

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUSTIN BUELL,

Plaintiff

v.

Case No. 22-10185
Honorable Victoria A. Roberts

SNEAKER BAR DETROIT, LLC,

Defendant.

_____ /

ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
[ECF NO. 10]

I. INTRODUCTION

Justin Buell ("Buell"), copyright owner of a photo of musician Kanye West gifting a pair of his "Yeezy" sneakers to then-President Barack Obama, filed this action for copyright infringement. After Defendant failed to respond or otherwise defend, Buell filed a motion for default judgment. He requests that the Court grant actual damages for copyright infringement, as well as costs incurred in filing this case.

After review of the record, the Court **GRANTS** Buell's Motion for Default Judgment.

II. FACTUAL BACKGROUND

Buell creates photographic images that he licenses to online and print publications. On October 9, 2015, Buell authored an exclusive photograph of musician Kanye West gifting a pair of his “Yeezy” sneakers to former President Barack Obama. On July 23, 2018, the United States Copyright Office registered the photograph under Registration No. VA 2-117-120.

Defendant Sneaker Bar (“Sneaker”) owns and operates a monetized website known as www.sneakerbardetroit.com. On August 12, 2019, Buell says he observed the photograph in question on Sneaker’s website in a blog post dated January 10, 2016. Buell says that without permission from him, Sneaker knowingly copied and displayed the photograph in violation of U.S. copyright laws. Because Sneaker’s website is monetized and contains paid advertisements, Buell says that Sneaker profited from the posting of his photo.

Buell filed this action on January 28, 2022. He alleges that Sneaker committed infringement of his copyright, in violation of 17 U.S.C. § 501. Because Sneaker failed to respond, the Clerk entered default. Buell then moved for default judgment, asking the Court to grant (1) actual damages and profits for copyright infringement in the amount of \$9,930.00; and (2) costs in the amount of \$402.00.

III. RELEVANT LAW

The Court may enter a default judgment against a defendant who fails to plead or otherwise defend against an action. To obtain a judgment by default, the moving party must first request for the Clerk of the Court to enter a default under Fed. R. Civ. P. 55(a). *Shepard Claims Serv. Inc. v. Williams Darrah & Assoc.*, 796 F.2d 190, 193 (6th Cir. 1986). Upon entry of a default, all well-pled allegations of the plaintiff's complaint are deemed admitted. *Ford Motor Co. v. Cross*, 441 F. Supp. 2d 837, 846 (E.D. Mich. Jun. 9, 2006) (citing *Visioneering Construction v. U.S. Fidelity and Guaranty*, 661 F.2d 119, 124 (6th Cir. 1981)).

A default judgment on well-pled allegations only establishes a defendant's liability; the plaintiff must still establish the extent of damages. *RQSI Global Asset Allocation Master Fund, Ltd. v. APERCU International PR LLC*, 2019 WL 1922052, at *4 (internal citations omitted).

IV. ANALYSIS

A. The Court Grants Buell's Request for Actual Damages.

Buell requests actual damages and profits for copyright infringement.

Buell's request is reasonable. The Copyright Act provides that copyright protection begins the moment the "tangible" work is created; registration with the Copyright Office is not required for a work to be

protected under U.S. copyright law. 17 U.S.C.A. § 102(a) (West) (“Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”) On the other hand, registration with the Copyright Office is required to file suit. 17 U.S.C.A. § 411(a) (West).

Buell’s copyright protections began the day he authored the West photograph, on October 9, 2015. Sneaker’s copyright infringement began the day it reproduced Buell’s photo without his permission on January 10, 2016. Buell’s potential damages began accruing on that day. And because Buell registered his copyright on July 23, 2018, he became eligible to file suit for copyright infringement on that date.

The Copyright Act also includes a statute of limitations on copyright infringement actions. Specifically, the Act provides that “[n]o civil action shall be maintained . . . unless it is commenced within three years after the claim accrued.” 17 U.S.C. § 507(b). The Sixth Circuit’s limitations period is governed by a “discovery rule,” under which a cause of action accrues when the injured party learns, or should have learned, of the injury. *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 390 (6th Cir. 2007) (“A

copyright infringement claim accrues when a plaintiff knows of the potential violation or is chargeable with such knowledge.”) (internal quotes omitted).

Buell discovered the post on August 12, 2019. He had until August 12, 2022 to file this action. Because Buell filed this action on January 28, 2022, he does not run afoul of the statute of limitations and is entitled to damages accruing from the day Sneaker’s copyright infringement began (January 10, 2016) to now.

Under the Copyright Act, “an infringer of copyright is liable for either (1) the copyright owner’s actual damages and any additional profits of the infringer . . . or (2) statutory damages . . .” 17 U.S.C.A. § 504(a) (West). Generally, the amount of actual damages in a copyright infringement action is calculated with reference to the loss in the fair market value of the copyright, often measured by the profits lost as a result of the infringement. *ECIMOS, LLC v. Carrier Corp.*, 971 F.3d 616, 632 (6th Cir. 2020).

Buell claims that he lost \$9,930.00 in profits because of Sneaker’s infringement. To calculate this, Buell first offers the Getty Images licensing fee of a photograph of Barack Obama with basketball star Michael Jordan, which is currently priced at \$4,965.00 for use for 3 years. [ECF No. 10-2, PageID.64]. Because this number equates to \$1,655 per year, Buell then multiplied \$1,655 by 6 (for the 6 years Defendant engaged in copyright

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.