the issuance of judgment as requested without further delay. The judgments requested herein are for a sum certain within the discretion of this court so no inquest is necessary. Plaintiff prays that this Motion be heard on submission.

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 as follows:

Against, 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, 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, OLICAT 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

LONSTEIN LAW OFFICE, P.C.

By: /s/ Julie Cohen Lonstein
Julie Cohen Lonstein
Bar Roll No. JL8521
Attorney for Plaintiff
1 Terrace Hill; PO Box 351
Ellenville, NY 12428
Telephone: 845-647-8500
Facsimile: 845-647-6277

Exhibit A

JOE HAND PROMOTIONS INC.

407 E. Pennsylvania Blvd., Feasterville, PA 19053

Phone: (215):364-9000

FAX: (215):364-5474

ULTIMATE FIGHTING CHAMPIONSHIP



<u>Capacity</u>	<u>Rate</u>
0-50	\$ 900.00
51-100	\$1,100.00
101-150	\$1,200.00
151-200	\$1,300.00
201-250	\$1,600.00
251-300	\$1,800.00
301-350	\$2,100.00
351-400	\$2,500.00
401-450	\$3,000.00
451-500	\$3,500.00
500+	Call to discuss
Casinos	Call to discuss

Please note, the ratecard prices are inclusive of the \$200.00 technical fees.

Rates are based on FCO *NOTEVO*

For more information, call your Joe Hand Promotions representative at:

800-557-4263

As of 8/13/2009