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

FOTOHAUS, LLC,

Plaintiff,

v.

OFS BRANDS, INC.,

Defendant.

Civil Action No.: 1:18-cv-1989

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, FOTOHAUS, LLC (“Fotohaus” or “Plaintiff”), brings this complaint in the United States District Court for the Southern District of Indiana against OFS BRANDS, INC. (“OFS” or “Defendant”), alleging as follows:

PARTIES

1. Plaintiff is a limited liability company existing under the laws of the State of Florida, with an office located in Tallahassee, Florida.
2. On information and belief, Defendant was established in 1937 and provides socially responsible furniture and logistics solutions in office, healthcare, education, government, and home office markets across the world.¹ Defendant maintains permanent showrooms in numerous states, including the District of Columbia.²

¹ www.ofsbrands.com/our-story

² www.ofsbrands.com/content/washington-dc-showroom

3. On information and belief, Defendant is a Domestic For-Profit Corporation existing under the laws of the state of Indiana, with headquarters in Huntingburg, Indiana. Defendant owns, operates, and is solely responsible for the content displayed on their commercial website, www.ofsbrands.com. Defendant's website and social media platforms reach individuals throughout the World.

JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
5. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
6. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), in that Defendant regularly does and solicits business, engages in other persistent course of conduct, and derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia.
7. Defendant is subject to personal jurisdiction in the District of Columbia.
8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because Defendant is subject to personal jurisdiction in this district.
9. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

1. Daniel Foster (“Foster”), Manager of Fotohaus, captured the photograph, “Light Collector” (“Copyrighted Photograph”) on July 1, 2010 in Shanghai, China. [Exhibit 1].
2. Foster posted Copyrighted Photograph to www.flickr.com/photos/danielfoster/4791809387 on or about July 13, 2010. [Exhibit 2].
3. Foster registered Copyrighted Photograph with the United States Copyright Office on July 17, 2012 (Registration No.: VA 1-832-736). [Exhibit 3].
4. Foster assigned the copyright to Copyrighted Photograph to Fotohaus on March 8, 2017.
5. Beginning on or about June 2, 2016, Defendant copied and posted Copyrighted Photograph to the OFS’ commercial website, www.ofsbrands.com. Defendant used Copyrighted Photograph accompanying the post titled “Buildings, Origami and Packaging Inspire Genus Elastomer Design,” advertising the design of a product offered by OFS. [Exhibit 4].
6. Defendant posted Copyrighted Photograph to the following URLs:
 - www.ofsbrands.com/blog/post/buildings-origami-and-packaging-inspire-genus-elastomer-design [Exhibit 4].
 - www.ofsbrands.com/blog/all?page=1 (together “OFS Posts”) [Exhibit 4].
7. Beginning on or about June 6, 2016, Defendant posted Copyrighted Photograph to OFS’ Twitter page, www.twitter.com/ofsbrands. (“Twitter Post”) [Exhibit 5].
8. On September 5, 2017, Fotohaus, mailed a letter to OFS identifying the above-described infringement and demanding, among other actions, OFS remove the infringing material.
9. Between October 17, 2017 and February 19, 2018, Fotohaus, engaged in at least nine (9) email communications and at least one (1) telephone conversation with OFS, through counsel, concerning the alleged infringement detailed in this complaint.

10. OFS did not remove the Twitter Post until February 19, 2018.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

11. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

12. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid Certificate of Copyright Registration by the Register of Copyrights.

13. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.

14. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendant's commercial website, www.ofsbrands.com, and Defendant's Twitter page, www.twitter.com/ofsbrands. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution.

Defendant's actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.

15. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

16. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual damages and/or statutory damages, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Awarding Plaintiff the maximum allowable statutory damages for Defendant's intentional and willful copyright infringement, or maximum actual damages in an amount, to be determined at trial;
- D. Awarding Plaintiff his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505; and
- E. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: June 28, 2018

_____/s/ Kenan L. Farrell_____
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david@daviddeal.com
Counsel for Plaintiff
(Awaiting Pro Hac Vice Admission)

EXHIBIT INDEX

- Exhibit 1: Photograph titled “Light Collector.”
- Exhibit 2: Screen capture depicting the URL, www.flickr.com/photos/danielfoster/4791809387, which depicts “Light Collector.”
- Exhibit 3: United States of America Register of Copyrights, Copyright Registration Number VA 1-832-736.
- Exhibit 4: Screen captures depicting the URLs, www.ofsbrands.com/blog/post/buildings-origami-and-packaging-inspire-genus-elastomer-design, and www.ofsbrands.com/blog/all?page=1.
- Exhibit 5: Screen capture depicting the URL, www.twitter.com/ofsbrands.

EXHIBIT 1

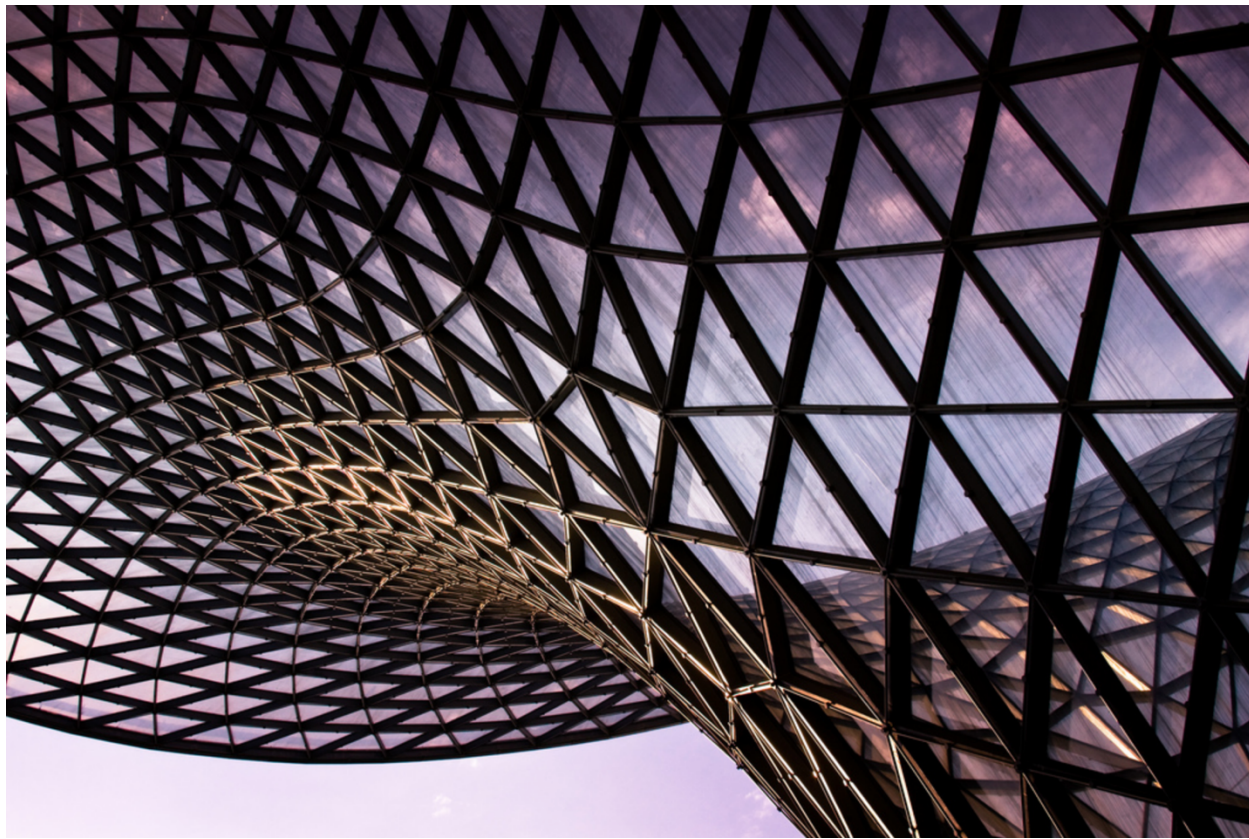


EXHIBIT 2

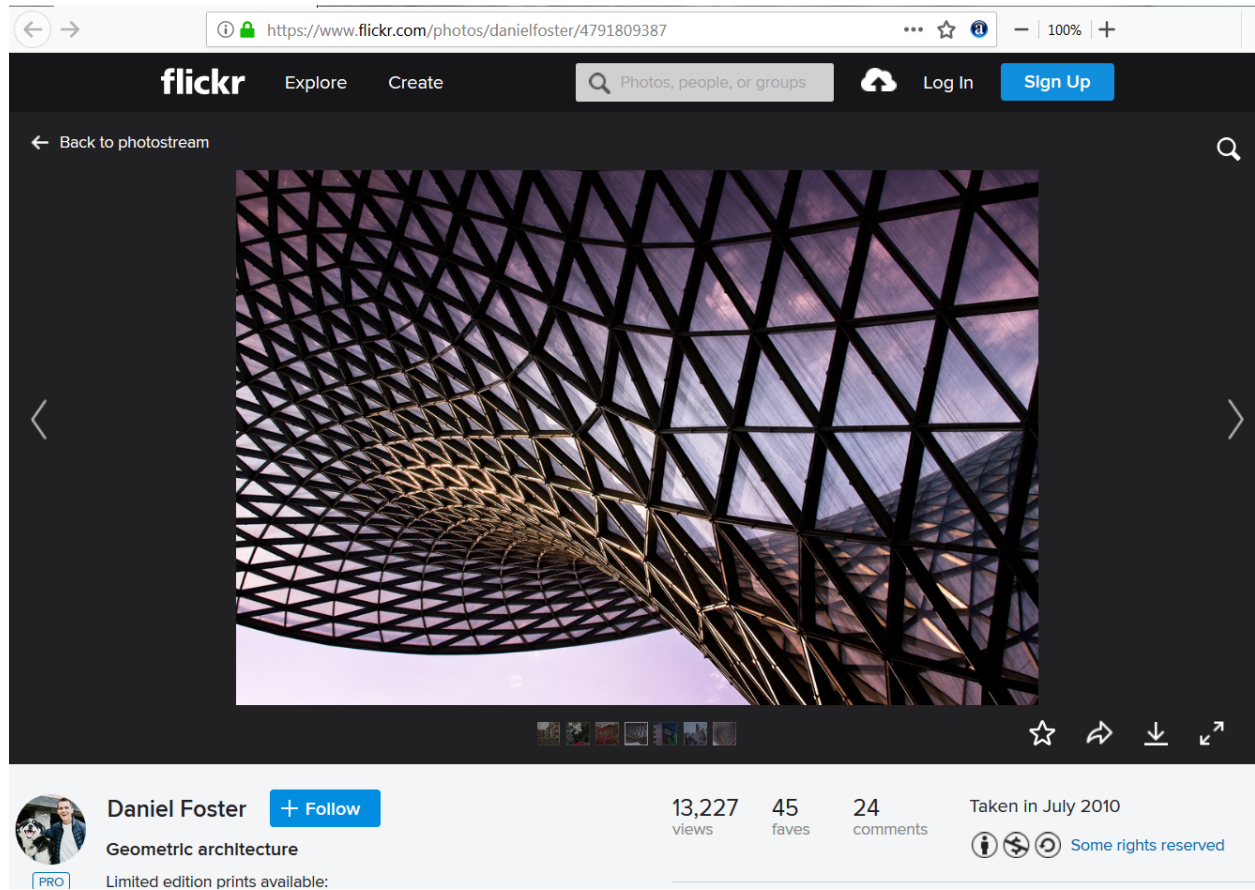



EXHIBIT 3

Certificate of Registration

 This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante
Register of Copyrights, United States of America

Registration Number
VA 1-832-736

Effective date of registration:
July 17, 2012

Title

Title of Work: Daniel Foster's Photographs, 2010

Contents Titles: Abandoned Building
Africa World Expo
Airport Train
Ampitheatre
Bird's Nest Seating
Bird's Nest Stadium
Boat in Water
Caddo Bridge Blue Sky
Caddo Lake Fishing
Caddo Lake Louisiana
Chelsea High Up
Chinese Factory
Chinese Factory BW
Chinese Military Training
Chinese Military Training BW
Chinese Stream
Chinese Temple BW
Chinese Worker
Costa Maya Nightfall
Crashing Waves
Cruise Ship at Port
Cruise Ship Departure1
Cruise Ship Departure1 BW
Cruise Ship Turning
Cruise Ship Yucatan

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Expo Architecture
Flower Box
Forbidden Palace Bridge BW
Forbidden Palace Bridge Color
Forbidden Palace Cauldren
Forbidden Palace Walkways
Girl in Theater
Great Wall BW
Great Wall Close Up BW
Great Wall Close Up Color
Just Another Tropical Day
Light Collector
Light Collector Portrait
Mexican Navy Boat Back
Mexican Navy Boat Side
Mississippi River
Mississippi River New Orleans
New Orleans CBD Landscape
New Orleans CBD Portrait
Old Bridge
Old Tree BW
Old Xian Wall
Old Xian Wall BW
On The Stairs
Osaka by Night
Panda Bear
Pensive Girl
Performance Finale
Pier Mexico BW
Poland Pavilion
Pudong Complete Black
Rail Tracks
Retro Windows
Road Ahead
Roatan Beach
Roatan Boats
Roatan Chairlift Landscape
Roatan Chairlift Portrait
Roatan River

Roatan Sunset with Glare
Roatan Sunset Yellow
Rocky Shore
Shanghai at Night
Shanghai Biker
Shanghai Building
Shanghai Night BW
Shanghai Square Night
Shanghai Streets
Silk Factory Machinery
Silk Factory Machines BW
Sprawled Out
Standing Guard
Temple of Heaven BW
Temple of Heaven Color
Temple Rocks BW
Temple Scene BW
Terra Cotta Warrior Close Up
Terra Cotta Warrior Group
Terra Cotta Warriors from Behind
Terra Cotta Warriors Front
Terra Cotta Warriors Side
Terra Cotta Warriors Upright Front
Texting on Duty
Tonji University
Tropical Day
Turkmenistan Pavilion
Under Bridge
Underpass China
West Bank
Woman With Bike BW
World Expo
World Expo Scene
Xian Buddha
Xian Dancers
Xian Hotel
Xian Performance
Xian Roses

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: December 31, 2010

Nation of 1st Publication: United States

Author

■ Author: Daniel R Foster

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Daniel R Foster

9004 Pink Pearl Court, Shreveport, LA, 71115, United States

Rights and Permissions

Name: Daniel Foster

Email: dfoste7@tigers.lsu.edu

Certification

Name: John H. Norris

Date: July 17, 2012

Correspondence: Yes




EXHIBIT 4

← → ↺ ↻ 🔒 https://web.archive.org/web/20170704001343/http://ofsbrands.com/blog/all?page=1

QUICKSHIP MY LOGIN Search

OFS BRANDS PRODUCTS DESIGN RESOURCES INFORMATION SOLUTIONS OUR STORY BLOG

JUN 07, 2016 BLOG/DESIGN SHARE



Buildings, Origami and Packaging Inspire Genus Elastomer Design

Notes and Inspirations from Roger Webb; designer of the Genus Series by Highmark.

The anatomical form of the human back is complex, and when it comes to the design of chairs it poses a particular challenge. I have always been a great advocate of chair back shapes having a form into which the back can snugly fit, holding it in the correct position with both lumbar and

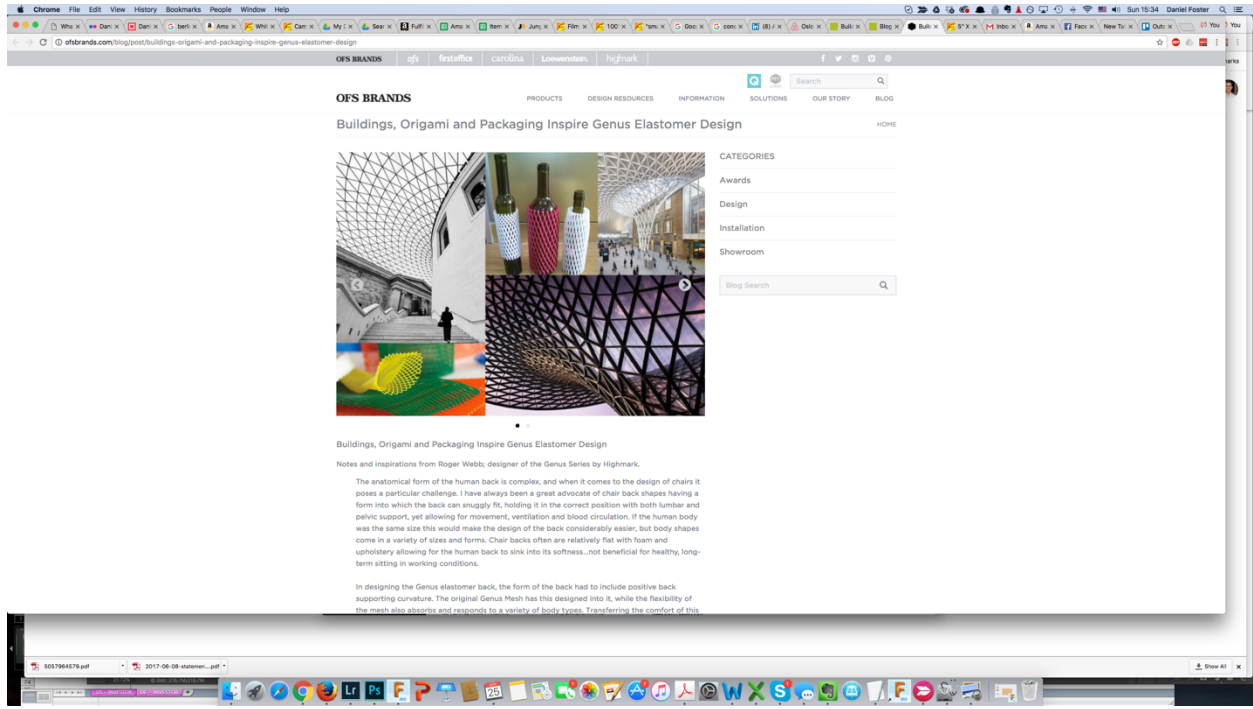


EXHIBIT 5

