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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FIGURE EIGHT HOLDINGS, LLC,

Plaintiff,

v.

DR. JAY’S, INC.; WICKED
FASHIONS, INC.; and DOES 1 through
10, inclusive,

Defendants.

Case No. CV 10-7828 R (AJWx)

The Honorable Manuel L. Real

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW RE
DEFENDANTS’ MOTION FOR
ATTORNEY’S FEES**

Courtroom: 8

Based upon the arguments and admissible evidence presented by the parties in connection with the Motion for Attorney’s Fees filed by Defendants DrJay’s.com, Inc., Fashion Studio LLC, and Wicked Fashions, Inc. (“Defendants”), the Court makes the following findings of uncontroverted facts and conclusions of law:

1 **FINDINGS OF FACTS AND CONCLUSION OF LAW**

2 1. In a civil suit for copyright infringement, the court may, in its
3 discretion, award a reasonable attorney’s fee to the prevailing party. 17 U.S.C.
4 § 505. Courts may consider numerous factors in determining whether to award
5 attorney’s fees, including but not limited to: (1) the degree of success attained; (2)
6 the non-prevailing party’s objective unreasonableness; (3) the non-prevailing
7 party’s frivolousness or motivation; and (4) the need to advance considerations of
8 compensation or deterrence. Jackson v. Axton, 25 F.3d 884, 890 (9th Cir. 1994).
9 Courts are not bound to any specific formula in applying these factors, and may
10 exercise their discretion in determining whether an award is appropriate. Fogerty
11 v. Fantasy, Inc., 510 U.S. 517, 534 (1994). Here, analysis of the various factors
12 indicates that an award of attorney’s fees is appropriate.

13 Defendants prevailed on a motion for summary judgment and are, therefore,
14 the prevailing party. See Buckhannon Board and Care Home, Inc. v. West
15 Virginia Dept. of Health and Human Resources, 532 U.S. 598, 603 (2001).
16 Defendants achieved a complete success, resulting in the dismissal of copyright
17 claims against them with prejudice, on the merits. Maljack Products, Inc. v.
18 GoodTimes Home Video Corp., 81 F.3d 881, 890 (9th Cir. 1996).

19 Plaintiff’s claim was also unreasonable because it was clear that defendant
20 was not infringing on plaintiff’s protected intellectual property due to the
21 dissimilarity of the two graphic works. Such unreasonableness is alone sufficient
22 to support an award of attorney’s fees. Entertainment Research Group v. Genesis
23 Creative Group, 122 F.3d 1211, 1229 (9th Cir. 1997).

24 While the Court does not determine whether the claims were frivolous or
25 motivated by bad faith, attorney’s fees may be awarded in absence of such factors.
26 Apple v. Microsoft, Inc., 35 F.3d 1435, 1448 (9th Cir. 1994).

27 Finally, considerations of compensation and deterrence weigh in favor of
28 granting defendants’ attorney’s fees. While a prevailing plaintiff is compensated

1 for victory through money damages or equitable remedies, prevailing defendants
2 are left having expended funds, even in defense of unmeritorious claims.
3 Assessment Technologies of Wisconsin, LLC, v. Wire Data, Inc., 361 F.3d 434,
4 436-37 (7th Cir. 2004). Thus, the Court finds that defendants are entitled to
5 reasonable attorney's fees.

6 In awarding attorney's fees in cases brought under the Copyright Act, the
7 Ninth Circuit has not mandated that the lodestar method or comparison to market
8 rates is required. Twentieth Century Fox Film Corp. v. Entertainment Distributing,
9 429 F.3d 869 (9th Cir. 2005). Courts, thus, have discretion to award actual
10 attorney's fees incurred by a prevailing party, so long as such fees are reasonably
11 incurred. Kourtis v. Cameron, 358 Fed. Appx. 863, 867 (9th Cir. 2009). Here,
12 defendants provided affidavits concerning the qualifications of their attorneys,
13 detailed billing statements, and documents containing prevailing market rates for
14 attorneys of similar skill, experience, and specialization. Defendants' actual legal
15 fees incurred appear reasonable, and there is no basis to believe they should not be
16 granted.

17 Therefore, defendants' motion for attorney's fees is granted, and defendants
18 are hereby awarded attorney's fees in the amount of \$139,610.10.

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20 Dated: November 18, 2011



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23 Honorable Manuel L. Real
United States District Judge
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