

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA



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GABRIELLA BASS,

Plaintiff,

- against -

COTR, LLC

Defendant.

Docket No. 4:18-cv-71

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Gabriella Bass (“Bass” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant COTR, LLC (“COTR” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photographs of Alex Gardena and his “pissing pug” owned and registered by Bass, a professional photographer. Accordingly, Bass seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Indiana.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bass is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 44 St. Nicholas Avenue, Apt. 3R , Brooklyn, NY 11237.

6. Upon information and belief, COTR is a domestic limited liability company duly organized and existing under the laws of the State of Indiana, with a place of business 1970 East 109th Street, Indianapolis, IN 46280. Upon information and belief COTR is registered with the Indiana Department of State Division of Corporations to do business in the State of Indiana. At all times material, hereto, COTR has owned and operated a website at the URL: <https://www.chicksonright.com> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Bass photographed the fearless girl statute in New York City (the “Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Bass then licensed the Photographs to New York Post. On May 29, 2017, the New York Post ran an article that featured the Photographs titled *Pissed-off artist adds statue of urinating dog next to ‘Fearless Girl.’* See URL <https://nypost.com/2017/05/29/pissed-off-artist-adds-statue-of-urinating-dog-next-to-fearless-girl/> . Bass’ name was featured in a gutter credit identifying her as the photographer of the Photographs. A true and correct copy of the article is attached hereto as Exhibit B.

9. Bass is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. The Photographs were registered with the United States Copyright Office and was given registration number VA 2-055-082 and were titled “Bass_Alex Gardena next to ‘Fearless Girl’ and his ‘Pissing Pug’, 5_29_17.jpg” and “Bass_Pissing Pug_Next to Wall Street’s_Fearless Girl_5_29_17.jpg.” See Exhibit C.

B. Defendant’s Infringing Activities

11. On or about May 30, 2017, COTR ran an article on the Website titled Remember That Stupid ‘Fearless Girl’ Statue? Someone Just Made A HILARIOUS Addition To It.... See URL <https://www.chicksonright.com/blog/2017/05/30/remember-stupid-fearless-girl-statue-someone-just-made-hilarious-addition/>. The article prominently featured the Photographs. A true and correct copy of the article and screen shots of the Photograph on the article are attached hereto as Exhibit D.

12. COTR did not license the Photographs from Plaintiff for its article, nor did COTR have Plaintiff’s permission or consent to publish the Photographs on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. COTR infringed Plaintiff’s copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. COTR is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

20. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-19 above.

21. Upon information and belief, in its article on the Website, Defendant copied the Photographs from the New York Post which contained a gutter credit underneath the Photographs stating, "Gabiella Bass" and placed it on its Website without the gutter credit.

22. Upon information and belief, COTR intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.

23. The conduct of COTR violates 17 U.S.C. § 1202(b).

24. Upon information and belief, COTR's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

25. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by COTR intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs. COTR also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs.

26. As a result of the wrongful conduct of COTR as alleged herein, Plaintiff is entitled to recover from COTR the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by COTR because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

27. Alternatively, Plaintiff may elect to recover from COTR statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant COTR be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant COTR be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 16, 2018

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