

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:07-bk-03080-KSJ
Chapter 7

JEFFREY WASZKIEWICZ,
CYNTHIA DIANE GALATOVICH,

Debtors.

SYMANTEC CORPORATION,

Plaintiff,

vs.

Adversary No. 6:07-ap-169

JEFFREY WASZKIEWICZ,
CYNTHIA DIANE GALATOVICH,

Defendants.

FINAL JUDGMENT

This adversary proceeding came before the Court on January 14, 2009, for trial on plaintiff Symantec Corporation's ("Symantec") complaint against defendants Jeffrey Waszkiewicz and Cynthia Diane Galatovich. After considering the testimony, the exhibits, the pleadings, including the Order on Symantec's Motion for Summary Judgment (Doc. No. 47), and the arguments of counsel, and consistent with the findings of fact and conclusions of law stated orally and recorded in open court pursuant to F.R.B.P. 7052, it is

ORDERED:

1. Defendant Cynthia Galatovich is dismissed as a defendant in this adversary proceeding.
2. Judgment is entered in favor of the plaintiff, Symantec, and against the defendant, Jeffrey Waszkiewicz, in the amount of \$27,750, pursuant to 15 U.S.C. § 1117(c)(2) and 17 U.S.C. § 504(c)(2), for defendant Jeffrey Waszkiewicz's infringement of the eleven Symantec trademarks and five Symantec copyrights at issue. In determining this amount of damages, the Court makes the following additional findings of fact and conclusions of law:
 - a. Defendant Jeffrey Waszkiewicz knowingly purchased and sold counterfeit Symantec software so as to support a finding that his

infringement was willful and malicious.

- b. Under the Lanham Act, the statutory minimum and maximum for non-willful trademark infringement are \$500 and \$100,000 per mark. 15 U.S.C. § 1117(c)(1).¹ A court may nevertheless award up to \$1,000,000 per mark if the plaintiff proves that the infringement was willful. 15 U.S.C. § 1117(c)(2).
- c. Under the Copyright Act, the statutory minimum and maximum for non-willful copyright infringement are \$750 and \$30,000 per mark. 17 U.S.C. § 504(c)(1). A court may nevertheless award up to \$150,000 per mark if the plaintiff proves that the infringement was willful. 17 U.S.C. § 504(c)(2).
- d. Trial courts have wide discretion in awarding statutory damages. Cable/Home Communication Corp. v. Network Prod., Inc., 902 F.2d 829, 852 (11th Cir. 1990). The trademark statute "does not provide guidelines for courts to use in determining an appropriate award," Louis Vuitton Malletier and Oakley, Inc. v. Veit, 211 F.Supp.2d 567, 583 (E.D. Pa. 2002), as it is only limited by what "the court considers just." 15 U.S.C. § 1117(c).
- e. Defendant Waszkiewicz ran a relatively small business in which he sold both legitimate and counterfeit product via the internet. The record lacks any specific

¹15 U.S.C. § 1117(c)(1) and (2) were amended on October 13, 2008, to increase the minimum and maximum statutory damage amounts available under the Lanham Act. Specifically, for non-willful trademark infringement, the statutory minimum and maximum are now \$1,000 and \$200,000 per mark, and for willful trademark infringement, the maximum is now \$2,000,000 per mark. All of defendant Waszkiewicz's infringing actions occurred before the adoption of this amendment and thus Symantec's statutory damages likely are subject to the former version of the statute. Statutes are presumed to be prospective in their operation unless expressly made retrospective. Jackson v. People's Republic of China, 794 F.2d 1490, 1497 (11th Cir. 1986), cert. denied, 480 U.S. 917 (1987); see also, U.S. v. Bekhrad, 672 F.Supp. 1529 (S.D. Iowa 1987) (holding that a recent amendment increasing penalties under False Claims Act could not be applied retrospectively). However, whether the older or newer version of the statute is irrelevant insofar as the awarded statutory damages exceed the statutory minimums under both versions.

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showing of actual profits made by Waszkiewicz or actual revenues lost by Symantec resulting from the infringing activity. Symantec primarily asserts that the willful and continuing nature of defendant Waszkiewicz's activities alone supports the imposition of maximum statutory damages, simply for their deterrent effect.

- f. Given the circumstances, an award of the minimum statutory damage amount per infringement times a multiplier of three is appropriate. Such an award will deter future infringements by defendant Waszkiewicz without being overly punitive. Treble damages are a common means to accomplish this objective in other types of damage awards, *e.g.*, civil remedies under the R.I.C.O. Act, 18 U.S.C. § 1964(c), and Florida's civil theft statute, F.S. § 772.11(1).
 - g. Defendant Waszkiewicz infringed eleven Symantec trademarks; the statutory minimum is \$500 for each infringement times a multiplier of three, for a total of \$16,500. Defendant Waszkiewicz infringed five Symantec copyrights; the statutory minimum is \$750 for each infringement times a multiplier of three, for a total of \$11,250. Added together, the two awards equal \$27,750.
3. Due to the willful and malicious nature of the infringement at issue, such amount owed by defendant Jeffrey Waszkiewicz to Symantec shall be nondischargeable pursuant to Section 523(a)(6) of the Bankruptcy Code.

DONE AND ORDERED on March 16, 2009.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

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