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

ZACH DOBSON PHOTOGRAPHY, LLC )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THREE-SIXTY GROUP, INC., )  
 NATIONAL FEDERATION OF STATE HIGH )  
 SCHOOL ASSOCIATIONS, and NATIONAL )  
 INTERSCHOLASTIC ATHLETIC )  
 ADMINISTRATORS ASSOCIATION )  
 )  
 Defendants. )

Case No. 1:18-cv-421

**DEMAND FOR JURY TRIAL**

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Zach Dobson Photography, LLC (hereinafter “Plaintiff”), by counsel, for its Complaint for Damages and Injunctive Relief against Defendants National Federation of State High School Associations, National Interscholastic Athletic Administrators Association, and Three-Sixty Group, Inc. (hereinafter “Defendants”), states and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action against the Defendants with regard to the unlawful use of copyrighted images owned by Plaintiff. Plaintiff has obtained U.S. copyright registration covering one of its images, and others are the subject of pending copyright applications.

2. For the purposes of this Complaint for Damages and Injunctive Relief, unless otherwise indicated, “Defendants” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of the named Defendants.

JURISDICTION AND VENUE

3. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 et seq., whereby the Defendants violated Plaintiff's exclusive rights as copyright owner pursuant to 17 §§ 106 and 106A. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338(a) (acts of Congress related to copyright).

4. This Court has personal jurisdiction over Defendants because all Defendants' principal place of business is in the State of Indiana, within this judicial district, all Defendants conduct business in the State of Indiana, some of Defendants' acts of infringement complained of herein occurred in the State of Indiana, and Defendants have caused injury to Plaintiff within the State of Indiana.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because, on information and belief, all Defendants have a principal place of business within this judicial district.

PARTIES

6. Zach Dobson Photography, LLC is an Indiana limited liability company located in the city of Carmel, in the State of Indiana. Mr. Zach Dobson is the managing member of Plaintiff, which provides professional photography services.

7. On information and belief, defendant Three-Sixty Group, Inc. ("Three-Sixty Group") is a corporation with a principal place of business of 310 West Michigan Street, Suite A, Indianapolis, Indiana 46204, conducts business in this judicial district, and is liable and responsible to Plaintiff based on the facts herein alleged.

8. On information and belief, defendant National Federation of State High School Associations (“NFHS”) has offices at 690 W. Washington St., Indianapolis, Indiana 46204, conducts business in this judicial district, and is liable and responsible to Plaintiff based on the facts herein alleged.

9. On information and belief, defendant National Interscholastic Athletic Administrators Association (“NIAAA”) has offices at 9100 Keystone Crossing, Suite 650, Indianapolis, Indiana 46240, conducts business in this judicial district, and is liable and responsible to Plaintiff based on the facts herein alleged.

### FACTS

10. Mr. Zach Dobson is a professional commercial photographer specializing in documenting people and businesses in action. Mr. Dobson has a degree in journalism with a concentration in photography. Mr. Dobson has over 12 years of commercial photography experience, helping organizations tell their stories through documentary photography.

11. Mr. Dobson is the sole author of 39 original images. A true and correct copy of Plaintiff’s original images (“Images”) is attached hereto as Exhibit A.

12. By virtue of his sole authorship, Mr. Dobson has complete ownership rights and copyrights to the Images, which have been assigned to Plaintiff.

13. Plaintiff is regularly contracted to take photographs for individuals, businesses and organizations. Plaintiff licenses photography to people and companies seeking to make use of the photographs for editorials, advertisements and pecuniary gain. Plaintiff’s livelihood is dependent on receiving compensation for use of the photographs he produces.

14. Image #1 has been registered with the United States Copyright Office under registration number VA 1-979-164, with an effective date of registration of February 9, 2015.

15. Images 2-23 are the subject of an application filed with the United States Copyright Office on January 18, 2018, under Application Number 1-6209751731, to obtain Copyright Registration Certificates and Numbers.

16. Images 24-39 are the subject of an application filed with the United States Copyright Office on February 7, 2018, under Application Number 1-6275260181, to obtain Copyright Registration Certificates and Numbers.

17. Plaintiff's standard license agreement contains the following language:

“3. Reservation of Rights. ... All rights not expressly granted shall be reserved to the Photographer, including but not limited to all copyrights and ownership rights in photographic materials, which shall include but not be limited to transparencies, negatives, and prints. Client shall not modify directly or indirectly any of the photographic materials, whether by digital means or any other form or process now in existence or which may come into being in the future, without the express, written consent of the Photographer.”

A true and correct copy of Plaintiff's standard license agreement, entered into by Plaintiff and Defendant Three-Sixty Group on March 6, 2014, is attached hereto as Exhibit B.

18. Plaintiff's standard license agreement also contains the following provision:

“4. Additional Usage. If Client wishes to make any additional uses, Client shall seek permission from the Photographer and pay an additional fee to be agreed upon.”

See Exhibit B.

19. Plaintiff's standard license agreement also contains the following provision:

“7. Releases. The Client shall indemnify and hold harmless the Photographer against any and all claims, costs, and expenses, including attorney's fees, due to uses for which no release was requested or uses which exceed the uses allowed pursuant to a release.”

See Exhibit B.

20. Plaintiff's standard license agreement also contains the following provision:

“10. Attorneys' Fees. Client shall indemnify all costs and charges, including attorneys' fees, incurred in enforcing any term in this agreement.”

See Exhibit B.

21. Plaintiff previously licensed the Images to Defendant Three-Sixty Group pursuant to Plaintiff's standard license agreement for the exclusive use of the Indiana High School Athletic Association. Defendant Three-Sixty Group is an advertising agency which claims to have over 50 years of experience in the industry. On eight (8) different occasions over a four (4) year period, Defendant Three-Sixty Group desired Plaintiff's photography services and signed Plaintiff's standard license agreement, thereby acknowledging and agreeing to all stated terms and conditions.

22. In 2015, Plaintiff was subjected to unrelated but similar instances of copyright violations by Defendant Three-Sixty Group, which were resolved without Court intervention by Defendant Three-Sixty Group agreeing to payment of additional usage fees after Plaintiff thoroughly and in great detail explained each of Defendant Three-Sixty Group's rights and obligations under Plaintiff's standard license agreement.

23. On or about January 2018, Plaintiff discovered that Defendants have been making substantial unauthorized use of the Images in connection with promotions and campaigns for NFHS and NIAAA, with unauthorized uses starting as early as 2015, shortly after Plaintiff agreed to amicably resolve Defendant Three-Sixty Group's prior copyright violations. A true and correct copy of Defendants' infringing uses of Plaintiff's Images, 161 of which have been discovered so far, is attached hereto as Exhibit C. In some of the infringing uses, the Images have been directly modified, in many instances to remove or hide Plaintiff's watermark.

24. Plaintiff did not consent to authorize, permit, or allow in any manner such use of Images by Defendants.

25. Plaintiff was not compensated for such use of Images by Defendants.

26. Plaintiff is informed and believes that Defendants used Plaintiff's copyrighted Images without permission and that they published, reproduced, prepared derivative works, communicated, posted, publicized and otherwise held out to the public for commercial benefit, the original Images of Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

27. On information and belief, Defendants knew that they did not possess any rights in the Images and that such use of the Images was unauthorized.

28. On information and belief, Defendants' use of the Images was deliberate and willful.

29. Defendants used the Images in numerous unauthorized promotions and campaigns despite knowledge that the Images are subject to copyright.

30. Plaintiff did not consent to the use of the Images for Defendants' commercial gain.

31. Defendants continue their infringing conduct which has caused and is causing substantial and irreparable injury and damage to Plaintiff in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving the Plaintiff with no adequate remedy at law.

32. Plaintiff attempted to amicably settle the matter with Defendant Three-Sixty Group after informing them of the infringing uses. However, the parties were not able to agree upon settlement terms. Therefore, Plaintiff brings the instant action seeking relief from the Court.

### CAUSE OF ACTION

#### **COPYRIGHT INFRINGEMENT**

33. Plaintiff incorporates the preceding paragraphs as if fully set forth in this paragraph.

34. Plaintiff did not consent to, authorize, permit, or allow in any manner the Defendants' uses of Plaintiff's unique and original Images.

35. Plaintiff is informed and believes and thereon alleges that the Defendants willfully infringed upon Plaintiff's copyrighted Images in violation of Title 17 of the U.S. Code, in that they used, published, reproduced, prepared derivative works, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Images of the Plaintiff without Plaintiff's consent or authority, and without giving proper attribution to Plaintiff, and acquired monetary gain and market benefit as a result.

36. As a result of Defendants' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. § 504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

37. As a result of the Defendants' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendants.

38. As a result of Defendant Three-Sixty Group's breach of Plaintiff's license agreements, Plaintiff is entitled to recovery of costs and expenses, including attorney's fees, from Defendant Three-Sixty Group.

39. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of its copyrights pursuant to 17 U.S.C. § 502.

#### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment and relief as follows:

a. For statutory damages against Defendants in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);

b. For general and special damages against Defendants according to proof together with interest thereon at the maximum legal rate;

c. For costs of litigation and reasonable attorney's fees against Defendants pursuant to 17 U.S.C. § 505;

d. For costs of litigation and reasonable attorney's fees against Defendant Three-Sixty Group pursuant to Plaintiff's license agreements;

e. For an injunction preventing Defendants from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and

f. For any other relief the Court deems just and proper.

Date: February 13, 2018

Respectfully submitted,



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**Counsel for Plaintiff,  
ZACH DOBSON  
PHOTOGRAPHY, LLC**

**DEMAND FOR JURY TRIAL**

Plaintiff, Zach Dobson Photography, LLC, hereby demands a trial by jury in the above matter.

Date: February 13, 2018

Respectfully submitted,



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