

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

RICHARD N. BELL,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CAMERON TAYLOR,)	
TAYLOR COMPUTER SOLUTIONS,)	Case No. 1:13-cv-00798-TWP-DKL
INSURANCE CONCEPTS,)	
FRED O'BRIEN,)	
SHANNA CHEATAM,)	
)	
Defendants.)	

ENTRY ON APPEAL OF MAGISTRATE JUDGE'S DECISION

This matter is before the Court on Plaintiff Richard N. Bell's ("Mr. Bell") Appeal of Magistrate Judge Decision (Dkt. 47) denying his Second Motion to Compel (Dkt. 46). For the reasons set forth below, Mr. Bell's appeal is **DENIED**.

I. BACKGROUND

Mr. Bell brought this copyright infringement action against Defendants, who allegedly used Mr. Bell's copyrighted photograph of the Indianapolis skyline (the "Indianapolis photo") without license or permission. Pertinent to the instant motion, Mr. Bell alleges the Defendants posted the Indianapolis photo on websites intended to advertise and increase business. Thus, Mr. Bell sought tax returns and business receipts in discovery to determine if gross revenues had increased during the time the Indianapolis photo was used by Defendants. Defendants individually objected to the production of the returns and receipts, and Mr. Bell filed a Second Motion to Compel production of the documents. The Magistrate Judge denied this motion, finding that the request for 11 years of tax returns was overbroad, and that the request was based

on bare allegation and speculation. Dkt. 46 at 8. Further, the Magistrate Judge noted that the websites at issue advertised services unrelated to the Indianapolis photo and there was no allegation that any of the Defendants sold the Indianapolis photo.

II. LEGAL STANDARD

A district judge may refer a nondispositive matter to a magistrate judge to decide and hear. Fed. R. Civ. P. 72(a). A party may file objections to a magistrate judge's written order, and the "district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). A magistrate judge is given broad discretion in controlling discovery. *Jones v. City of Elkhart*, 737 F.3d 1107, 1116 (7th Cir. 2013).

III. DISCUSSION

Mr. Bell argues that the Magistrate Judge's decision is clearly erroneous because it prevents him from gathering necessary evidence required under 17 U.S.C. § 504(b). Specifically, Mr. Bell contends that he should be allowed to review Defendants' 2000-2011 tax returns to determine Defendants' gross revenues during the use of the Indianapolis photo, and that it was erroneous to rule that he will be unable to recover profits. The Court disagrees.

The Magistrate Judge found that Mr. Bell had not adequately supported his request for the tax return information because he could not establish a causal nexus. Further, the Magistrate Judge found the connection between Defendants' profits and the Indianapolis photo was pure speculation. The Court agrees and finds that the Magistrate Judge was within its broad discretion in making this ruling. Mr. Bell's citation to cases with indirect profits is unavailing. Unlike, for example, *Cream Records, Inc. v. Joseph Schlitz Brewing Co.*, 754 F.2d 826, 828-29 (9th Cir. 1985), in which profits gained from the improper use of plaintiff's song in a commercial to sell

beverages, Mr. Bell did not provide the Magistrate Judge with allegations beyond mere speculation that the Indianapolis photo was utilized to increase sales and profits of the Defendants. Finally, the Court finds that in addition to the Magistrate Judge's findings on the causal nexus, the Magistrate Judge's alternate finding that the request for 11 years of tax returns is overbroad is also not clearly erroneous and is an independent basis for denial of the Second Motion to Compel. The Magistrate Judge's decision is not clearly erroneous.

IV. CONCLUSION

Accordingly, Mr. Bell's Appeal of the Magistrate Judge's Decision (Dkt. 47) is

DENIED.

SO ORDERED.

Date: 06/09/2014



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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