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

ANGELA ELLSWORTH,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:15-cv-02031
)	
MISSION 22 AKA)	
ELDER HEART, INC.,)	
)	
Defendant.)	

COMPLAINT FOR COPYRIGHT INFRINGEMENT

COMES NOW Plaintiff Angela Ellsworth (“Ellsworth”), by counsel, Barrett McNagny, LLP, and for her Complaint against Defendant Mission 22, AKA Elder Heart, Inc. (“Defendant”), states as follows:

Nature of the Case

1. This is an action under the Copyright Act of 1976, as amended, 17 U.S.C. § 501, *et seq.*, for infringement of Plaintiff’s copyrighted Artwork. Defendant has created at least one unauthorized derivative work, violating Plaintiff’s exclusive right to prepare derivative works based upon her copyrighted Artwork under 17 U.S.C. § 106(2). Plaintiff seeks an injunction, monetary damages, attorneys’ fees, and related relief.

Parties

2. Plaintiff Angela Ellsworth is a citizen of Indiana, residing in Huntington County, Indiana, and she is a professional artist operating out of her own studio also in Huntington County, Indiana.

3. Defendant Elder Heart, Inc. is a non-profit Indiana corporation with its principal place of business in Nashville, Brown County, Indiana.

4. Defendant has copied Ellsworth's Artwork that depicts the silhouettes of 22 soldiers and has created at least one derivative work that is strikingly similar to the Artwork without the authorization or knowledge of Ellsworth, the owner of the copyrighted Artwork.

Jurisdiction and Venue

5. Jurisdiction in this matter is based on 28 U.S.C. § 1338(a), which provides the Court with original jurisdiction of civil actions arising under any Act of Congress relating to copyrights, among other things.
6. Jurisdiction in this matter is also based on 28 U.S.C. § 1331, which provides the Court with original jurisdiction of all civil actions arising under the laws of the United States.
7. Venue is appropriate pursuant to 28 U.S.C. § 1440(a), which provides for venue of civil actions arising under any Act of Congress relating to copyrights in the district in which the defendant resides or may be found, in this case Brown County, Indiana, which is in the Southern District of Indiana, Indianapolis Division.

Factual Background

8. From approximately October 2013 to November 3, 2014, Plaintiff Ellsworth volunteered her time and resources to assist Defendant in accomplishing its goals of helping veterans with post-traumatic stress disorder (PTSD) and bringing awareness to the veteran suicide rate of 22 per day.
9. On or about November 29, 2013, Ellsworth created her original Artwork depicting the silhouettes of 22 soldiers and the shadows of those 22 silhouettes, entitled "22". A true and accurate copy of Ellsworth's Artwork is attached hereto and incorporated herein by reference as Exhibit A.

10. On or about April 13, 2015, Ellsworth obtained a copyright registration for her original Artwork entitled 22 (the “Registered Work”). A true and accurate copy of the registration is attached hereto and incorporated herein by reference as Exhibit B.
11. Ellsworth has also created several copyrightable works derivative to the Registered Work. These include a linoleum carving, several linocut prints made with the linoleum carving, a larger woodblock carving, several woodblock prints, and a design intended to be placed on t-shirts.
12. In January 2014, Ellsworth used a sheet of linoleum with her Registered Work carved into it to create several linocut prints of her Registered Work. Ellsworth donated 12 of these prints to Defendant to be distributed to veterans or given to donors. Ellsworth also donated one of these prints to Magnus Johnson, President and Chief Executive Officer of Defendant. A true and accurate copy of a linocut print of Ellsworth’s Registered Work is attached hereto and incorporated herein by reference as Exhibit C.
13. At Defendant’s request, Ellsworth created a 4’ x 2’ woodblock in order to make enlarged prints of her Registered Work that were intended to be sold at a charity auction in Philadelphia to help raise funds for Defendant.
14. On October 19, 2014, Ellsworth used the woodblock of her Registered Work to create prints for Defendant’s auction. Ellsworth spent approximately 25 hours creating the woodblock and prints, and she personally incurred costs for the materials to do so. Ellsworth retains possession of the woodblock prints, but Defendant’s auction never occurred. A true and accurate copy of a woodcut print of Ellsworth’s Registered Work is attached hereto and incorporated herein by reference as Exhibit D.

15. Without Ellsworth's knowledge or consent, Defendant collaborated with CP&B, an independent marketing agency, to create a project entitled "Mission 22" and launched a website and social media campaign to raise awareness about the veteran suicide rate.
16. As part of the Mission 22 project, and without a license or Ellsworth's knowledge or consent, Defendant designed a sculpture ("Sculpture"), knowingly and willfully copying Ellsworth's Registered Work by depicting the silhouettes of 22 soldiers, to be constructed in such a way that the sun shining on the Sculpture will also form shadows of the 22 silhouettes. As designed, the Sculpture with its shadows closely resembles Ellsworth's Registered Work.
17. Without a license or Ellsworth's knowledge or consent, Defendant created renderings of the Sculpture design knowingly and willfully copying the Registered Work by depicting the silhouettes of 22 soldiers and the Sculpture's shadows of the 22 soldiers. These renderings closely resemble Ellsworth's Registered Work. A true and accurate copy of a rendering of the Sculpture is attached hereto and incorporated herein by reference as Exhibit E.
18. On or about November 3, 2014, Defendant publicly announced plans to build the Sculpture as a national monument, as depicted in Exhibit E, without a license from Ellsworth or her knowledge or consent.
19. On or about March 21, 2015, Ellsworth received a letter from Defendant's counsel in Ohio claiming that Defendant was "completely unaware" of Ellsworth's Artwork at the time Defendant designed the Sculpture and created renderings of the Sculpture. The letter also claimed that any similarities between her Artwork and the Sculpture were "coincidence."

A true and accurate copy of the letter from Defendant's Ohio counsel is attached hereto and incorporated herein by reference as Exhibit F.

20. On or about April 3, 2015, Ellsworth's attorneys responded to Defendant's counsel's letter with a cease and desist letter, a copy of which is attached hereto and incorporated herein by reference as Exhibit G. Exhibit G also requests that the Defendant preserve all evidence, including ESI, pertaining to Ellsworth, the Artwork or the Sculpture, any and all renderings relating to the Sculpture along with the Defendant's current website and social media sites.
21. Subsequently, Defendant, through its attorneys, admitted that its original position that Defendant was completely unaware of Ellsworth's Artwork and that the similarities between the works were a coincidence is untrue. Defendant, through its attorneys also admitted that Plaintiff owned the copyright to the Artwork.

Copyright Infringement

22. Plaintiff incorporates the allegations of paragraphs 1–21 above.
23. Plaintiff Ellsworth is the sole creator and owner of the copyrighted original Artwork, entitled "22", and her other works derivative to this Artwork.
24. Ellsworth has registered her original "22" Artwork ("Registered Work") in the Copyright Office, as shown in Exhibit B.
25. Defendant was in possession of several prints of Ellsworth's Registered Work, and in or about November 2014, Defendant knowingly and willfully copied the Registered Work, without a license from Ellsworth or her knowledge or consent, and designed at least one work derivative to Ellsworth's Registered Work, in the form of a sculpture, including renderings of that Sculpture as shown in Exhibit E.

26. Ellsworth has not granted a license to Defendant or any other right to reproduce or copy any portion of the Registered Work identified herein, or to otherwise create derivative works based on her Registered Work.
27. By its actions alleged above, Defendant has infringed, and will continue to infringe, the exclusive rights afforded Ellsworth under 17 U.S.C. § 106, by copying her Registered Work and preparing at least one derivative work based upon the copyrighted artwork.
28. Ellsworth has suffered damages in an amount thus far not determined, and has suffered and will continue to suffer irreparable injury as a result of Defendant's infringing acts. Ellsworth has no adequate remedy at law to redress all of the injuries that Defendant has caused, and will continue to cause, by its wrongful conduct. Ellsworth will continue to suffer irreparable injury, unless Defendant's actions are preliminarily and permanently enjoined by this Court.
29. Because of Defendant's infringement, Ellsworth is entitled to preliminary and permanent injunctions restraining Defendant Elder Heart, Inc., its officers, principals, agents, servants, employees, successors and assigns, subsidiaries and affiliates, and all persons and organizations acting in concert or privity with Defendant, from engaging in any further acts in violation of Ellsworth's copyright, and Ellsworth is entitled to recover from Defendant damages, including attorneys' fees, Ellsworth has sustained, and will sustain, and all gains, profits, and advantages obtained by Defendant's acts of infringement described above.

Prayers for Relief

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

- A. Angela Ellsworth's registered copyright covering her "22" Artwork is good and valid in law, Defendant has infringed Ellsworth's copyright identified herein, and Defendant's copyright infringement has been deliberate and willful;
- B. Ellsworth be awarded the actual damages she has sustained as a consequence of Defendant's infringement of her Artwork, and all profits, gains, and advantages that are attributable to the infringement and are not taken into account in computing Ellsworth's actual damages; or in the alternative, Ellsworth be awarded statutory damages pursuant to 17 U.S.C. § 504(c);
- C. Ellsworth be awarded an increase in actual damages, or statutory damages, found or assessed as a result of Defendant's willful infringement;
- D. Ellsworth be awarded the costs of this action, including reasonable attorneys' fees, as provided under 17 U.S.C. § 505;
- E. Defendant Elder Heart, Inc., its officers, principals, agents, servants, employees, successors and assigns, subsidiaries and affiliates, and all persons and organizations in active concert or privity or in participation with Defendant be preliminarily and permanently enjoined from:
 - i. imitating, copying, or making unauthorized use of any portion of Ellsworth's copyrighted Artwork;
 - ii. designing or constructing any derivative work based upon Ellsworth's Artwork;
 - iii. manufacturing, producing, distributing, circulating, displaying, selling or offering to distribute for the purposes of further distribution, or in any way making available to others, any portion of Ellsworth's

copyrighted Artwork or derivatives of the Artwork, or authorizing or permitting any such acts, or infringing Ellsworth's copyrighted Artwork in any way; and

iv. using any simulation, reproduction, counterfeit, copy, derivative, or colorable imitation of Ellsworth's copyrighted Artwork, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation, or distribution of Defendant's services or any product.

F. Defendant be required to deliver for impoundment and destruction pursuant to judgment entered by the Court, all originals, copies, duplicates, or derivatives of any works, shown by the evidence to infringe Ellsworth's copyright, into the possession, custody, or control of Ellsworth, as provided for under 17 U.S.C. § 503; and

G. Ellsworth be awarded such other and further relief as this Court may deem just and proper.


Angela Ellsworth

Respectfully submitted,

BARRETT McNAGNY LLP

Date: December 29, 2015

By: /s/ Thomas A. Herr
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