IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PYROTECHNICS MANAGEMENT, INC.,   )
)
            Plaintiff,   )   Civil Action No. 2:19-cv-00893
)
      v.   )
)
XFX PYROTECHNICS LLC and fireTEK,   )
)
            Defendants.   )

OPINION

Robert J. Colville, United States District Judge

On July 24, 2019, Plaintiff Pyrotechnics Management, Inc. ("Plaintiff" or

"Pyrotechnics") filed a Complaint (ECF No. 1, hereinafter "Compl.") against fireTEK and XFX

Pyrotechnics LLC ("XFX"). The Complaint alleges copyright infringement (Count I), tortious

interference with prospective contractual relations (Count II), and unfair competition (Count III)

arising out of Defendants' alleged unauthorized copying, distribution and sale of

command/control protocols in which Pyrotechnics owns the copyright; and arising out of the

unauthorized distribution and sale of fireTEK products that incorporate or reproduce such

command/control protocols.

This Court has original jurisdiction under 17 U.S.C. § 104 *et seq.* and 28 U.S.C.

§§ 1331 and 1338.

On May 28, 2020, Plaintiff filed a Motion for Preliminary Injunction with Brief in

Support (ECF Nos. 55, 56), to which both Defendants have responded. (ECF Nos. 59, 60, 67).

The Court entered a scheduling order setting forth deadlines for the filings of proposed findings

of fact and conclusions of law, as well as witness lists, exhibit lists, and stipulations. (ECF No.

66). On August 19, 2020, the Court held an evidentiary hearing on the motion for preliminary injunction. Thereafter, the parties filed post-hearing proposed findings of fact and conclusions of law. An official transcript of the hearing was prepared. (ECF No. 106). On February 18, 2021, the Court heard closing arguments. (ECF Nos. 116, 117).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with Federal Rule of Civil Procedure 65, and based upon the pleadings, record papers, affidavits, depositions, exhibits, stipulations of counsel and the evidence presented at the hearing on August 19, 2020, as well as arguments of counsel, we make the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A.   Procedural History

1.   Pyrotechnics filed the Complaint in this matter on July 24, 2019, alleging claims of copyright infringement, tortious interference with prospective contractual relations, and unfair competition against Defendants fireTEK and XFX. (ECF No. 1.)

2.   Plaintiff filed a motion seeking to enjoin Defendants from further infringement of Plaintiff's copyrighted work simultaneously with its Complaint. (ECF No. 7.)

3.   Defendant XFX answered the Complaint on September 9, 2019, whereas Defendant fireTEK filed a motion to dismiss the Complaint on October 15, 2019. (ECF Nos. 28, 34.)

4.   Plaintiff's Motion for Preliminary Injunction was administratively denied without prejudice on February 3, 2020, pending resolution of the fireTEK's Motion to Dismiss. (ECF No. 43.)

5.   On April 30, 2020, the Court denied fireTEK's Motion to Dismiss the Complaint. (ECF No. 49.)

6.   fireTEK answered the Complaint on May 13, 2020. (ECF No. 50.)

7.   Pyrotechnics then refiled the instant Motion for Preliminary Injunction on May 28, 2020. (ECF No. 55.)

8.   Defendants XFX and fireTEK filed briefs in opposition to Plaintiff's Motion for Preliminary Injunction on June 1, 2020 and June 11, 2020, respectively. (ECF No. 60, 67.)

9.   The Court held a hearing on the Motion for Preliminary Injunction on August 19, 2020 (ECF No. 89); supplemental briefing and transcripts were filed, and final argument was heard.

B.   Factual Background

1.   The Parties

10.   Plaintiff Pyrotechnics is a Pennsylvania corporation with a principal place of business at 863 Benner Pike Ste. 100, State College, PA 16801-7315.   Its owner is Daniel Barker.

11.   Pyrotechnics manufactures digital pyrotechnics firing systems and related products that are used to create fireworks displays. Pyrotechnics sells such systems and products worldwide, including in the Western District of Pennsylvania. Many of those systems and products incorporate the command/control protocols that Pyrotechnics authored and for which Pyrotechnics is sole owner of all copyrights.

12.   Defendant fireTEK is a Romanian corporation with a place of business at Strada Silvestru 24A, Iaşi, Romania.

13.   Defendant fireTEK is owned by Laurian Antoci.

14.   fireTEK sells digital pyrotechnic firing equipment and related products worldwide, including in the United States.

15.   fireTEK is a competitor of Pyrotechnics in the distribution and sale of digital pyrotechnics firing systems and related products.

16.   Defendant XFX is a Delaware limited liability company with a place of business at 44 Ridgewood Drive, McDonald, Pennsylvania 15057.

17.   XFX distributes and offers for sale fireTEK's digital pyrotechnics firing systems and related products in the United States.

2.   *The Copyrighted Protocol*

18.   Plaintiff Pyrotechnics has been a world leader in the manufacture and sale of digital pyrotechnic firing systems for nearly twenty-five years.

19.   Pyrotechnics' digital pyrotechnic firing systems and related products are sold under the brand name "FireOne" (herein "the FireOne Products"). FireOne systems and products are also sometimes referred to as "F1" systems and products.

20.   The FireOne brand is used in connection with a variety of digital pyrotechnic firing systems and related products. Certain FireOne systems include FireOne field modules which are used for remote ignition of pyrotechnic products such as fireworks.

21.   FireOne field modules are activated through the use of FireOne's command/control protocol (the "Protocol"). The FireOne field modules use the Protocol to communicate with a FireOne control panel.

22.   In response to commands, the FireOne control panel uses the Protocol to communicate to one or more FireOne field modules so as to cause the FireOne field modules to execute certain predefined functions. Such functions include, but are not limited to, causing the

FireOne field modules to ignite pyrotechnic products that are electrically connected to the

FireOne field modules.

23.   The Protocol enables the operator to use the FireOne control panel and FireOne

field modules to execute fireworks displays in which fireworks are ignited in a particular order

and at specific times.

24.   Pyrotechnics has invested substantial time and money to develop the FireOne

system in which the Protocol is an integral and essential part.

25.   The Protocol was created by Pyrotechnics' engineers Daniel Barker, Elwood

Seifert, and Robert Ceschini in 1993. (Hr. Test. of Daniel Barker at 73-74).

26.   The Protocol was first published by Pyrotechnics embedded inside hardware in

1995.

27.   The Protocol includes command codes that are not the expression of the idea of

controlling pyrotechnics displays but are the author's original expression. (Hr. Test. of Daniel

Barker at 25-26, 31-32, 76, 82; Hr. Test. of Robert Capuro at 106-07)[1]; *see also* Conclusions of

Law, *infra*.

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[1] As Pyrotechnic's owner Daniel Barker explained, "It's actually the unique communications code that is expressed by the control panel and is on this wire that goes to the field modules. It is, in fact, the message that flows from one device to another to allow you to control a very complex [sy]stem. . . . In the development of the system and the communications code that we used, we were concerned about having an extremely secure, extremely safe system. So we used a lot of existing types of ideas that have been out there for years and years, and we modified them significantly to make this system unique so we wouldn't have interference, we wouldn't have problems with broadcasts from radio and TV and the cellular communications and that type of thing. So the two frequencies that we chose were specifically chosen as nonstandard frequencies to be out of the band paths of typical devices that are out around the world. . . . This is a very offbeat, very strange frequency standard that we devised specifically for safety. This is information that was derived specifically to empower our system. And up until the time that we placed it with the Copyright Office, it was not something that you could find anywhere. So the only way you could get this information would be to use some sophisticated equipment to look at our hardware while it's operating and decode it and, therefore, you could derive the information. . . . The only system I know of in the world that would use this command structure would be FireOne, other than the attempt by fireTEK to pirate the information." (Transcript, ECF No. 106 at 25-26, 31-32). He continued to explain that the purpose of the code was to control Pyrotechnics proprietary hardware, specifically for the purpose to control its field modules. All of the codes were not included in the Copyright registration because, he posed, "Can you imagine if we sent them four or five billion pages? No. That would be nonsensical. What we sent them was the base code. And it said, look, here is how you talk

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