

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONAL SATELLITE SPORTS, INC., : CIVIL ACTION
: :
v. : :
: :
TOP JOY INC. t/a SOUTHERN INN, :
and :
WARREN TOPPIN, INDIVIDUALLY and :
t/a SOUTHERN INN : NO. 01-4580

ORDER AND MEMORANDUM

AND NOW, this 2nd day of May, 2002, upon consideration of the Plaintiff's Motion for Default Judgment (Docket No. 6), and following a hearing thereon, IT IS HEREBY ORDERED THAT the motion is GRANTED. The Court will award National Satellite Sports, Inc. \$7,500.00 and attorneys' fees and costs, for the reasons stated herein. IT IS FURTHERED ORDERED that counsel for the plaintiff shall file an affidavit setting forth attorneys' fees and costs it requests.

National Satellite Sports, Inc. ("National") filed a complaint on September 10, 2001, against Top Joy, Inc. and Warren Toppin, both t/a Southern Inn,¹ a bar. National alleged that the defendants, without authorization, "willfully intercepted and/or received the interstate communication" of a telecast to which National had rights or "assisted in the receipt of the interstate

¹ Warren Toppin was also sued individually.

communication" thereof. Compl. ¶ 17. National further alleged that the defendants transmitted the telecast to the patrons in the bar, all with the purpose and intent of securing a financial gain and commercial advantage. Compl. ¶¶ 18, 20. National moved for relief under two provisions of the Federal Communications Act of 1934, as amended: 47 U.S.C. §§ 553 and 605.

Service on Warren Toppin was accepted by a designated authorized individual, Art Roosevelt, the manager in charge of the Southern Inn, on September 28, 2001. Art Roosevelt also accepted service on behalf of Top Joy, Inc., on September 28, 2001. George Joynes, the owner of Top Joy, Inc., was also served personally on October 8, 2001, for Top Joy, Inc.

On December 17, 2001, the plaintiff requested entry of default against both Top Joy, Inc. and Toppin. The Clerk of the Court entered default against both on December 18, 2001.

On March 28, 2002, the plaintiff filed a motion for default judgment. The plaintiff sent a copy of the proposed order and memorandum in support of the motion to the defendants by certified mail, and received a signed card indicating that the materials had been received. The plaintiff then sent a copy of the motion itself by certified mail, which came back unclaimed.

The Court ordered a hearing on the motion, by order dated April 12, 2002. The order was mailed to the defendants, but they did not appear at the May 16, 2002 hearing.

The Court finds that National entered into a closed-circuit television license agreement to exhibit the telecast of a January 16, 1999 championship boxing match between Mike Tyson and Francois Botha, including the undercard or preliminary bouts (the "Event"), at locations throughout Pennsylvania. National then entered into contracts with business establishments, like bars and restaurants, to authorize their receiving and transmitting the Event for a fee. The transmission was otherwise electronically coded, and could not be viewed without appropriate decoding equipment.

The defendants intercepted and transmitted the closed-circuit telecast of the Event at the Southern Inn without authorization from National. Approximately thirty patrons were present. The defendants charged \$6.00 for patrons to enter the Southern Inn.

Different sections of the Federal Communications Act apply to intercepted satellite transmissions, depending on the point of the interception. If interception occurs after the transmission reaches a cable system's wire distribution, then section 553 applies. If interception occurs before distribution of a transmission over a cable system, or else has nothing to do with a cable system, then section 605 applies. TKR Cable Co. v. Cable City Corp., 267 F.3d 196, 207 (3d Cir. 2001).

Although the plaintiff moved for relief under both sections, the plaintiff conceded at oral argument that, at the time of the interception, the defendants had cable, but not a satellite dish. The Court's award is thus based only on section 553, which it finds the defendants to have violated.

Under that section, an aggrieved party may choose between actual or statutory damages, with statutory damages ranging from \$250.00 to \$10,000.00, as the Court considers just. See 47 U.S.C. §§ 553(c)(3)(A)(i)-(ii); General Instr. Corp. v. Nu-Tek-Elec., 197 F.3d 83, 93 (3d Cir. 1999). The plaintiff has elected to recover statutory damages. The Court is also empowered to increase an award by up to \$50,000, for violations committed willfully and for purposes of commercial advantage or private financial gain. 47 U.S.C. § 553(c)(3)(B).

Upon consideration of the evidence contained in the affidavit of an investigator attached to the plaintiff's motion for entry of default judgment, the allegations in the complaint, and the arguments of the plaintiff, the Court finds that statutory damages in the amount of \$7,500.00 are just. National lost sublicense fee revenues to which it would have been entitled had the Southern Inn's transmission been authorized. The Southern Inn, on the other hand, received revenue based on the \$6.00 cover charge, and the food and drinks consumed by patrons while watching the Event.

National also suffers harm not directly related to its revenue, in the form loss of goodwill and damage to National's reputation, due to actions like the defendants' here. National's paying customers expect it to safeguard the integrity and quality of its product. But unauthorized commercial establishments are often able to offer intercepted programming at no fee or a fee less than the authorized establishments are required to charge, thereby undercutting the authorized establishments and luring away customers. Moreover, as a technical matter, interception of cable signals weakens the signal, adversely affecting the quality of the picture received by authorized users.

Section 553 also authorizes the Court to award full costs, including reasonable attorneys' fees. 47 U.S.C § 553(c)(2)(C). The Court will determine the amount of such fees and costs after receipt of an affidavit from the plaintiff, and judgment shall be entered thereafter.

BY THE COURT:


MARY A. McLAUGHLIN, J.

Unmailed 5/23/02

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