UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
EASTERN DIVISION

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KEITH F. BELL, PH.D.,	§	
	§	
Plaintiff,	§	
	§	
-v-	§	**Civil Action No. 1:18-cv-156**
	§	
LLOY BALL AND USA VOLLEYBALL	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Keith F. Bell, Ph.D. ("Dr. Bell" or "Plaintiff"), by and through his attorneys Alexander I. Passo and Latimer LeVay Fyock LLC, files this Complaint to recover damages arising from violations of Dr. Bell's intellectual property rights by Defendants Lloy Ball and USA Volleyball (collectively, "Defendants"). In support of his claims, Plaintiff states as follows:

THE PARTIES

1. Plaintiff is, and at all relevant times has been, a resident of Texas.

2. Lloy Ball is a natural person who lives in Angola, Indiana. Ball may be served at 1640 Lane 105 Lake James, Angola, IN 46703-8533, or wherever he may be found.

3. USA Volleyball is a Colorado non-profit corporation that may be served through its registered agent, USA Volleyball, at 4065 Sinton Rd., Suite 200, Colorado Springs, CO 80907, or wherever USA Volleyball may be found.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 & 1338 in that the claims arise under an act of Congress relating to copyrights. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiff's claims under state law. This Court also has diversity jurisdiction in this case because Plaintiff and Defendants are from different states and the amount in controversy exceeds $75,000. There is complete diversity among the parties.

5. This Court has jurisdiction over Ball because he resides and is domiciled in Indiana. The Court has jurisdiction over USA Volleyball because:

a. It is doing business in this state;

b. Has caused personal injury or property damage by an act or omission done within this state; and

c. Has caused personal injury or property damage in this state by an occurrence, act or omission done outside this state. USA Volleyball regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state.

6. Plaintiff contends that there is both specific and general jurisdiction over Defendants in these states, that each has sufficient minimum contacts to satisfy due process, and that the exercise of jurisdiction over Defendants comports with traditional notions of fair play and substantial justice.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 139l(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district and

because Defendants live and/or have their principal places of business in this state within this judicial district and division.

THE FACTS

Dr. Bell and His Sports Psychology Practice

7. Dr. Bell is an internationally recognized sports psychology and performance consultant. He has worked as a sports psychologist with over 500 teams, including the Olympic and national teams for the United States, Canada, Australia, New Zealand, Hong Kong, Fiji, and the Cayman Islands.

8. In addition to his work with sports teams, Dr. Bell speaks at national and international coaching symposia. Among others, he has been a featured speaker with the American Swim Coaches Association, Australian Coaches Association, Canadian Coaches Association, Japanese Coaches Association, and British Swim Coaches Association.

9. Dr. Bell has also enjoyed success as an athlete and coach. He is a four-time collegiate All-American swimmer, holds numerous world and national masters swim records, and has coached U.S. national, university, collegiate, high school, and club swimming teams.

10. Further, Dr. Bell has authored and had published 10 books and over 80 articles relating to sports psychology and sports performance. He also has been a regular columnist for national swimming publications such as *Swimmers, Swimmers Coach, SwimSwam*, and *Swim Texas Magazine*, and is a periodic contributor to *Austin Fit Magazine*.

Dr. Bell's Original Literary Work, Winning Isn't Normal

7. In 1981, Dr. Bell wrote the book entitled *Winning Isn't Normal* ("*Winning Isn't Normal*" or the "Infringed Work"), which was first published in 1982. The book has enjoyed

substantial acclaim, distribution, and publicity. Dr. Bell is the sole author of this work and continues to own all rights in the work.

8. Dr. Bell holds a copyright registration for the Infringed Work. A copyright registration certificate for *Winning Isn't Normal* was issued to Dr. Bell by the United States Copyright Office on or about September 21, 1989, with the registration number TX-0002-6726-44. A true and correct copy of the Certificate of Registration is attached hereto as **Exhibit A**.

9. Since Dr. Bell authored and published the Infringed Work, *Winning Isn't Normal*, he has and continues to promote, distribute, offer for sale, and sell numerous copies of the work. Currently, among others, Dr. Bell offers *Winning Isn't Normal* for sale through Amazon.com and the website keelpublications.com.

10. Dr. Bell has made and continues to make meaningful efforts to create a market for *Winning Isn't Normal* and to protect and enjoy the rights afforded to him under the Copyright Act. Importantly, as part of these efforts, Dr. Bell creates, markets, and sells works derivative of the Infringed Work, such as posters and t-shirts that display a particular passage from *Winning Isn't Normal* (the "WIN Passage"). The WIN Passage is viewed by Dr. Bell and others as the heart of Dr. Bell's literary work *Winning Isn't Normal*. A true and correct copy of the WIN Passage is attached as **Exhibit B**.

11. Dr. Bell owns the domain winningisntnormal.com, which points to the keelpublications.com website where Dr. Bell offers the Infringed Work *Winning Isn't Normal* and derivative works for sale.

12. Due to the popularity of his original work *Winning Isn't Normal*, Dr. Bell has been able to increase his international recognition as an authority in sports psychology and sports

performance and has been asked to speak at conferences, symposia, and other engagements as a result.

13. Dr. Bell has offered and continues to offer licenses at fair and reasonable rates to others who wish to publish or otherwise use the popular WIN Passage on the internet or in traditional publishing mediums.

14. Dr. Bell has taken due care to provide notice of his copyright in *Winning Isn't Normal*. Dr. Bell has included pertinent copyright notices on physical and electronic copies of *Winning Isn't Normal* and derivative works, provides pertinent copyright notices on Amazon.com and keelpublications.com, and includes a conspicuous copyright watermark on digital images of derivative works (such as posters) or excerpts that he posts online or otherwise distributes. Dr. Bell also includes information on keelpublications.com regarding how to contact Dr. Bell about obtaining permission to use the WIN Passage or other portions of *Winning Isn't Normal*.

15. Because of Dr. Bell's commercial efforts, Dr. Bell enjoys trademark protection in the word mark WINNING ISN'T NORMAL, which he uses in connection with various goods and services, including his Winning Isn't Normal® series of books, of which *Winning Isn't Normal* is part. The United States Patent and Trademark Office issued a trademark registration to Dr. Bell for WINNING ISN'T NORMAL for printed matter on November 4, 2014, with a registration number of 4630749. A copy of the trademark registration is attached as **Exhibit C**.

16. Pursuant to Section 33(b) of the Lanham Act, registration of the WINNING ISN'T NORMAL® mark is conclusive evidence of the validity of the registered mark and of Dr. Bell's right to use the registered mark in commerce in connection with the goods or services specified in the registration.

17. As a result of the unique and distinctive nature of Dr. Bell's WINNING ISN'T NORMAL® mark and his continued commercial use of the mark, "Winning Isn't Normal" has become widely associated with Dr. Bell and his printed material and related goods and services. The WINNING ISN'T NORMAL® mark is indicative to consumers that printed material and related items bearing the WINNING ISN'T NORMAL® mark originate from or are affiliated with, sponsored, or approved by Dr. Bell.

Defendants' Infringement of Dr. Bell's Work

18. Defendant Ball is the individual connected with and responsible for activity on the social media platform Twitter.com ("Twitter") by the user "@LTPer."

19. Defendant USA Volleyball is connected with and responsible for activity on the social media platform Twitter.com ("Twitter") by the user "@usavolleyball."

20. On or about November 12, 2015, a representation of the WIN Passage was posted to the Twitter account of Defendant Ball. A copy of the Twitter post is attached as **Exhibit D**.

21. The post was made without authorization from Dr. Bell and without attribution to Dr. Bell.

22. On or about November 20, 2015, a representation of the WIN Passage was posted to the Twitter account of Defendant USA Volleyball. A copy of the Twitter post is attached as **Exhibit E**.

23. The post was made without authorization from Dr. Bell and without attribution to Dr. Bell.

24. Neither of the Defendants contacted Dr. Bell to request permission to use Dr. Bell's copyrighted work.

25. Upon information and believe, Defendant Ball had over 2,000 followers when the post was made, and the post of Defendant Ball received at least 51 "Retweets" and 201 "Likes." Due to the globally accessible nature of Twitter, the post was accessible by Internet users across the world.

26. The post of Defendant USA Volleyball was a "retweet" embedding the post by Defendant Ball. Upon information and believe, Defendant USA Volleyball had over 123,000 followers when the post was made, and the post of Defendant USA Volleyball received at least 30 "Retweets" and over 7,000 "Likes." Due to the globally accessible nature of Twitter, the post was accessible by Internet users across the world.

27. Dr. Bell sent a cease and desist letter to Defendant Ball on July 15, 2016, and to Defendant USA Volleyball on April 21, 2017. Upon information and belief, both Defendants removed their infringing posts shortly after the letter was sent to Defendant Ball, automatically removing all retweets of the post. The post was therefore accessible on each Defendant's Twitter page for at least 8 months..

28. While Defendants have tacitly acknowledged their liability to Plaintiff, they have steadfastly refused to enter into a settlement agreement that will protect Plaintiff right in the future and compensate him for his injuries.

CLAIM I: COPYRIGHT INFRINGEMENT

29. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth again at length herein.

30. Plaintiff owns valid copyright in the Infringed Work.

31. Defendants have, without authorization, copied one or more of the constituent elements of the Infringed Work that are original.

32. Defendants copied the heart of the Infringed Work almost verbatim, rendering the offending works substantially similar to and/or functionally identical to the Infringed Work.

33. Defendants' copying of the Infringed Work was done willfully and intentionally in violation of federal copyright law, with knowledge that an agreement had not been reached with Plaintiff regarding such copying, and with knowledge that neither a license nor an assignment had been granted to Defendants allowing them to copy or use the Infringed Work.

34. Defendants have, without authorization, publicly displayed one or more of the constituent elements of the Infringed Work that are original.

35. Defendants' public display of the heart of the Infringed Work was done willfully and intentionally in violation of federal copyright law, with knowledge that an agreement had not been reached with Plaintiff regarding such public display, and with knowledge that neither a license nor an assignment had been granted to Defendants allowing them to publicly display the Infringed Work.

36. By so copying and publicly displaying the Infringed Work, Defendants have willfully infringed Plaintiff's copyrights therein, for which infringement Plaintiff is entitled to injunctive relief and to recover damages in the form of either Defendants' actual profits attributable to the infringements or, in the alternative and at Plaintiff's election, statutory damages. Defendants should also be required to pay Plaintiff's attorneys' fees, as authorized by law, associated with their copyright infringement.

CLAIM II: TRADEMARK INFRINGEMENT

37. Plaintiff repeats and realleges each and every paragraph set forth above as if fully set forth again at length herein.

38. As a cause of action and ground for relief, Plaintiff alleges that Defendants have engaged in trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. Section 1114(1).

39. The WINNING ISN'T NORMAL trademark is federally registered for use in relation to the following goods: "Printed matter, namely, non-fiction publication ns, namely, books, booklets, pamphlets, articles, manuals and posters in the field of sports, fitness, and competitive performance and psychology." See the attached trademark registration at **Exhibit C**.

40. The Defendants included Plaintiff's trademark in the Twitter posts discussed herein. The Defendants used Plaintiff's trademark in the Twitter post without the Plaintiff's knowledge or permission and without attribution to Plaintiff.

41. The Twitter post lacked Plaintiff's name, and some readers of the post are likely to be confused so as to infer that the text shown in the post was originated by either of the Defendants, rather than by Plaintiff, and/or that the infringing Twitter posts were affiliated with, sponsored, or approved by Plaintiff.

42. Defendants have infringed the Plaintiff's right to be identified and distinguished from others through use of the trademark.

43. Defendants' willful and deliberate acts described above have caused injury and damages to Plaintiff and have caused injury to Plaintiff's goodwill.

44. As a direct and proximate result of said infringement by Defendants, Plaintiff is entitled to damages in an amount to be proven at trial.

45. Defendants have infringed Plaintiff's registered trademark and therefore Plaintiff is entitled to costs of suit pursuant to the Lanham Act at 15 U.S.C. § 1117. This is also an extraordinary case under the Lanham Act in which attorney fees should be awarded to Plaintiff.

ATTORNEY FEES

46. Because of Defendants' willful and intention infringement of Plaintiff's copyrights, Plaintiff has been required to retain the services of attorneys to protect his rights and interests. Based upon the foregoing, Plaintiff respectfully requests that this Court award costs

of court and reasonable attorneys' fees as part of the requested relief, pursuant to 17 U.S.C. § 505.

47. Plaintiff is also entitled to recover attorney fees for trademark infringement because this is an extraordinary case under the Lanham Act.

PRAYER

48. WHEREFORE, Plaintiff demands judgment against Defendants as follows:

49. That the Court issue an injunction prohibiting Defendants and those acting in concert with them from:

(a) Infringing Plaintiff's federal trademark registration;

(b) Copying, using, or publicly displaying the Infringed Work or constituent elements thereof that are original;

(c) Creating any derivative works based on the Infringed Work (either individually or with a third party) without first obtaining a license or assignment from Plaintiff that allows Defendants to do so; and

(d) Otherwise infringing the rights of Plaintiff with respect to the Infringed Work and Plaintiff's trademark.

50. A judgment awarding damages to Plaintiff based on each of the claims asserted herein, including actual, consequential, incidental, and all other types of damages authorized by law necessary to make Plaintiff whole under applicable law;

51. Actual damages, profits, and/or statutory damages based on copyright infringement;

52. Actual damages, profits, and/or statutory damages based on trademark infringement;

53. That an accounting be directed to determine the profits of Defendants resulting from their activities and that such profits be paid over to Plaintiff, increased as the Court finds to be just under the circumstances;

54. Reasonable and necessary attorney fees pursuant to 17 U.S.C. § 505, the Lanham Act, and other law;

55. The injunctive relief and all necessary findings requested herein;

56. Pre-judgment and post-judgment interest at the highest rate allowed by law;

57. Costs of bringing this claim; and

58. Such other relief at law or in equity to which Plaintiff shows himself justly entitled.

Dated: May 30, 2018

Respectfully submitted,
By: /s/ *Alexander I. Passo*

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