

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

John Van Stry,

Plaintiff,

v.

Travis Robert McCrea,

Defendant.

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Case No. 2:19-cv-00104-WCB

[PROPOSED] ORDER RE PLAINTIFF’S
CORRECTED MOTION FOR FINAL SUMMARY
JUDGMENT

Plaintiff Jon Van Stry brings this infringement action against Defendant Travis Robert McCrea. Currently pending before the Court is Plaintiff’s Corrected Motion for Final Summary Judgment and Permanent Injunction. [Dkt. 50.] Having considered the pleadings, affidavits and memorandum, Plaintiffs’ Motion for Entry of Final Summary Judgment and Permanent Injunction is GRANTED.

Infringement

The Court finds that in light of the undisputed facts set forth in support of the motion for summary judgment, Defendant Mr. Travis Robert McCrea is found to have knowingly and intentionally directly infringed Plaintiff Mr. John Van Stry’s exclusive copyrights in the twelve works registered listed in the Complaint. [See Dkt. No. 1–1]. Mr. McCrea also knowingly and intentionally committed copyright infringement by being contributorily and vicariously responsible for the copyright infringement of the same works by Mr. McCrea’s users of his eBook.Bike website. Mr. McCrea’s infringement was willful.

Damages

Pursuant to 17 U.S.C. §504(c)(1), the Court awards Mr. Van Stry \$15,000 per each of the twelve works-at-issue, consisting of \$3,800 in compensatory damages and, due to Mr. McCrea's willful infringement, \$11,200 in punitive damages, for a total of \$180,000.

Injunction

Pursuant to Federal Rule of Civil Procedure 65(d), 28 U.S.C. § 165(a), 17 U.S.C. § 502(a), and this Court's inherent equitable powers, Defendant and his agents, servants, employees, attorneys, and all persons in active concert and participation with him, are hereby PERMANENTLY RESTRAINED AND ENJOINED from infringing, or causing, enabling, facilitating, encouraging, promoting, contributing to, inducing or participating in the infringement of Plaintiff's copyrights protected by the Copyright Act, whether now in existence or hereafter created.

This Court shall retain jurisdiction over the parties of the subject matter of this litigation for the purpose of interpretation, enforcement or modification of this Permanent Injunction.

Costs

Plaintiff shall recover from Defendant full costs in this action, including reasonable attorneys' fees pursuant to 17 U.S.C. § 505. Within 30 days from the date of this Order, Mr. Van Stry shall submit an affidavit detailing the reasonable costs in this matter, including attorney's fees, but excluding the costs already granted as a result of Mr. McCrea's failure to comply with the Court's order to provide discovery responses. [Dkt. No. 47 at 14.]

Post-Judgement Interest

Pursuant to 28 U.S.C. § 1961, Plaintiff is entitled to,¹² and therefore GRANTED, post-judgment interest as of the date the Court enters this Order.

Affirmative Defenses

The Court finds that in light of the undisputed facts set forth in support of the motion for summary judgment, the record demonstrates an absence of a genuine issue of material fact that (1) Mr. McCrea failed to register a designated agent with the U.S. Copyright Office, so is not entitled to the affirmative defense provided for service providers as provided by the DMCA; and (2) Mr. McCrea is not exempt from copyright due to his religion, because at least there is no substantial burden under the strict constitutional scrutiny standard, no statutory exemption, and Mr. McCrea has not shown that his first amendment right to practice his religion trumps the constitutionally provided for copyright laws enacted by congress.

¹² See *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988).