



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WARNER BROS. ENTERTAINMENT
INC. and TWENTIETH CENTURY FOX
FILM CORPORATION, :

Plaintiffs, :

-against- :

IDEAL WORLD DIRECT, et al., :

Defendants. :

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06 Civ. 4174 (WHP)

MEMORANDUM AND ORDER

WILLIAM H. PAULEY III, District Judge:

Defendant Matthew Ashworth (“Ashworth”) moves for entry of judgment pursuant to Fed. R. Civ. P. 54(b) and an award of attorney’s fees and costs under 17 U.S.C. § 505 and 15 U.S.C. § 1117(a). For the following reasons, Ashworth’s motion is granted in part and denied in part.

BACKGROUND

Plaintiffs commenced this action on June 1, 2006, asserting claims against Ashworth under the Copyright Act and the Lanham Act. By Memorandum and Order dated September 26, 2007 (the “Memorandum and Order”), this Court dismissed all claims against Ashworth for lack of personal jurisdiction. Warner Bros. Entm’t. Inc. v. Ideal World Direct, No. 06 Civ. 4174 (WHP), 2007 WL 2807757, at *3-5 (Sept. 26, 2007). The basis for the Court’s decision was a supplemental declaration submitted by Ashworth after the close of briefing on the underlying motion, in which he explained that his allegedly infringing website had operated as a

“pass-through” that did not consummate transactions with customers. Warner Bros., 2007 WL 2807757 at *4.

DISCUSSION

I. Entry of Judgment

Fed. R. Civ. P. 54(b) provides, in relevant part: “When more than one claim . . . is presented in an action . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more . . . of the claims or parties . . . upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” The application of this rule is within the sound discretion of the district court. Reiter v. Cooper, 507 U.S. 258, 265 (1993).

The Memorandum and Order dismissed all claims against Ashworth for lack of personal jurisdiction. Warner Bros., 2007 WL 2807757 at *4. Plaintiffs having expressly declined to oppose Ashworth’s motion for entry of judgment pursuant to Rule 54(b), and there being no just reason for delay, the application is granted.

II. Attorney’s Fees

The attorney’s fee provision of the Copyright Act, 17 U.S.C. § 505, provides in relevant part: “In any civil action under this title, the court in its discretion may allow the recovery of full costs . . . [and] award a reasonable attorney’s fee to the prevailing party as part of the costs.” The analogous provision of the Lanham Act similarly provides, in relevant part: “The court in exceptional cases may award reasonable attorney[’s] fees to the prevailing party.” 15 U.S.C. § 1117(a). Plaintiffs oppose Ashworth’s application for attorney’s fees and costs,

arguing that he is not a “prevailing party” for purposes of the statutes and that, in any event, no award of fees is justified.

The Second Circuit has not directly addressed whether the dismissal of claims against a defendant for lack of personal jurisdiction renders him a “prevailing party” for purposes of 17 U.S.C. § 505 and 15 U.S.C. § 1117(a). However, the Court need not decide that issue, because even if Ashworth is a prevailing party, he is not entitled to attorney’s fees.

This Court may grant attorney’s fees under the Lanham Act only “on evidence of fraud or bad faith.” Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187, 194 (2d Cir. 1996) (applying fraud or bad faith standard to Lanham Act claim); Twin Peaks Prods., Inc. v. Publications Int’l, Ltd., 996 F.2d 1366, 1383 (2d Cir. 1993) (quotation omitted) (same). Under the Copyright Act, the Court must consider “frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in the particular circumstances to advance considerations of compensation and deterrence.” Matthew Bender & Co. v. West Publ’g Co., 240 F.3d 116, 121 (2d Cir. 2001) (citing Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 n.19 (1994)). These requirements apply equally to fee applications by plaintiffs and defendants. Conopco, 95 F.3d at 195 (Lanham Act); Matthew Bender, 240 F.3d at 121 (Copyright Act).

The Memorandum and Order dismissed all claims against Ashworth because the Court found that it lacked personal jurisdiction. Warner Bros., 2007 WL 2807757 at *4. The Court’s conclusion was based primarily on the rebuttal declaration submitted by Ashworth, several weeks after the close of briefing on the underlying motion, which described the passive nature of his business model and website. Warner Bros., 2007 WL 2807757 at *4. There is no evidence that Plaintiffs had knowledge of the relevant facts prior to filing their claims, or indeed

after conducting limited discovery. Therefore, the Court cannot conclude that Plaintiffs brought suit in bad faith. For the same reason, the Court cannot conclude that Plaintiffs asserted frivolous or objectively unreasonable claims. Ashworth's motion for attorney's fees is denied.

III. Award of Costs

Fed. R. Civ. P. 54(d) provides, in relevant part: "[C]osts other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." As noted above, Plaintiffs did not bring their claims unreasonably or in bad faith. Accordingly, the motion for costs is denied. See Cantor Fitzgerald v. Peaslee, 88 F.3d 152, 157 (2d Cir. 1996) (denying a motion for costs following dismissal of the action for lack of personal jurisdiction); Aquascutum of London, Inc. v. S.S. American Champion, 426 F.2d 205, 212 (2d Cir. 1970) (same).

CONCLUSION

For the foregoing reasons, Ashworth's application for entry of judgment is granted and his application for attorney's fees and costs is denied. The Clerk of the Court is directed to enter judgment in favor of Ashworth pursuant to Fed. R. Civ. P. 54(b).

Dated: November 13, 2007
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

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