UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRISTOPHER SADOWSKI,

Plaintiff,

No. 1:22-cv-00887 (BKS/DJS)

v.

URBANSPOTLITE LLC,

Defendant.

Appearance:

For Plaintiff:
Daniel DeSouza
CopyCat Legal PLLC
3111 N. University Drive, Suite 301
Coral Springs, FL 33065

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On August 25, 2022, Plaintiff Christopher Sadowski brought this action against Defendant Urbanspotlite LLC, alleging copyright infringement pursuant to the Copyright Act of 1976. (Dkt. No. 1). Defendant has not answered the Complaint or otherwise appeared in this action. (*See* Dkt. Nos. 5, 7). Presently before the Court is Plaintiff's motion under Federal Rule of Civil Procedure 55(b) for a default judgment against Defendant. (Dkt. No. 9). Plaintiff seeks a permanent injunction, $9,000 in statutory damages, and $3,257.80 in attorneys' fees and costs. (*Id.*). For the reasons that follow, Plaintiff's motion is granted.

II. FACTS

In 2021, Plaintiff, an "award winning" and "widely published" photojournalist, created a professional photograph titled "080721nypdarmpatch24CS" (the "Work"), which depicted a New York Police Department Officer's arm patch. (Dkt. No. 1, ¶¶ 6–7, 12). Plaintiff "specializes in photo-documenting ordinary life and the human condition," and he "spends countless hours capturing hundreds of photographs and then processing [them] to ensure they meet customers' requirements." (*Id.* ¶¶ 7, 9). On December 31, 2021, Plaintiff registered the Work with the Register of Copyrights; the Work was assigned Registration No. VA 2-288-279. (*Id.* ¶ 13; *id.* at 10 (Copyright Registration)). Plaintiff serves as the licensing agent for his photographs, and licenses them for limited use by Plaintiff's customers. (*Id.* ¶ 11). Plaintiff's terms include "a limited, one-time license for use of any particular photograph by the customer only," and make clear that "all ownership remains with Plaintiff and that [his] customers are not permitted to transfer, assign, or sub-license any of Plaintiff's photographs." (*Id.*).

On April 14, 2022, Plaintiff discovered the Work on Defendant's website. (*Id.* ¶ 22). Defendant is "a media platform and event promoter" that advertises and markets its business through its website, social media, and other forms of advertising. (*Id.* ¶¶ 15–16). Defendant used the Work as the main photo associated with a blog article titled "Off Duty Cop Arrested for Beating Girlfriend" and dated March 10, 2022. (*Id.* ¶¶ 17, 20; *id.* at 20 (screenshot of Defendant's website displaying the Work)). Plaintiff has never licensed Defendant to use or display the Work, and Defendant has never contacted Plaintiff seeking permission to use or display the Work. (*Id.* ¶ 19). Plaintiff alleges, upon information and belief, that "Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, [it] simply copied the Work for its own commercial use." (*Id.* ¶ 21). Following Plaintiff's

discovery, he notified Defendant in writing of the unauthorized use but was unable to negotiate a reasonable license. (*Id.* ¶ 22).

III. DISCUSSION

A. Procedural Requirements

"Rule 55 of the Federal Rules of Civil Procedure provides a two-step process for obtaining a default judgment." *Priestley v. Headminder, Inc.*, 647 F.3d 497, 504 (2d Cir. 2011). First, under Rule 55(a), the plaintiff must obtain a clerk's entry of default. Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."); *see also* Local Rule 55.1 (requiring a party seeking a clerk's entry of default to "submit an affidavit showing that (1) the party against whom it seeks a judgment . . . is not an infant, in the military, or an incompetent person (2) a party against whom it seeks a judgment for affirmative relief has failed to plead or otherwise defend the action . . . and (3) it has properly served the pleading to which the opposing party has not responded."). Second, under Rule 55(b)(2), the plaintiff must "apply to the court for entry of a default judgment." *Priestley*, 647 F.3d at 505; *see also* Local Rule 55.2(b) ("A party shall accompany a motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), with a clerk's certificate of entry of default . . . a proposed form of default judgment, and a copy of the pleading to which no response has been made.").

Here, Plaintiff has complied with the procedural requirements for obtaining a default judgment. On September 27, 2022, Plaintiff requested a clerk's entry of default under Rule 55(a) and, as required by Local Rule 55.1, Plaintiff submitted an affidavit affirming that Urbanspotlite LLC (1) is not an infant, incompetent, or an active duty member of the United States Armed Forces; (2) was properly served; and (3) has defaulted in this action. (Dkt. No. 6, ¶¶ 1–4).

Plaintiff properly served Defendant in accordance with Fed. R. Civ. P. 4(h)(1)(B) by serving the Complaint on an authorized agent for Defendant. (Dkt. No. 5). On October 7, 2022, Plaintiff received a clerk's entry of default against the Defendant. (Dkt. No. 7).

On November 7, 2022, Plaintiff moved for default judgment under Fed. R. Civ. P. 55(b)(2) and Local Rule 55.2(b). (Dkt. No. 9). Plaintiff served the motion on Defendant by mail, (Dkt. No. 9, at 14–15), and Defendant has filed no response. As the procedural requirements for entry of default judgment are met, the Court will address liability.

B. Liability

By failing to answer the Complaint or oppose this motion, Defendant is deemed to have admitted the factual allegations in the Complaint. *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992) ("[A] party's default is deemed to constitute a concession of all well pleaded allegations of liability."); *Rolex Watch, U.S.A., Inc. v. Pharel*, No. 09-cv-4810, 2011 WL 1131401, at *2, 2011 U.S. Dist. LEXIS 32249, at *5–6 (E.D.N.Y. Mar. 11, 2011) ("In considering a motion for default judgment, the court will treat the well-pleaded factual allegations of the complaint as true, and the court will then analyze those facts for their sufficiency to state a claim.").

"The decision whether to enter default judgment is committed to the district court's discretion." *Greathouse v. JHS Sec. In.*, 784 F.3d 105, 116 (2d Cir. 2015). Even where a defendant has admitted all well-pleaded facts in the complaint by virtue of default, a district court "need not agree that the alleged facts constitute a valid cause of action," and may decline to enter a default judgment on that ground. *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011) (quoting *Au Bon Pain Corp. v. Artect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981)). Indeed, the Second Circuit has "suggested that, prior to entering default judgment, a district court is 'required to determine whether the [plaintiff's] allegations establish [the

defendant's] liability as a matter of law.'" *Id.* (quoting *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009)).

Based on the allegations in the Complaint, Defendant is liable for copyright infringement pursuant to the Copyright Act. "The Copyright Act of 1976 grants copyright owners the exclusive right to reproduce their copyrighted work, to prepare derivatives of the work, and to sell copies of the work." *Feingold v. RageOn, Inc.*, 472 F. Supp. 3d 94, 98 (S.D.N.Y. 2020) (citations omitted); *see* 17 U.S.C. §§ 106–22. To establish copyright infringement, a plaintiff must prove two elements: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Arista Records LLC v. Doe 3*, 604 F.3d 110, 117 (2d Cir. 2010) (quoting *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991)).

With regard to the first element, a "certificate of registration" made within five years after first publication of a work "constitute[s] prima facie evidence of the validity of the copyright." 17 U.S.C. § 410(c). Once a party proffers a certificate of copyright registration, "the party challenging the validity of the copyright has the burden to prove the contrary." *Stern v. Lavender*, 319 F. Supp. 3d 650, 669 (S.D.N.Y. 2018) (quoting *Hamil Am. Inc. v. GFI*, 193 F.3d 92, 98 (2d Cir. 1999)). Here, Plaintiff alleges that he created the Work in 2021 and registered it "with the Register of Copyrights on December 31, 2021," (Dkt. No. 1, ¶ 13), and attaches a copy of the copyright registration to his Complaint and motion for default judgment, (Dkt. No. 1, at 10–18; Dkt. No. 9-1). Thus, Plaintiff established ownership of a valid copyright. *See Kelly Toys Holdings, LLC v. alialialiLL Store*, 606 F. Supp. 3d 32, 50–51 (S.D.N.Y. 2022) (finding that the first element of copyright infringement was met on a default judgment motion where the plaintiff "allege[d] that it [was] the owner of U.S. Copyright Registration numbers covering" the works at

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.