



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0098
September 22, 2023

Joe Hand Promotions, Inc.

CLAIMANT

v.

Arif Skyline Café LLC and Hellen A. Kassa

RESPONDENTS

FINAL DETERMINATION

On August 18, 2023, the Copyright Claims Board (Board) issued the below Proposed Default Determination, proposing a finding that (a) Respondent Arif Skyline Café LLC has committed copyright infringement and that Claimant Joe Hand Promotions, Inc. should be awarded \$3,000 in statutory damages and (b) the presented evidence is insufficient to support a finding in favor of Claimant against Hellen A. Kassa (“Kassa”), and the claim against Kassa should be dismissed without prejudice. The Proposed Default Determination, a Notice of Proposed Default, and a Notice Regarding Proposed Dismissal were issued through eCCB and sent via mail to the addresses on file for Arif Skyline Café LLC and Hellen A. Kassa. More than thirty days have passed, and Arif Skyline Café LLC and Hellen A. Kassa have not responded to the Notice of Proposed Default. Claimant did file a response to the proposed Kassa dismissal, and for the reasons expressed in the Order Confirming Proposed Default Determination, the Board did not find reason to alter the Proposed Default Determination. Therefore, pursuant to 17 U.S.C. § 1506(u)(4), the Board issues the below Proposed Default Determination as a Final Determination. The Board finds Arif Skyline Café LLC liable for copyright infringement and awards Joe Hand Promotions, Inc. \$3,000 in statutory damages. The Board dismisses the claim against Hellen A Kassa without prejudice.

* * * * *

The respondents, Arif Skyline Café LLC (“Arif”) and Hellen A. Kassa (“Kassa”) (collectively, “Respondents”), have not appeared or participated in this proceeding before the Copyright Claims Board (Board), and the claim is now in default. When a respondent fails to appear in a proceeding and the Board proceeds to a default determination, the Board shall require the claimant to submit written direct testimony. 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a). The claimant, Joe Hand Promotions, Inc. (“Joe Hand” or “Claimant”), has submitted testimony,

which the Board has reviewed, and now the Board issues this proposed default determination. 17 U.S.C. § 1506(u)(2). For the reasons that follow, the Board finds that: (1) the presented evidence is sufficient to support a finding in favor of Claimant against Arif Skyline Café LLC and proposes an award of \$3,000 in statutory damages; and (2) the presented evidence is insufficient to support a finding in favor of Claimant against Hellen A. Kassa and proposes a dismissal of the claim against Kassa without prejudice.

Arif now has thirty days, ending on September 18, 2023, from the issuance of this proposed default determination to submit any evidence or information in opposition to the proposed default determination. 17 U.S.C. § 1506(u)(2). A copy of this proposed default determination will be sent to Respondents at all addresses and email addresses reflected in the record. *Id.* If Arif submits an opposition, the Board will evaluate any materials submitted by Arif before issuing a final determination. *Id.* § 1506(u)(3). If Arif does not submit a response, the Board will issue this default determination as a final determination. *Id.* § 1506(u)(4). **Any determination against a respondent, including a monetary award for damages, will be enforceable in a court of law.**

Claimant now also has thirty days, ending on September 18, 2023, from the issuance of this proposed default determination to submit a statement limited to seven pages (and following the requirements of 37 C.F.R. § 220.5(b)), and limited to an opposition to the proposed dismissal of Kassa. 37 C.F.R. § 227.3(a)(2). If Claimant submits such an opposition, the Board will evaluate it before issuing a final determination. *Id.*

I. Procedural History

This claim was filed on August 11, 2022. Claim (Dkt. 1). The Board found the claim compliant and, on September 21, 2022, directed Claimant to serve Respondents within ninety days. (Dkt. 2). Claimant filed proofs of service on November 10, 2022, stating that both Respondents were served on October 29, 2022 by hand delivery. (Dkt. 7 & 8). The Board sent a second notice to Respondents by mail on November 17, 2022. (Dkt. 9 & 10). The Board did not receive an opt-out form from either respondent.

On January 3, 2023, the Board notified the parties that the claim had entered the “active phase” because Respondents did not submit a timely opt-out, and ordered Joe Hand to pay the second filing fee and Respondents to register for the Board’s online docketing system (eCCB). (Dkt. 11). On January 20, 2023, the Board issued a

Scheduling Order (Dkt. 14) and a Second Notice for Respondents to register for eCCB. (Dkt. 15). These Board issued all of the foregoing orders through eCCB and also sent to Respondents by mail.

In the Scheduling Order, Respondents were ordered to submit a response by February 21, 2023, but they did not. All parties were also ordered to attend an initial conference to be held on March 9, 2023. While Joe Hand did attend the initial conference, Respondents did not, despite the Board sending the Zoom link to the email addresses on file for respondent on March 7, 2023.

On February 27, 2023, the Board issued its First Default Notice (Dkt. 16) because Respondents did not meet any of the mandatory deadlines set by the Board. The First Default Notice gave Respondents an additional thirty days, to March 29, 2023, to file a response and register for eCCB. *Id.* On March 17, 2023, the Board issued its Second Default Notice (Dkt. 19), reminding Respondents of the deadline to cure the missed obligations. These notices were issued on eCCB and sent to Respondents by mail and email.

Respondents failed to file a response or register for eCCB by March 29, 2023. The Board has received no communication from Respondents to date. Accordingly, on April 10, 2023, the Board ordered Claimant to submit written direct testimony in support of a default determination. (Dkt. 20). Claimant submitted the required written materials on May 25, 2023, consisting of a party statement, two witness statements, and evidence, including an affidavit of an investigator who visited the Arif Skyline Café and witnessed the allegedly unauthorized performance of the work at issue. (Dkt. 21-31).

Pursuant to 37 C.F.R. § 227.2(b), on July 3, 2023, the Board issued an Order to Submit Additional Evidence (Dkt. 32), noting the lack of evidence related to Kassa's liability and giving Claimant until July 14, 2023 to submit any additional materials it wished to support a finding of individual liability against Kassa. On July 14, 2023, Claimant submitted an exhibit consisting of Kassa's personal Facebook page (Dkt. 33) and a supplement to its prior party statement (Dkt. 34).

II. Factual History

Claimant is a Pennsylvania corporation that specializes in commercially licensing premier sporting events to commercial locations such as bars, restaurants, lounges, clubhouses, and similar establishments. Dkt. 1; Declaration

of Joseph P. Hand, III (Dkt. 24), ¶ 3 (“Hand Decl.”). Major sporting events, especially boxing and mixed martial arts fights, are often shown through pay-per-view (closed circuit) arrangements. Pay-per-view arrangements may be different based on whether the viewer of the event is an individual watching the event from their home, or a retail establishment, such as a bar or restaurant, showing the event for their customers. Therefore, cable and satellite television providers that broadcast pay-per-view events block them from being ordered by or shown at commercial establishments that do not pay a separate fee. Hand Decl. ¶¶ 8-9. If a commercial establishment wishes to receive and exhibit a pay-per-view event licensed by Joe Hand, it pays a fee to Joe Hand pursuant to a “rate card” for that particular event based on the capacity of the establishment. *Id.* ¶ 7. Joe Hand then notifies the location’s cable or satellite provider to unscramble that program so that the establishment can show the event to its customers. *Id.* ¶ 9. By written agreement, Joe Hand was granted, by the copyright owner, the exclusive right to license, display, distribute publicly, and authorize the public exhibition of a boxing event that is the subject of this proceeding: *UFC 241: Daniel Cormier v. Stipe Miocic 2*, including all undercard bouts and commentary (the “Work”), which was broadcast live via pay-per-view on October 21, 2019, for businesses such as the Respondents’ restaurant. Dkt. 1; Hand Decl. ¶ 3.

The copyright for the Work was registered by the copyright owner, Zuffa, LLC (Reg. No. PA0002207919), for a “motion picture.” *See* Dkt. 1 (registration attachment). The effective date of registration is October 21, 2019 and the registration states that the Work was published on August 17, 2019, such that the Work was registered within three months of its initial publication. *Id.*

On January 1, 2019, Joe Hand entered into a license with Zuffa, LLC whereby it granted Joe Hand the “sole and exclusive third party license” “to distribute and authorize the public display” of the Work “in the Market Territory,” which is defined as the entirety of the United States. Dkt. 1 (license attachment). The license further stated that Joe Hand “shall be the sole and exclusive third party distributor of non-residential distribution of the [Work] to commercial establishments on a closed-circuit basis” (with limited exceptions not relevant here). *Id.* *See also* Hand Decl. ¶ 3.

Arif is the owner of a commercial establishment in Falls Church, Virginia, called Arif Skyline Cafe. Dkt. 1; Hand Decl. ¶ 10; (Dkt. 26 & 31).

According to Joe Hand, Kassa is an individual who resides in Virginia and was a member, manager, officer, and/or principal of Arif. *See, e.g.*, Dkt. 1; Hand Decl. ¶ 10. Kassa is named as Arif's "Organizer" in its articles of organization. (Dkt. 26). However, Joe Hand has provided no evidence showing that Kassa had any direct involvement with the alleged infringement.

No payment was made to Joe Hand that would allow Arif to receive and show the Work to its customers, and Joe Hand neither authorized Arif to show the Work at Arif Skyline Café nor notified Arif's cable or satellite provider to unblock the Work. Hand Decl. ¶¶ 11-13.

Joe Hand has a nationwide program to police whether establishments showing Joe Hand events have a proper license. *Id.* ¶¶ 4-5. It retains auditors and enforcement personnel who have access to a list of authorized commercial establishments. *Id.* ¶ 6.

One person who performs audits on behalf of Joe Hand is Richard Dunmire. At 10:20 pm on August 17, 2019, the date of the official broadcast of the Work, Mr. Dunmire entered Arif Skyline Café. Piracy Affidavit of Richard Dunmire (Dkt. 25). Mr. Dunmire was greeted by a hostess and did not pay a cover charge. *Id.* Mr. Dunmire states that he took photographs and videos, including of the inside of Arif Skyline Café, while it was showing the Work. The photographs attached to Joe Hand's submitted papers only show the exterior of the restaurant, although one video in a Dropbox link shows the interior while a fight is being shown on tv screens. *Id.* Mr. Dunmire states that he observed the second round of a match between Derek Brunson and Ian Heinisch on Arif Skyline Café's five television sets. *Id.*¹ Mr. Dunmire described certain details of the restaurant, including the bar, tables, and flooring, and described the Work being shown, including the appearance of the fighters. *Id.* He took three head counts

¹ While the Board can see from its own review of the official UFC website, www.ufc.com/event/ufc-241, that the Brunson-Heinisch fight was on the undercard of *UFC 241: Daniel Cormier v. Stipe Miocic 2*, Claimant is cautioned that it should provide specific evidence with its papers in future cases where the investigator views an undercard fight to show that such fight is part of the allegedly infringed work.

during his time at Arif Skyline Café and each time the count was approximately 11 people. *Id.* Mr. Dunmire opines that the approximate capacity of Arif Skyline Café is 50 people. *Id.*

Based on Joe Hand's rate card, the price for a commercial establishment having a fire code occupancy of anywhere from 0 to 50 people to show the Work was \$866. Rate Card (Dkt. 23).

Claimant is seeking statutory damages for the alleged infringement of the Work, and requests \$3464, representing an amount four times the \$866 rate. Default Direct Party Statement at 8 (Dkt. 21). Claimant also requests an award of costs and attorneys' fees. *Id.* at 10.

III. Copyright Infringement

To succeed on a claim for copyright infringement, a claimant must establish: "(1) ownership of a valid copyright; and (2) copying of constituent elements of [plaintiff's] work that are original." *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). Claimant submitted Certificate of Registration PA0002207919 for the Work, which was effective as of October 21, 2019 and which states that the Work was published on August 17, 2019. A certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid and of the facts contained in the certificate, including that the registrant owns the copyright. *See* 17 U.S.C. § 410(c); *Scholz Design, Inc. v. Sard Custom Homes, LLC*, 691 F.3d 182, 186 (2d Cir. 2012); *Service & Training, Inc. v. Data General Corp.*, 963 F.2d 680, 688 (4th Cir. 1992). Claimant has submitted evidence that Zuffa, LLC, the registrant, granted an exclusive license to distribute and authorize the public performance of the Work. Dkt. 1 (license attachment). Accordingly, the Board need only consider whether Respondents infringed the Work.

Respondents did not have permission from Claimant to show the Work in Arif Skyline Café. In this proceeding, Claimant has submitted direct evidence of copying through a witness statement. Given the credible witness testimony that Respondent Arif showed the Work without permission to Arif Skyline Café's customers at the time of the event, the Board finds that infringement by Arif has been shown. Such activity constitutes an unauthorized public performance

of the Work in violation of 17 U.S.C. § 106(6). *See EMI April Music, Inc. v. White*, 618 F. Supp. 2d 497, 505 (E.D. Va. 2009).

However, the Board has determined that Claimant has produced no evidence that could lead to a finding of individual liability on the part of Respondent Kassa.

Beyond conclusory and clearly boilerplate allegations in the claim that Kassa was a “member, manager, officer and/or principal of the entity owning and operating the Establishment on the date of the Program,” and “had a right and ability to supervise the activities of the Establishment on the date of the Program and had an obvious and direct financial interest in the activities of the Establishment on the date of the Program,” Claimant offers no information linking Kassa to the infringement.

There are no facts alleged in the claim or in any submitted evidence to suggest what, if anything, Kassa did to advance the infringement. There are no facts alleged in the claim or in any submitted evidence for the Board to conclude that Kassa had a right and ability to control the infringement or a direct financial interest in the infringing activities. It is unknown whether Kassa was in the restaurant on the night of the infringement or managed the day-to-day activities of the restaurant in any way. In fact, other than the conclusory allegations in the claim mentioned above, the only mentions of Kassa in the claim or in the evidence submitted is through the attachment of: (1) the Articles of Organization of Arif Skyline Café LLC (Dkt. 26), stating that Kassa is the “company’s initial registered agent” (and implying that she is also a member or manager of the company), and with a signature line bearing her name as the “Organizer” of the company; and (2) printouts of Kassa’s Facebook page (Dkt. 33), where she posts generally (and relatively infrequently) about Arif Skyline Café and describes herself on her profile page as “Owner at Arif skyline bar and restaurant” (Dkt. 33).

The application of individual vicarious liability requires that the claimant come forward with facts to prove that the individual in question “(1) possessed the right and ability to supervise the infringing activity; and (2) possessed an obvious and direct financial interest in the exploited copyrighted materials.” *Universal Furniture Int’l, Inc. v.*

Frankel, 538 Fed. Appx. 267, 272 (4th Cir. 2013) (quoting *Nelson-Salabes, Inc. v. Morningside Dev., LLC*, 284 F.3d 505, 513 (4th Cir. 2002)). See also *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 & n. 9 (2005).

The mere boilerplate allegation in a claim that an individual is one of the “members, managers, officers and/or principals of the entity owning and operating the Establishment,” or even actually showing that an individual is one of the owners, without more, is not enough to prove vicarious liability. See, e.g., *Zuffa, LLC v. Ferrell*, No. 8:20-cv-0273, 2021 WL 2315458, at *3-4 (D. Md. June 7, 2021) (denying default judgment as to individual defendant upon unsupported allegations that the individual was an “officer, director, shareholder, and/or principal” of the establishment” and had “supervisory capacity and control”; vague allegation that the individual “‘received a financial benefit’ from [its] operations . . . does not equate with deriving financial gain from broadcasting the Fight. This is so even if the Court accepts as true that [the individual] advertised the Fight on [the establishment’s] Facebook page.”). Such allegations are often not even enough to survive a motion to dismiss. See *J&J Sports Productions, Inc. v. Mayreal II, LLC*, 849 F. Supp. 2d 586, 590-91 (D. Md. 2012) (comparing many vicarious liability cases under a similar standard and dismissing individual defendants who did not have “personal knowledge of, or the ability to supervise and control, the alleged unlawful interception of the Program. For instance, there is no allegation that the individual defendants were present at the nightclub when the Program was shown, that they personally authorized the interception and display of the Program, or that they authorized advertisements for the display of the Program or the imposition of a cover charge to profit from the display.”); *Scurmont LLC v. Firehouse Restaurant Group, Inc.*, No. 4:09-cv-00618-RBH, 2010 WL 11433199, at *15-16 (D.S.C. May 19, 2010) (rejecting “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements” alleging vicarious liability for trademark infringement against a company’s owners or officers that did not show that they participated in or directed the company’s alleged acts); *Worsham v. Travel Options, Inc.*, No. JKB-14-2749, 2016 WL 4592373, at *5 (D. Md. Sept. 2, 2016) (discussing the tort principle of vicarious liability, stating that naked assertions “couched as factual

allegations” are not enough, and reviewing cases declining to find personal liability absent evidence of “direct participation in the wrongdoing”).

Joe Hand is not a stranger to the default context in federal court with regard to both copyright cases and cases relating to the unlawful interception of cable and satellite signals. As such, Joe Hand is aware that more is required. *See, e.g., Joe Hand Promotions, Inc. v. Up at Night LLC*, No. GJH-21-580, 2023 WL 375188, at *2-3 (D. Md. Jan. 23, 2023) (default cannot be granted against an officer, director, shareholder, member or principal of the company without facts showing that the individual had the ability to supervise the activity and a direct financial benefit); *Joe Hand Promotions, Inc. v. Bowers*, No. 1:18-CV-3859-MHC, 2020 WL 4557072, at *3 (N.D. Ga. Feb. 25, 2020) (referring to a prior order denying Joe Hand’s motion for default judgment in which “the Court specifically described that the Complaint was deficient because it lacked factual allegations regarding the level of authority or control that Bowers had in sanctioning the airing of the Program”); *Joe Hand Promotions, Inc. v. Sharp*, 885 F. Supp. 2d 953, 957 (D. Minn. 2012) (awarding summary judgment to individual defendant on similar grounds); *Joe Hand Promotions, Inc. v. Murray*, No. 5:15-cv-5631, 2016 WL 3903205, at *4-5 (E.D. Pa. July 18, 2016) (denying a Joe Hand motion for summary judgment on similar grounds).

In cases where Joe Hand was granted a default judgment against an individual defendant, additional facts were typically presented, such as documents showing the individual’s position and control or allegations and evidence that the individual was present at the establishment on the night of the event. *See Joe Hand Productions, Inc. v. Yakubets*, 3 F. Supp. 3d 261, 292-301 (E.D. Pa. 2014) (analyzing cases and adopting the copyright standard for vicarious infringement in an unlawful interception of cable signals case; holding that conclusory statements that one has ownership of or an officer role at a company is not enough to establish liability in default, but also finding that

just enough evidence was presented); *Joe Hand Promotions, Inc. v. Disla*, No. 19-CV-788, 2020 WL 2572268, at *3 (E.D.N.Y. Feb. 3, 2020) (accepting allegation that individual was present on night of event).

Given the lack of evidence to establish individual liability, the Board's proposed determination is to dismiss the claim against Kassa without prejudice.

IV. Defenses

When reviewing the evidence provided by a claimant in support of the claim, the Board must consider whether defaulting respondents have a meritorious defense. 37 C.F.R. § 227.3(a). The Board has considered the facts and finds that no such defense exists to this claim for Respondent Arif.

V. Damages

Claimant requests statutory damages. Before the Board, the maximum award of statutory damages is \$15,000 per work for works timely registered (either before the infringement started or within three months of first publication of the infringed work) and \$7,500 for works not timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii). The Work appears to have been registered timely, and the statutory maximum is \$15,000.

Courts have wide discretion to award statutory damages as long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231–232 (1952); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986); *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 143 (2d Cir. 2010). “[T]he court’s conception of what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like, is made the measure of the damages to be paid. . . . Within these [statutory] limitations the court’s discretion and sense of justice are controlling[.]” *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919). *See also Alouf v. Expansion Products, Inc.*, 417 F.2d 767, 769 (2d Cir. 1969); *Peer Int’l Corp. v. Pansa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (*quoting F.W. Woolworth*, 344 U.S. at 232).

Furthermore, various courts have explained that (regardless of willfulness or lack thereof) statutory damage awards should significantly exceed the amount of unpaid license fees because the award “should put infringers on notice that it costs less to obey the copyright laws than to violate them.” *Broadcast Music, Inc. v. DFK Entertainment*,

LLC, No. 1:10-CV-1393 GLS/DRH, 2012 WL 893470, at *4 (N.D.N.Y. Mar. 15, 2012) (internal quotation marks and citation omitted). As the court noted in *Werner v. Evolve Media, LLC*, No. 2:18-CV-7188-VAP-SKx, 2020 WL 4012784, at *3 (C.D. Cal. June 22, 2020):

Such an approach is consistent with the Copyright Act's purpose of deterring copyright infringement. Indeed, as the Supreme Court has held, “a rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of copyright policy. The statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed to discourage wrongful conduct.”

(quoting *F.W. Woolworth*, 344 U.S. at 233). See also *Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018), *rev'd and remanded on other grounds sub nom. Philpot v. LM Commc'ns II of S.C.*, 776 F. App'x 906 (6th Cir. 2019) (“Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement would do little to discourage infringers.”).

In deciding the appropriate amount of statutory damages to award, courts generally seek to establish a relationship between statutory damages and actual damages. See, e.g., *Atari Interactive, Inc. v. Redbubble, Inc.*, 546 F. Supp. 3d 883, 888 (N.D. Cal. 2021) (“A statutory damages award ‘must bear a plausible relationship to Plaintiff’s actual damages’”) (citation omitted); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) (on remand) (“Undoubtedly these [statutory] damages should bear some relation to the actual damages suffered[.]”); *Seoul Broad. Sys. Int’l v. Young Min Ro*, No. 1:09cv433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011) (“After all, ‘when awarded, statutory damages should bear some relation to the actual damages suffered.’”) (citation omitted); *Aberle v. GP Clubs, LLC*, No. A-19-cv-1066-RP, 2020 WL 4035074, at *4 (W.D. Tex. July 17, 2020) (while there “need not be a direct correlation between statutory damages and actual damages,” it has generally been held that “the statutory award should bear some relation to actual damages suffered”) (citation omitted); *Bly v. Banbury Books, Inc.*, 638 F. Supp. 983, 987 (E.D. Pa. 1986) (“numerous courts have held that asserted statutory damages should bear some relation to the actual damages suffered”).

Actual damages are primarily measured by “the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement.” *Fitzgerald*, 807 F.2d at 1118. To secure actual damages, a claimant typically establishes impairment of market value by demonstrating lost sales or

other lost profits that would have been obtained from the sale or license of the infringed work but for the respondent's infringement. *See Stevens Linen Associates v. Mastercraft Corp.*, 656 F.2d 11, 15 (2d Cir. 1981); *Baker v. Urban Outfitters, Inc.*, 254 F. Supp. 2d 346, 356 (S.D.N.Y. 2003). Such amounts should be based on a "factual basis" and not "undue speculation." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 165 (2d Cir. 2001).

Across the country, courts typically award statutory damages in a range from approximately two to six times the lost licensing fee for the infringed work, with around three times the lost fee being most prevalent. *See, e.g., Barcroft Media, Ltd. v. Coed Media Group, LLC*, 297 F.Supp. 3d 339, 359 (S.D.N.Y. Nov. 2, 2017); *Broadcast Music, Inc. v. Paden*, No. 5:11-02199-EJD, 2011 WL 6217414, at *5 (N.D. Cal. Dec. 14, 2011); *Sixx Gunner Music v. The Quest, Inc.*, 777 F.Supp. 2d 272, 274 (D. Mass. 2011); *Broadcast Music, Inc. v. Amici III, Inc.*, No. 14-CV-5002, 2014 WL 7271915, at *1 (D.N.J. Dec. 16, 2014); *Broadcast Music, Inc. v. Eatnout, LLC*, No. 2:15cv254, 2015 WL 12803458, at *3 (E.D. Va. Dec. 29, 2015); *Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d at 702; *Broadcast Music, Inc. v. Ken V, Inc.*, 159 F.Supp. 3d 981, 990 (E.D. Mo. 2016); *Minden Pictures, Inc. v. Buzznick, LLC*, No. 2:22-cv-00369-RJS-CMR, 2023 WL 2243177, at *5 (D. Utah Feb. 27, 2023); *Broadcast Music, Inc. v. Entertainment Complex, Inc.*, 198 F.Supp. 2d 1291, 1296 (N.D. Ala. 2002); *MOB Music Publ'g v. Zanzibar on the Waterfront, LLC*, 698 F. Supp. 2d 197, 207-08 (D.D.C. 2010).

In this proceeding, Claimant has provided the Board with specific evidence regarding how much Arif should have paid to license the Work in its establishment. This event had a rate card that designated exactly how much a restaurant with a fire capacity of 0 to 50 people should pay. Based on the rate card, Claimant should have received \$866 from Arif for showing this Work at its establishment. Claimant is seeking statutory damages for the alleged infringement of the Work, and requests \$3464, representing an amount four times the \$866 rate. Default Direct Party Statement at 8 (Dkt. 21).

Awarding damages between three and four times Joe Hand's lost license fee for the infringed work in this case is appropriate to deter Arif and others from using these types of works without paying the appropriate license fees. It is reasonable to assume that Claimant's business, including Claimant's continued licensing to its existing customers, depends in part on its enforcement of copyright, because few restaurants will pay for an event if the competitor next door advertises the same event for free with impunity. *See Hand Decl.* ¶¶ 4, 17-18. There is no

evidence that Claimant's primary income is litigation, but rather that litigation is used to remedy the erosion of its customer base and to appease its existing customer base. *See id.*

Based on the record before it, the Board awards \$3,000, which is approximately three and a half times the amount of the proven actual damages of Joe Hand.

Finally, Claimant requests its attorney's fees and costs. Default Direct Party Statement at 10. Such fees and costs are not permitted in Board proceedings under 17 U.S.C. § 1504(e)(3) unless there is a specific finding of bad-faith conduct by the respondents under 17 U.S.C. § 1506(y)(2). There has been no such finding.

VI. Conclusion

The Board's proposed default determination is to dismiss the claim against Hellen A. Kassa without prejudice and to find that Arif has committed copyright infringement and award Joe Hand \$3,000 in statutory damages.