

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

**J & J SPORTS PRODUCTIONS, INC.,
Plaintiff,**

CIVIL ACTION

v.

**MANUEL E. JAQUEZ, Individually and
d/b/a 5 Iris, and
3651 JAQUEZ ENTERPRISES, INC., an
unknown business entity d/b/a 5 Iris,
Defendants.**

NO. 13-6957

ORDER

AND NOW, this 24th day of September, 2014, upon consideration of plaintiff's Notice of Application and Application for Default Judgment by the Court ("Application for Default Judgment") (Document No. 7, filed April 28, 2014) and its attachments; and Fed. R. Evid. 902(11) Affidavit of Plaintiff (Document No. 8, filed May 2, 2014), it appearing that defendants have been duly served with process and have failed to appear or otherwise defend, and that defaults have been entered against them, **IT IS ORDERED** that plaintiff's Application for Default Judgment is **GRANTED** and **JUDGMENT IS ENTERED** in **FAVOR** of plaintiff, J&J Sports Productions, Inc., and **AGAINST** defendants, Manuel E. Jaquez, individually and d/b/a 5 Iris, and 3651 Jaquez Enterprises, Inc., an unknown business entity d/b/a 5 Iris, in the total amount of \$10,000.00, comprising \$7,500.00 in statutory damages and \$2,500.00 in enhanced damages pursuant to 47 U.S.C. § 605.

IT IS FURTHER ORDERED that the Clerk of Court shall **MARK** this case **CLOSED**.

1. INTRODUCTION

Plaintiff, J&J Sports Productions, Inc., is an international distributor of sports and entertainment programming that held the domestic commercial exhibition rights to broadcast a

championship boxing match between Miguel Angel Cotto and Antonio Margarito that took place on December 3, 2011. Any domestic commercial establishment wanting to legally broadcast the boxing match was required to enter into a sublicensing agreement with plaintiff.

Plaintiff alleges that defendants, Manuel E. Jaquez and 3651 Jaquez Enterprises, Inc., — neither of which had a sublicensing agreement with plaintiff — unlawfully intercepted and exhibited the Cotto-Margarito boxing match at a bar named 5 Iris, located at 3651 N. 5th Street in Philadelphia, Pennsylvania. Plaintiff’s Complaint alleges three counts: (1) violation of 47 U.S.C. § 553 (unauthorized intercepting, receiving, or assisting in receiving any communication over a cable system); (2) violation of 47 U.S.C. § 605 (unauthorized interception of radio or satellite communications); and (3) conversion under California law.¹

Defendants were duly served with process and failed to answer or otherwise respond to plaintiff’s Complaint. Thereafter, on March 21, 2014, the Clerk of Court entered defaults against defendants at plaintiff’s request. Presently before the Court is plaintiff’s Application for Default Judgment.

2. GRANTING OF MOTION FOR DEFAULT JUDGMENT

“Three factors control whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant’s delay is due to culpable conduct.” Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000). With respect to the first factor, if a motion for default judgment is denied, plaintiff will be prejudiced by its inability to recover damages for defendants’ unlawful interception and exhibition of the Cotto-Margarito boxing match. With respect to the second and third factors, the fact that defendants have wholly failed to respond after having been duly served

¹ The Court has jurisdiction pursuant to 18 U.S.C. §§ 1331 and 1367.

with process in this case leads the Court to conclude that defendants do not have a litigable defense and that their failure to respond is due to their culpable conduct. The Court thus concludes that all three of the Chamberlain factors weigh in favor of entering a default judgment. For all such reasons, plaintiff's Application for Default Judgment is granted.

3. **PLAINTIFF'S ENTITLEMENT TO DAMAGES**

Having concluded that a default judgment should be entered in favor of plaintiff, the Court next considers whether to award plaintiff damages and, if so, in what amount. At the outset, the Court notes that defendants' default is deemed as an admission of all facts alleged in the Complaint, except those relating to damages. Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990). Thus, defendants have admitted that they unlawfully intercepted and exhibited the Cotto-Margarito boxing match. Although plaintiff is unable to identify the precise means by which defendants did so, i.e. whether it was done via cable or satellite transmission, the Court adopts the view that this is not a bar to plaintiff's ability to recover damages in this

case.² Accordingly, the question now before the Court is the amount of damages to award plaintiff. The Court makes this determination on the present state of the record.³

4. ASSESSMENT OF DAMAGES

47 U.S.C. § 605 prohibits the interception and transmission of encrypted radio or satellite communications.⁴ Pursuant to this statute, an aggrieved party can elect to recover either actual damages or statutory damages for each violation “in a sum of not less than \$1,000 or more than \$10,000, as the [C]ourt considers just.” 47 U.S.C. § 605(e)(3)(C)(i)(II). In addition to actual or statutory damages, § 605 gives the Court discretion to award enhanced damages of not more than \$100,000 “[i]n any case in which the [C]ourt finds that the violation was committed willfully and

² The U.S. Court of Appeals for the Third Circuit has not yet decided whether a plaintiff seeking damages pursuant to 47 U.S.C. § 553 or § 605 in the default judgment context must be able to prove the precise means of interception. Courts in this District have reached different conclusions. Compare Joe Hand Promotions, Inc. v. Yakubets, No. 12-4583, 2014 WL 960787, at *3 (Pratter, J.) (“[T]he presumption that § 553 applies absent any evidence of interception by satellite is a more principled approach. The fundamental principle that a plaintiff in a civil lawsuit must prove his case by a preponderance of the evidence dictates that if he can present only insufficient evidence of a particular wrong, he should not be entitled to relief.”), with J & J Sports Prods., Inc. v. Roach, No. 07-5059, 2008 WL 8901291, at *2 (E.D. Pa. July 8, 2008) (Dalzell, J.) (“Plaintiff does not explain how the bar intercepted these signals, and we are not sure whether the method of interception is information exclusively in the hands of the defendants . . . [but w]e will follow Munguti and award damages under either statute because we cannot determine which applies, but the award will be for a single amount.”).

³ Because the amount of damages can be determined from plaintiff’s unopposed evidentiary submissions, the Court concludes that a damages hearing is unnecessary. See, e.g., Joe Hand Promotions, Inc., 2014 WL 960787, at *5 n.8 (“Rule 55(b)(2)’s language regarding hearings is permissive. If the court can determine the amount of damages to be awarded based on affidavits or other evidentiary materials, “[t]he Court is under no requirement to conduct an evidentiary hearing with testimony.”) (citations omitted).

⁴ The Third Circuit has held that 47 U.S.C. § 605 applies only to “satellite transmissions insofar as they are actual airborne transmissions” and not to “satellite-initiated cable television transmissions,” as contemplated by 47 U.S.C. § 553. TKR Cable Corp. v. Cable City Corp., 267 F.3d 196, 205–06 (3d Cir. 2001). Thus, with respect to a single transmission, a defendant can violate § 553 or § 605, but not both. Id. Although plaintiff’s Complaint includes claims under both statutes, plaintiff asks for damages only pursuant to § 605.

for purposes of direct or indirect commercial advantage or private financial gain.” Id.
§ 605(e)(3)(C)(ii).

Plaintiff seeks a total award of \$111,200.00 in damages in this case. Of that sum, \$10,000.00 covers statutory damages under 47 U.S.C. § 605(e)(3)(C)(i)(II) and \$100,000.00 covers enhanced damages under 47 U.S.C. § 605(e)(3)(C)(ii). Plaintiff also seeks \$1,200.00 for the tort of conversion under California law. Plaintiff does not seek to recover attorney’s fees or costs.

A private investigator hired by plaintiff, Dustin Villardo, observed the Cotto-Margarito boxing match being played on three flat-screen television sets in defendants’ bar, 5 Iris. Villardo noted that the capacity of 5 Iris was approximately 150 people, and he personally observed between 72–73 patrons who were inside of the bar watching the fight. (Appl. Default J., Decl. of Affiant.) Although a cover charge was not required to enter 5 Iris that evening, patrons purchased food and/or drink while they were inside. (Fed. R. Evid. 902(11) Aff. of Pl. ¶ 11.) Because plaintiff possessed the domestic commercial ;exhibition rights to broadcast the Cotto-Margarito fight, defendants could only have broadcast the fight legally had they purchased the program from plaintiff at a cost \$1,200.00, which they did not do in this case. (Id. ¶ 8.)

Based on the foregoing, the Court concludes that plaintiff is entitled to statutory damages under § 605. Plaintiff does not seek actual damages under that statute. The Court further concludes that plaintiff is entitled to enhanced damages because defendants’ unlawful interception and exhibition of the fight was done “willfully and for purposes of direct or indirect commercial advantage or private financial gain.” 47 U.S.C. § 605(e)(3)(C)(ii). On this issue, the Court finds that, as a result of the unlawful interception and exhibition of the Cotto-Margarito

fight, defendants benefited from increased food and drink sales and thus obtained a direct or indirect commercial advantage or private financial gain.

Based on all of the evidence presented, and after surveying cases in this District awarding damages for violations of §§ 553 and 605 in the default judgment context, the Court finds that an award of \$7,500.00 in statutory damages and \$2,500.00 in enhanced damages is appropriate. This award is proportionate to those imposed in this District,⁵ and is sufficient to compensate plaintiff and to deter similar misconduct in the future.

The Court declines to award additional damages for the tort of conversion. See J & J Sports Prods., Inc. v. Moody, No. 08-CV-5225, 2009 WL 1515749, at *2 (E.D. Pa. May 28, 2009) (“As to plaintiff’s claim for conversion, we find that these damage[s] are not appropriate given the statutory damages awarded under Title 47.”).

BY THE COURT:

/s/ Hon. Jan E. DuBois
DuBOIS, JAN E., J.

⁵ See, e.g., Joe Hand Promotions, Inc., 2014 WL 960787, at *11 (awarding \$4,880.00 in statutory and enhanced damages where there were 44–48 patrons in the bar, no cover charge, no advertising, and the unlawfully-intercepted boxing match was broadcast on four television sets); J & J Sports Prods., Inc. v. Moody, No. 08-CV-5225, 2009 WL 1515749, at *2 (E.D. Pa. May 28, 2009) (Joyner, J.) (awarding \$2,000.00 in statutory and enhanced damages where there were only two patrons in the bar, no cover charge, no advertising, and the unlawfully-intercepted boxing match was broadcast on one small television set without sound).