

plaintiffs' exclusive rights under the Copyright Act. Plaintiffs further allege that defendant's unauthorized distribution of *The Company You Keep* bearing plaintiff Voltage Pictures trademark violates Oregon trademark law. Plaintiffs also allege that the conduct of defendant has and will continue to cause harm to plaintiffs unless the infringing activity is enjoined.

The court entered an order of default against defendant on November 3, 2014. Plaintiffs now seeks a default judgment. Specifically, plaintiffs seek a permanent injunction under both the copyright claim and the trademark claim, statutory damages for copyright infringement, and attorney fees and costs.

To establish a claim of copyright infringement, plaintiffs must show ownership of the copyright and copying by the defendant. Kelly v. Arriba Soft Corp., 336 F.3d 811, 817 (9th Cir. 2003). The complaint establishes these elements in this case and generally the factual allegations of the complaint are taken as true upon default. Geddes v. United Financial Group, 559 F2d 557, 560 (9th Cir. 1977).

Plaintiffs are entitled to recover actual damages attributable to the infringement or may elect to recover statutory damages. 17 U.S.C. § 504(b) and (c). The court may award, as statutory damages "a sum of not less than \$750 or more than \$30,000." 17 U.S.C. 504(c)(1) However, where the infringement is committed willfully, "the court in its discretion may increase the award of statutory

damages to a sum of not more than \$150,000." 17 U.S.C. 504(c)(2). Taking the allegations in the complaint as true, defendant willfully infringed plaintiffs' copyright. Although the complaint establishes willfulness and plaintiffs present some evidence of continued infringing activity after service of the complaint, the court finds that the circumstances of this case do not justify an increase beyond the statutory minimum of \$750.

The court may grant final injunctions to prevent further infringement. 17 U.S.C. § 502(a). Accordingly, defendant is hereby permanently enjoined from infringing plaintiffs' rights in the motion picture *The Company You Keep* via any means.

Under ORS § 647.095, a person may not use a copy of a mark in connection with distribution of goods if it is likely to cause confusion or mistake or deceive as to the origin of the goods. While the complaint is not entirely clear as to the exact nature of this claim, plaintiffs have submitted evidence of the distribution of the motion picture involves a down sampled resolution reducing the quality of the product. Accordingly, a consumer could be confused into believing an inferior copy of the product is authorized by plaintiff Voltage Pictures because of the use of its trademark displayed with the inferior product.

Under ORS § 647.105(1)(a) the court may enjoin future use of a counterfeit or imitation of a registered mark. The court may also order all counterfeits or imitations destroyed. ORS §

647.105(1)(c). Accordingly, defendant is enjoined from further unauthorized use of plaintiff Voltage Pictures's trademark and defendant shall destroy all unauthorized copies of plaintiffs' motion pictures.

The court, in its discretion, may allow recovery of costs and attorney's fees to the prevailing party in an action for copyright infringement. 17 U.S.C. § 505. In considering whether to exercise that discretion, the court can consider (1) the degree of success obtained; (2) frivolousness; (3) motivation; (4) the objective unreasonableness of the losing party's factual and legal arguments; and (5) the need, in particular circumstances, to advance considerations of compensation and deterrence. Jackson v. Axton, 25 F.3d 884, 890 (9th Cir. 1994). These factors justify an award of fees in this case.

Plaintiffs, as the parties seeking fees, have the burden of showing that time spent by their attorney was reasonably necessary. Gates v. Deukmajian, 987 F.2d 1392, 1397 (9th Cir. 1992); Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc., 886 F.2d 1545, 1557 (9th Cir. 1989). In order to support a finding of reasonableness, plaintiffs must document the hours spent in the litigation and provide evidence supporting those hours. Gates, 987 F.2d at 1397.

Calculating a "reasonable attorney's fee" involves a two pronged approach. A court must first calculate a lodestar figure by multiplying the number of hours reasonably expended on the

litigation times a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886, 888, 104 S.Ct. 1541, 1543 (1984). This lodestar figure is presumed to represent an appropriate fee. Under certain circumstances, however, a court may adjust the award upward or downward to take into account the Kerr factors not subsumed within the initial lodestar calculation. Cunningham v. County of Los Angeles, 879 F.2d 481, 487 (9th Cir. 1988).¹

The court has previously determined that plaintiffs' counsel is entitled to an hourly rate of \$312 in similar cases. The court finds plaintiffs' counsel's expenditure of 17.4 hours on this case is reasonable. Accordingly, plaintiffs are entitled to an award of attorney fees in the amount of \$5,428.80. Plaintiffs are also entitled to an award of costs in the amount of \$540.

¹The Kerr factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70 (9th Cir 1975). Among the many subsumed factors in the lodestar calculation are the novelty and complexity of the issues involved, the special skill and experience of counsel, and the results obtained. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1464 (9th Cir. 1988).

CONCLUSION

For the reasons stated above, plaintiffs' motion for a default judgment (#19) is granted and judgment is awarded in favor of plaintiffs and against defendant as follows: (1) statutory damages in the amount of \$750; (2) attorney's fees and costs in the amount of \$5968.80 and (3) a permanent injunction enjoining defendant from infringing plaintiffs' rights in plaintiffs' motion pictures including, without limitation, by using the internet to reproduce or copy plaintiffs' motion pictures, to distribute plaintiffs' motion pictures, or to make plaintiffs' motion pictures available for distribution to the public, except pursuant to a lawful license or with the express authority of plaintiffs. Moreover, defendant shall destroy all unauthorized copies of plaintiffs' motion pictures in his possession.

DATED this 18th day of February 2015.



Ann Aiken

United States District Judge