



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0071  
January 2, 2024

Joe Hand Promotions, Inc.

CLAIMANT

v.

Mary A. Dawson

RESPONDENT

## FINAL DETERMINATION

On November 27, 2023, the Copyright Claims Board (Board) issued the below Proposed Default Determination, proposing a finding that the evidence provided by the Claimant, Joe Hand Promotions, Inc., is insufficient to support a finding in favor of Claimant against Dawson. The Board proposed a dismissal of the claim against Dawson without prejudice. More than thirty days have passed, and Claimant has not submitted a statement objecting to the proposed dismissal. 37 C.F.R. § 227.3(a)(2). Therefore, the Board issues the below Proposed Default Determination as a Final Determination. The Board finds the evidence provided by the Claimant insufficient to hold Dawson liable for copyright infringement and therefore dismisses the claim against Dawson without prejudice.

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The remaining respondent, Mary A. Dawson (“Dawson” or “Respondent”), has 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 requires 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 the presented evidence is insufficient to support a finding in favor of Claimant against Dawson and proposes a dismissal of the claim against Dawson without prejudice.<sup>1</sup>

Claimant now has thirty days, ending on December 27, 2023, from the issuance of this proposed default determination to submit a statement of no more than seven pages, that follows the requirements of 37 C.F.R. § 220.5(b) and is limited to an opposition to the proposed dismissal of Dawson. 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 February 15, 2023 against respondents Mary A. Dawson and Lynette G. Giglio (“Giglio”). Claim (Dkt. 1). The Board found the Claim compliant and, on March 16, 2023, directed Claimant to serve the two respondents within ninety days. (Dkt. 6). Claimant filed proofs of service on May 3, 2023, stating that both respondents were served on April 5, 2023 by hand delivery to the person in charge at the respondents’ business address at the time of service. (Dkt. 7-8). The Board sent a second notice to respondents by mail on May 4, 2023 (Dkt. 9-10) (with the second notice for Giglio sent back to the Board marked “Return to Sender”). The Board did not receive an opt-out form from either respondent.

On June 8, 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 June 28, 2023, the Board issued a Scheduling Order (Dkt. 13) and a Second Notice for respondents to register for eCCB. (Dkt. 14). The Board issued all of the foregoing orders through eCCB and also sent them to respondents by mail (although the mailings for both respondents were sent back to the Board marked “Return to Sender”).

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<sup>1</sup> Dismissals in default cases are without prejudice because the applicable regulations provide: “If the Board determines that the evidence is insufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed determination dismissing the proceeding without prejudice and shall provide written notice of such proposed determination to the claimant or counterclaimant.” 37 C.F.R. § 227.3(a)(2).

In the Scheduling Order, respondents were ordered to submit a response by July 28, 2023, but they did not. All parties were also ordered to attend an initial conference to be held on August 16, 2023. While Joe Hand attended the initial conference, respondents did not.

On August 1, 2023, the Board issued its First Default Notice (Dkt. 15) because respondents had not met any of the mandatory deadlines set by the Board. The First Default Notice gave respondents an additional thirty days, to August 31, 2023, to file a response and register for eCCB. *Id.* On August 15, 2023, the Board issued its Second Default Notice (Dkt. 16), reminding respondents of the deadline to cure the missed obligations. These notices were issued on eCCB and sent to respondents by mail (although both mailings for both respondents were sent back to the Board marked “Return to Sender”).

Respondents failed to file a response or register for eCCB by August 31, 2023. The Board has received no communication from respondents to date. Accordingly, on September 12, 2023, the Board ordered Claimant to submit written direct testimony in support of a default determination. (Dkt. 17). Claimant submitted the required written materials on October 27, 2023, consisting of a party statement, two witness statements, and evidence, including an affidavit of an investigator who visited the Bottoms Up Bar & Grill (“Bottoms Up”) and witnessed the allegedly unauthorized performance of the work at issue. (Dkt. 19-29). Also, on October 27, 2023, Claimant submitted a request to withdraw its claim against Giglio. (Dkt. 18). On the same date, the Board dismissed the claim against Giglio without prejudice (Dkt. 30), so the only respondent remaining in this proceeding is Dawson.

## **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. 22), ¶ 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: *Deontay Wilder vs. Tyson Fury II*, including all undercard bouts and commentary (the “Work”), which was broadcast live via pay-per-view on February 22, 2020, for businesses such as the Bottoms Up restaurant. (Dkt. 1) (license attachment); Hand Decl. ¶ 3.

The copyright for the Work was registered by the copyright owner, TGB Promotions, LLC (Reg. No. PA0002237116), for a “motion picture.” (Dkt. 1) (registration attachment). The effective date of registration is April 15, 2020, and the registration states that the Work was published on February 22, 2020, such that the Work was registered within three months of its initial publication. *Id.*

On January 13, 2020, TGB Promotions, LLC entered into a license with Joe Hand, granting 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 (excluding only portions of Nevada). (Dkt. 1) (license attachment). The license further stated that Joe Hand “shall be the sole and exclusive third party distributor of commercial closed-circuit television or streaming” of the Work “through closed-circuit television or IPTV authorizing the public display by commercial establishments.” *Id.* See also Hand Decl. ¶ 3.

Bottoms Up is a commercial establishment located in Marysville, California. (Dkt. 1); Hand Decl. ¶ 10.

According to Joe Hand, Respondent is an individual who resides in California and who owned, operated, maintained, and controlled Bottoms Up. (Dkt. 1). See also Hand Decl. ¶ 10. Dawson is listed on a 2019 liquor license issued to Bottoms Up as the “Primary Owner” and “Licensee.” (Dkt. 27). However, Joe Hand has provided no evidence showing that Dawson had any direct involvement with the alleged infringement or any other evidence pertaining to Dawson.

No payment was made to Joe Hand for a license or permission for Bottoms Up to receive and show the Work to its customers, and Joe Hand neither authorized anyone to show the Work at Bottoms Up nor notified Bottoms Up's cable or satellite provider to unblock the Work. Hand Decl. ¶¶ 11-14. Despite this, Bottoms Up advertised on its Facebook page that it would be showing the Work to its customers when it aired on February 22, 2020. *Id.* ¶ 15; Exhibit 1 (Dkt. 26).

Joe Hand has a nationwide program to police whether establishments showing Joe Hand events have a proper license. Hand Decl. ¶¶ 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 Frank W. Wright. On February 22, 2020, the date of the official broadcast of the Work, Mr. Wright entered Bottoms Up. UFC Piracy Affidavit (Dkt. 21).<sup>2</sup> Mr. Wright paid a \$10 cover charge and watched at least part of one fight on the undercard of the Work at the restaurant; he also saw images of the main card fighters arriving at the event and walking in a hallway. *Id.* In his affidavit, he mentions a male doorperson and a bartender, whom he does not describe or name. The affidavit does not mention Respondent or indicate that she was present. *Id.* Mr. Wright's affidavit states that he has attached photographs of the outside of Bottoms Up, as well as inside the restaurant, *id.*, and those photographs were provided by Claimant via a Dropbox link. Default Direct Party Statement at 4 n.1 (Dkt. 19). Mr. Wright states that he observed "a match between the following two fighters: Fundora and Lewis," on at least three of Bottoms Up's television sets.<sup>3</sup> (Dkt. 21). Mr. Wright described certain details of the restaurant, including the bar, seating, televisions, and decor, and described the Work being shown, including the appearance of the fighters. *Id.* He took three head counts during his time at Bottoms Up, with the counts ranging from 10 to 20 people. *Id.* Mr. Wright opines that the approximate capacity of Bottoms Up is 50 people. *Id.*

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<sup>2</sup> The affidavit is titled "UFC Piracy Affidavit" and Joe Hand has filed other cases where the alleged infringement involved UFC fights. However, this proceeding involves boxing matches, not UFC fights.

<sup>3</sup> The Board can see from its own review of various websites that the Fundora-Lewis fight referred to by Mr. Wright was on the undercard of *Deontay Wilder vs. Tyson Fury II*. However, Claimant has been cautioned multiple times in past cases by the Board to provide specific evidence with its Default Direct Party Statement in future cases where its investigator views an undercard fight, rather than the main event, to show that such fight is part of the allegedly infringed work. The Board will take notice that the Fundora-Lewis fight was on the Wilder-Fury undercard but reserves its right not to do so in the future (and to find that Joe Hand has not proven that the work at issue was shown by the respondent(s)) if Joe Hand continues to not follow the Board's direction.

Based on Joe Hand's rate card, the price for a commercial establishment having a fire code occupancy of anywhere from 1 to 100 people to show the Work was \$1,450. Rate Card (Dkt. 23).

Claimant is seeking statutory damages for the alleged infringement of the Work and requests an award of \$5,800, representing an amount four times the \$1,450 rate, given that Mr. Wright's estimate of the occupancy of the restaurant falls into the 1-100 people range. Default Direct Party Statement at 9 (Dkt. 19). Claimant also requests an award of costs and attorneys' fees. *Id.* at 10-11.

### **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 the work that are original." *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). Claimant submitted a record of Copyright Registration No. PA0002237116 for the Work, which was effective as of April 15, 2020, and which states that the Work was published on February 22, 2020. (Dkt. 1) (registration attachment). 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 TGB Promotions, LLC, the registrant, granted Joe Hand an exclusive license to distribute and authorize the public performance of the Work. (Dkt. 1) (license attachment); Hand Decl. ¶ 3. Accordingly, the Board need only consider whether Respondent infringed the Work.

Neither Respondent nor Bottoms Up had permission from Claimant to show the Work at Bottoms Up. In this proceeding, Claimant has submitted direct evidence of acts of infringement through a witness statement. Given the credible witness testimony that Bottoms Up showed the Work without permission to Bottoms Up's customers at the time of the event, and evidence that it advertised beforehand that it would show the Work, the Board finds that infringement by Bottoms Up has been shown. Such activity constitutes an unauthorized public performance of the Work in violation of 17 U.S.C. § 106(4). *See Joe Hand Promotions, Inc. v. Griffith*, 49 F.4th 1018, 1024 (6th Cir. 2022); *Range Road Music, Inc. v. East Coast Foods, Inc.*, 668 F.3d 1148, 1154 (9th Cir. 2012).

However, just because the establishment known as Bottoms Up may have committed infringement, that does not mean that Respondent has. The Board has determined that Claimant has produced no evidence that could lead to a finding of individual liability on the part of Dawson.

Beyond the conclusory and clearly boilerplate allegations in the Claim that Dawson (and now-dismissed respondent Giglio) “owned, operated, maintained, and controlled the commercial business known as Bottoms Up Bar & Grill” 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” (Dkt. 1), Claimant offers absolutely no information linking Respondent to the infringement.

There are no facts alleged in the Claim or in any submitted evidence to suggest what, if anything, Respondent did to advance the infringement. There are no facts alleged in the Claim or in any submitted evidence for the Board to conclude that she had a right and ability to control the infringement or a direct financial interest in the infringing activities. It is unknown whether Respondent 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 mention of Dawson in the Claim or in the evidence submitted is through the attachment of a 2019 liquor license issued to Bottoms Up where the fields for “Primary Owner” and “Licensee” were filled with the name Mary Anne Dawson. Exhibit 2 (Dkt. 27).

The application of individual vicarious liability requires that the claimant come forward with facts to prove that the individual in question “has (1) the **right and ability** to supervise the infringing conduct and (2) a **direct** financial interest in the infringing activity.” *Erickson Productions, Inc. v. Kast*, 921 F.3d 822, 829 (9th Cir. 2019) (*quoting* *VHT, Inc. v. Zillow Group, Inc.*, 918 F.3d 723, 745 (9th Cir. 2019)) (emphasis added). “The essential aspect of the ‘direct financial benefit’ inquiry is whether there is a causal relationship between the infringing activity and any financial benefit a defendant reaps.” *Id.* (*quoting* *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)). *See also* *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)).

Mere boilerplate allegations that an individual is one of the people who “owned, operated, maintained, and controlled” the business, or even actual evidence that an individual is one of the owners, without more, is not enough to prove vicarious liability. *See, e.g., J & J Sports Productions, Inc. v. Walia*, No. 10-5136 SC, 2011 WL 902245, at \*3 (N.D. Cal. Mar. 14, 2011) (applying the copyright vicarious liability standard, under which “officers and shareholders have the right and ability to supervise a corporation’s infringing activities when they are a moving active conscious force behind the [company’s] infringement”) (citation omitted).

Such allegations are often not even enough to survive a motion to dismiss. *See Netbula, LLC v. Chordiant Software, Inc.*, No. C 08-00019 JW, 2009 WL 750201, at \*2 (N.D. Cal. Mar. 20, 2009) (granting a motion to dismiss because “bare allegations that an individual was a corporate officer or member of a company’s board of directors are insufficient”; such allegations fail both parts of the vicarious liability standard because: as to financial interest, “[t]here must be an *obvious and direct* financial interest in the exploitation of copyrighted materials. The mere fact that a defendant is an officer and shareholder of an infringing corporation is too attenuated to show a direct financial interest in the exploitation of copyrighted materials”; and, as to control, control cannot be general control, but rather, a “plaintiff must allege that the defendant had supervisory power over the infringing conduct itself”) (citations and internal quotation marks omitted) (emphasis in original); *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.”).

Joe Hand is not a stranger to the default context in federal court (and before the Board) 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).

In this proceeding, Claimant cites a single case, *Innovative Sports Mgmt., Inc. v. Valenzuela*, No. 19-cv-02785-JSW (JCS), 2021 WL 5238592 (N.D. Cal. Aug. 30, 2021), for the proposition that “where an individual is named on the liquor license, they are individually liable for the underlying infringement that occurs at their establishment.” Direct Default Party Statement, at 9 (Dkt. 19). However, in *Valenzuela*, substantially more evidence was supplied as to the individual defendant’s position (as the “CEO, CFO, Secretary and sole director of [the corporate defendant], as well as its agent for service of process”), and the court concluded that what was before it was sufficient to find that “he was involved in the unauthorized broadcast or at least that he was responsible for his employees’ conduct by virtue of the fact that he was in charge of operating [the establishment].” *Valenzuela*, at \*2 & 5. Furthermore, a review of the filings in *Valenzuela* shows that, in Valenzuela’s answer, he fully admitted “the right and ability to supervise” the

business's activities and that he "had an obvious and direct financial interest" in those activities. Answer ¶¶ 10 & 13, *Innovative Sports Mgmt., Inc. v. Valenzuela*, No. 4:19-cv-02785-JSW (JCS) (N.D. Cal. filed July 1, 2019). No such facts are in evidence about Respondent.

In addition, one of the two cases *Valenzuela* cites in support of its acceptance of the evidence submitted is *Joe Hand Promotions, Inc. v. McInnis*, No. 10-CV-01614-LHK, 2011 WL 1740109, at \*9 (N.D. Cal. May 5, 2011). In *McInnis*, for one of the defendants, the "only evidence that Joe Hand present[ed] showing that Unger had any connection to the Seabreeze Tavern on the night the Program was shown is Seabreeze Tavern's liquor license, which lists Sarah Ann Unger as a licensee." *Id.* Joe Hand "argue[d] that Unger's appearance as a licensee on the Seabreeze Tavern's liquor license is an independent and sufficient basis to find Unger liable for the showing of the Program." *Id.* The court found that a person's name on a liquor license could subject that person to "vicarious liability in certain situations" for *misuse of the liquor license itself*, but not for other violations of law. *Id.* As such, Joe Hand is well aware that an individual's name on a liquor license is not enough to impose liability in this case.

Given the lack of evidence to establish individual liability, the Board's proposed determination is to dismiss the Claim against Respondent Mary A. Dawson without prejudice.

#### **IV. Conclusion**

The Board's proposed default determination is to dismiss the Claim against Respondent Mary A. Dawson without prejudice. As the Board has stated in its prior determinations where Joe Hand has brought claims against individual respondents, the Board will not find liability on the part of the individuals unless evidence is submitted specifically linking the individuals to the infringement at issue. Thus, if no such specific evidence is submitted in future similar proceedings, the Board will not deviate from the law and will dismiss the individual respondents.<sup>4</sup>

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<sup>4</sup> The Board notes that Joe Hand has also requested its attorney's fees and costs in each and every case in which it has submitted a Default Direct Party Statement, even going to the trouble to submit a declaration stating its counsel's hourly billing rate and billable fees for the time devoted to this case. (Dkt. 29 ¶¶ 8-12). Such requests are wasted effort before the Board. Joe Hand has repeatedly been told that awards of such fees and costs are not permitted in Board proceedings under 17 U.S.C. § 1504(e)(3) unless there has been a specific finding of bad-faith conduct by the respondents under 17 U.S.C. § 1506(y)(2). A bad-faith finding is impossible where a respondent has had no interaction with the Board or claimant in a particular proceeding. Therefore, Joe Hand should stop making such requests in its default filings. Joe Hand also routinely refers to and asks for damages to be based on a willfulness finding (see Default Direct Party Statement at

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5-7 (Dkt. 19), despite this Board’s statutory mandate that the Board “not make any finding that, or consider whether, the infringement was committed willfully in making an award of statutory damages.” 17 U.S.C. § 1504(e)(1)(A)(ii)(III). Joe Hand should likewise refrain from making this argument in the future.