

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GRADUATE MANAGEMENT ADMISSION)
COUNCIL,)
)
Plaintiff,)
)
v.)
)
LEI SHI,)
)
Defendant.)

No. 1:07cv605 (LMB/BRP)

ORDER

On January 7, 2008, the Court awarded plaintiff a default judgment of \$2.35 million, plus costs and reasonable attorney's fees, and injunctive relief. Plaintiff has filed a Motion for Reconsideration in which it argues that the damage award is insufficient and that the injunction is inadequate.

Motions to reconsider are strongly disfavored in this district. They are appropriate only where the Court has "patently misunderstood a party" or where there has been "a controlling or significant change in the law or facts since the submission of the issue to the Court." Natural Resources Defense Council v. U.S. Environmental Protection Agency, 806 F. Supp. 1263, 1266 n.3 (E.D. Va. 1992). Neither event has occurred in this civil action.

I. Copyright Infringement

Plaintiff argues that the Court incorrectly viewed plaintiff's failure to seek immediate equitable relief as an indication that defendant's conduct did not present a serious

threat to the integrity of the GMAT examination process. To explain its delay, plaintiff documents a decision by the FBI to initiate a covert criminal investigation of the <www.scoretop.com> website in March 2005 and its accompanying request that plaintiff not "take any action that might prompt the operators of the Scoretop website to destroy or transfer evidence." Burgoyne Decl. ¶ 8.

Even accepting that part of the delay was for law enforcement purposes, plaintiff filed its complaint in June 2007, nearly nine months after the FBI's criminal investigation became public. That delay undercuts plaintiff's argument that the defendant poses an imminent threat to the integrity of GMAT exams.

Plaintiff also argues that an award larger than \$2.35 million is justified because the defendant has distributed a large number of secure GMAT test questions.¹ See Mem. in Support [29] at 4 ("And the number of infringed secure questions here was not small. GMAC has pulled more than 200 items from its pool of active test questions"). The Court will not consider this argument, which is essentially a new allegation. Of the 494 infringing questions distributed by the defendant, plaintiff's

¹ To the extent that plaintiff argues that the damage award was based on an erroneous characterization of Graduate Mgmt. Admission Council v. Raju, 267 F. Supp. 2d 505 (E.D. Va. 2003), that argument does not change the underlying basis for the Court's conclusion as to an appropriate award of damages.

earlier pleadings clearly indicated that the number of questions in the "live" pool was small relative to the number of retired questions. See Plaintiff's Supp. Mem. [21] at 1-2 ("Most of the infringed GMAT questions were non-secure questions that are no longer in the pool of 'live' GMAT questions that appear on actual administrations of the GMAT exam.") (emphasis added). Plaintiff may not now supplement or refine its earlier position with facts that were available at the time of its motion for default judgment.

The Court has wide discretion in fixing the amount of statutory damages in a copyright infringement case. See 17 U.S.C. § 504(c)(1), (2); Lyons Partnership, L.P. v. Morris Costumes, Inc., 243 F.3d 789, 799 (4th Cir. 2001). Rather than blindly awarding the statutory maximum in every case of willful infringement, an assessment of damages should carefully consider the nature of the conduct at issue, any profits acquired by the defendant, the resulting damage to plaintiff's copyrights and its overall business, and the extent to which an award of injunctive relief will remedy some of that damage. Recognizing the total number of infringed questions at issue, the average cost incurred by GMAC to develop each question, the amount of revenue collected by the defendant, and the lack of irreparable harm to the GMAT examination process as a whole, the Court concludes that a \$2.35 million judgment is more than sufficient to punish the

defendant's illegal conduct and adequately deter him and other potential infringers.

II. Tortious Interference

Plaintiff also objects to the Court's conclusions with respect to its tortious interference claim. The Court finds no basis to disturb its prior ruling on the issue, as plaintiff's arguments are mere disagreements with the Court's assessment of the adequacy of plaintiff's allegations. Furthermore, plaintiff's motion for reconsideration does not contest the Court's conclusion that an award of damages on this count would be duplicative of the award of statutory damages.

III. Injunction

Plaintiff argues that the Court misunderstood its original request for relief - a directive that third-party internet service providers permit GMAC prompt access to the content of the <www.scoretop.com> website and remove all content identified in writing by GMAC as infringing on its copyrights. This is not correct. The magistrate judge did not include such language in his report and recommendation. Plaintiff failed to object to the omission of that language, and has waived this issue. Moreover, even if an objection had been preserved, the existing injunction adequately protects plaintiff's rights.


For these reasons, it is hereby

ORDERED that plaintiff's Motion for Reconsideration [28] be

and is DENIED.

The Clerk is directed to forward copies of this Order to counsel of record and, by certified mail return receipt requested, to the defendant pro se at the address listed in the case file.

Entered this ¹²12 day of February, 2008.



Leonie M. Brinkema
United States District Judge

Alexandria, Virginia