



Provided by:
Overhauser Law Offices LLC
www.iniplaw.org
www.overhauser.com

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

REDWALL LIVE CORPORATION,)	
)	
Plaintiff,)	
)	CAUSE NO. 1:13-cv-01849
vs.)	
)	
ESG SECURITY, INC.)	
)	
Defendant.)	

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff Redwall Live Corporation (“Redwall”), by its undersigned counsel and for its complaint against defendant ESG Security, Inc. (“ESG”), alleges as follows:

NATURE OF THE CASE

1. This is an action seeking damages and injunctive relief for copyright infringement, breach of contract, and unjust enrichment.

JURISDICTION AND VENUE

2. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, namely 17 U.S.C. § 101 et seq. (the “Copyright Act”). This Court has supplemental jurisdiction over Redwall’s state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over ESG, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that ESG is headquartered and does business in this District, and the acts of infringement complained of herein occurred in this District.

THE PARTIES

5. Redwall is an Indiana corporation organized and existing under the laws of the state of Indiana, and has a principal place of business at 47 South Meridian Street, Suite 410, Indianapolis, IN 46204. Redwall is the exclusive holder of the relevant rights with respect to the copyrighted creative work that is the subject of this Complaint.

6. ESG is an Indiana corporation organized and existing under the laws of the state of Indiana, and has a principal place of business at 1060 North Capitol Avenue, Suite E-210, Indianapolis, IN 46204. ESG is an Indiana company that provides security services and professional staff in the entertainment and hospitality industries.

FACTS

7. Redwall is a consulting and design services firm engaged in the business of strategic branding and advertising. Its services include, but are not limited to, developing a clear message, a unique visual image, and developing cutting edge brand collateral for its clients.

8. On or around June of 2012, ESG engaged Redwall to revamp and recreate its brand. To that end, Redwall created a comprehensive design plan for ESG.

9. The comprehensive design plan for ESG was tailored to provide a five (5) month phased implementation of services, and service installments were to be billed monthly with payment terms "paid in advance". The quoted price of the comprehensive design plan was \$31,500.00.

10. In accordance with the comprehensive design plan, ESG made a brand strategy initial down payment in the amount of \$6,500.00 in July of 2012.

11. As part of the comprehensive design plan, Redwall created a new logo design for ESG (the "Design") to be utilized on ESG's business cards, letterhead, brochures, and on the company website. At a minimum and notwithstanding any of the other provisions, the comprehensive design plan (the "Agreement") required that ESG's business cards and letterhead be printed by Redwall, and provided to ESG upon request.

12. On or around October of 2012, Redwall completed the new logo Design to ESG's satisfaction. A copy of the logo Design is attached hereto as Exhibit A.

13. On or around October 10, 2012, Redwall presented ESG with the completed Design and prototypes for business cards, stationary, and envelopes to be utilized by ESG, and produced by Redwall, as agreed upon by both parties.

14. On or around May 16, 2013, Redwall registered the Design with the United States Copyright Office, and a Certificate of Copyright Registration issued by the Register of Copyrights under Registration No. VA 1-874-872. A copy of the Copyright Registration for the Design is attached hereto as Exhibit B.

15. Redwall is, and at all relevant times has been, the copyright owner of the logo design that is the subject of this Complaint.

16. Despite Redwall's delivery of services as agreed upon by Redwall and ESG, ESG has failed to submit the remaining payments for the work of Redwall. As of October 3, 2012, and continuing up to and until at least the date of this Complaint, a principal balance of \$12, 543.97 remains outstanding and unpaid.

17. ESG, despite having failed to make the remaining payments due under the comprehensive design plan and without the permission or consent of Redwall, has used and continues to use the copyrighted Design of Redwall on a variety of items including, but not limited to, its website and traffic barricades.

**COUNT I
COPYRIGHT INFRINGEMENT**

18. Redwall re-alleges and incorporates by references paragraphs 1-17 of this Complaint as if fully set forth herein.

19. At the request of ESG, Redwall commissioned the creation of a logo Design, developed through the creative selection, arrangement and combination of literal, visual and graphic elements and configurations that, when joined together, create a distinct, unique and original Design.

20. Redwall's Design constitutes an original work of authorship and is copyrightable subject matter fixed in a tangible medium of expression under the copyright laws of the United States. At no time has the Design been dedicated to the public, nor has it fallen into the public domain.

21. Redwall has been and still is, the sole and exclusive owner of all rights, title, and interest in and to the copyrighted Design logo, including, the literary, textual, and graphic materials therein. Redwall has never assigned, licensed, or otherwise transferred any of these rights, nor has Redwall authorized or given permission to ESG to copy, display, use, or reproduce the Design outside of the uses permitted by Redwall and outlined in their Agreement.

22. ESG has willfully infringed Redwall's exclusive rights for reproduction and distribution of copyrighted material by utilizing the Design created and owned by Redwall

and/or preparing, reproducing, distributing, and/or displaying the infringing work without Redwall's permission, license, consent, or authorization, and ESG has done so with knowledge of Redwall's rights in the copyrighted design.

23. Without the consent of Redwall, and in disregard of Redwall's rights, ESG has infringed and continues to infringe upon Redwall's above mentioned copyright within this Judicial District by using the copyrighted logo Design on unauthorized items including, but not limited to, its website and traffic barricades.

24. ESG's acts of infringement are willful, intentional, purposeful, in disregard of and with indifference to Redwall's rights.

25. ESG has obtained gains, profits, and advantages as a result of their infringing acts as hereinabove alleged. Redwall is presently unable to ascertain the full extent of the gains, profits and advantages ESG has obtained by reason of its aforesaid acts of copyright infringement.

26. ESG is liable to Redwall for actual damages incurred as a result of the aforesaid infringements and any additional profits of ESG attributable to such infringement.

27. As a result of ESG's infringement of Redwall's copyrighted Design and exclusive rights, Redwall is entitled to statutory damages pursuant to 17 U.S.C. § 504(c).

28. The conduct of ESG is causing and, unless preliminarily and permanently enjoined and restrained by this Court, will continue to cause Redwall great and irreparable injury that cannot fully be compensated or measured through money damages. Redwall has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Redwall is entitled to preliminary and final injunctive relief prohibiting ESG from further infringing Redwall's copyrighted logo Design and an order enjoining ESG from using any materials that contain infringing material.

**COUNT II
BREACH OF CONTRACT**

29. Redwall re-alleges and incorporates by references paragraphs 1-28 of this Complaint as if fully set forth herein.

30. ESG entered into an Agreement with Redwall for Redwall to provide services that included, but are not limited to, visual identity (including logo Design), message, complete web development, branding, and print collateral and print standards (which included purchasing business cards, letterhead, and brochures featuring the copyrighted Design directly from Redwall).

31. Redwall developed and provided ESG with a logo Design pursuant to this agreement.

32. Upon information and belief, ESG accepted and has used the logo Design provided by Redwall to promote its business known as ESG Security, but breached its contract with Redwall by failing to comply with its obligation to render payment for services provided in accordance with the terms and conditions of the Agreement, and ESG failed to purchase all print collateral and standards directly from Redwall.

33. Redwall has been damaged by nonpayment of ESG for services rendered. As of October 30, 2013, a principal balance of \$12, 543.97 remains outstanding and unpaid.

34. Redwall has suffered additional damages by nature of ESG failing to purchase all print collateral and standards from Redwall.

**COUNT III
UNJUST ENRICHMENT**

35. Redwall re-alleges and incorporates by references paragraphs 1-34 of this Complaint as if fully set forth herein.

36. Redwall conferred a benefit upon ESG by entrusting it with the copyrighted Design, which it unjustly used for its own self-serving purposes without compensating Redwall. Redwall did not confer this benefit officiously or gratuitously.

37. ESG accepted and unjustly retained the benefits of the Design without compensating Redwall for their time and labor in creating the Design.

38. By its conduct, including but not limited to that which is described above, ESG has been and will be unjustly enriched by the amount of revenues obtained as a result of the infringement of Redwall's copyright.

39. To prevent its unjust enrichment, equity demands that ESG compensate Redwall for its time and labor in creating the Design, pay Redwall for its' use of the Design and pay restitution for the value of the benefits that it unjustly acquired and retained in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Redwall respectfully demands judgment against ESG as follows:

1. That judgment be entered in favor of Redwall, and against ESG, finding that ESG committed copyright infringement, breached their contractual obligations to pay for services rendered pursuant to an agreement between the parties, and were unjustly enriched by such actions;

2. That ESG, its officers, directors, shareholders, principals, agents, servants, employees, attorneys and related companies, and all persons in active concert or participation with one or more of them, be preliminarily and permanently enjoined and restrained from using the logo Design, or any logo or design that is confusingly similar thereto.

3. That ESG be required to pay to Redwall such damages as Redwall has sustained as a consequence of ESG's infringement of Redwall's copyrights and to account for:
 - i. all gains, profits, and advantages derived by ESG from its infringement of Redwall's copyright or such damages as the Court deems proper within the provisions of the copyright statutes, but not less than the amount of statutory damages; and
 - ii. That ESG be required to deliver up to be impounded during the pendency of this action all products in its possession or under its control containing the copyrighted Design; and
 - iii. That ESG be required to deliver up to be impounded during the pendency of this action all products in its possession or under its control containing the copyrighted Design.

4. That ESG be required to pay to Redwall such damages as Redwall has sustained as a consequence of ESG's breach of contract and unjust enrichment.

5. That ESG be required to pay Redwall's costs of this action together with reasonable attorneys' fees and disbursements.

6. That Redwall be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff Redwall respectfully requests a trial by jury of all issues raised by its complaint.

Dated: November 25, 2013

Respectfully submitted,

/s/ Steven G. Cracraft _____
Steven G. Cracraft, Indiana Attorney No. 3417-49
Beth A. Behrens, Attorney No. 30804-49
BRANNON SOWERS & CRACRAFT, P.C.
1. North Pennsylvania Street, Suite 800
Indianapolis, IN 46204
Office: (317) 630-2810
Fax: (317) 630-2813
Email: scracraft@bscattorneys.com;
bbehrens@bscattorneys.com