

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**



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The Trustees of Indiana University )  
)  
*Plaintiff,* )  
)  
v. )  
)  
Mid-America Publishing, Inc., and )  
Terry R. Self )  
)  
*Defendants* )  
\_\_\_\_\_ )

Civil Action No. 1:18-cv-3266

**COMPLAINT AND JURY DEMAND**

Plaintiff, The Trustees of Indiana University (“Indiana University”), for its Complaint against the Defendants, Mid-America Publishing, Inc. and Terry R. Self (“Mr. Self”), alleges as follows:

**Parties**

1. Plaintiff Indiana University is a body corporate and politic organized and existing under the laws of the State of Indiana, having its principal place of business at 400 E. 7th St., Poplars Building, Room #410, Bloomington, Indiana 47405.

2. Upon information and belief, Defendant Mid-America Publishing, Inc. is a corporation organized and existing under the laws of the State of Indiana, having a principal place of business at 2464 Hardscrabble Rd., Spencer, Indiana 47460.

3. As of the time of this Complaint, the status of Mid-America Publishing, Inc. with the Indiana Secretary of State was “administratively dissolved,” and had been since July 15, 2010.

3. Upon information and belief, Defendant Mr. Self is an individual residing at 2464 Hardscrabble Rd., Spencer, Indiana 47460.

4. Upon information and belief, Defendant Mr. Self is the sole officer, President and owner of Mid-America Publishing, Inc. Mr. Self authorizes, directs and/or participates in all acts of Mid-America Publishing, Inc. As such, Mr. Self and Mid-America Publishing, Inc. shall be collectively referred to herein as “Mid-America”.

### **Jurisdiction and Venue**

5. This Court has subject matter jurisdiction under Section 39 of the Trademark Act of 1946, 15 U.S.C. §§ 1121 (the “Lanham Act”), 17 U.S.C §501 (“the Copyright Act”), 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Mid-America Publishing, Inc. because *inter alia* Mid-America Publishing, Inc. is incorporated in the state of Indiana, conducts regular, continuous and systematic business in this Judicial District, operates from its place of business within the Judicial District at 2464 Hardscrabble Rd., Spencer, Indiana 47460, and the conduct of Mid-America Publishing, Inc. complained of in this Complaint occurred in this Judicial District.

7. This Court has personal jurisdiction over Mr. Self because *inter alia* Mr. Self resides in this Judicial District at 2464 Hardscrabble Rd., Spencer, Indiana 47460, conducts regular, continuous and systematic business in this Judicial District, and the conduct of Mr. Self complained of in this Complaint occurred in this Judicial District.

8. Venue in this Judicial District with respect to the claims set forth herein against Mid-America Publishing, Inc. is proper pursuant to 28 U.S.C. § 1391(b).

9. Mid-America Publishing, Inc. may be served via its registered agent Terry R. Self, whose address is 2464 Hardscrabble Rd., Spencer, Indiana 47460.

**Indiana University's Trademarks**

10. Since at least as early as 1978 and continuously to date, Indiana University has adopted and used in interstate commerce the marks HOOSIERS and INDIANA HOOSIERS in connection with a wide range of products, including clothing, sporting goods, posters, calendars and gift items (the "HOOSIERS Mark").

11. Indiana University obtained United States Trademark Registration No. 1,713,815 for the INDIANA HOOSIERS Mark for products in class 25, including clothing, jerseys, sweat shirts and other clothing items. A true copy of registration 1,713,815 is attached as Exhibit A.

12. Since at least the early 1900s, Indiana University has adopted and used in interstate commerce the logo comprising the letters "I" and "U" in various stylized forms to create the design impression of a trident (the "IU Trident Logo") in connection with its academic and athletic programs. The IU Trident Logo has been used for decades with a wide range of products, including clothing, sporting goods, posters, calendars and gift items. The most recent version of the IU Trident Logo was introduced in 2002 (the "2002 IU Trident Logo").

13. Indiana University obtained United States Trademark Registration No. 4,912,172 for the 2002 IU Trident Logo for a wide range of products, including products in classes 14, 16, 18, 20, 21, 25 and 28. A true copy of registration 4,912,172 is attached as Exhibit B.

14. Since at least as early as 1975 and continuously to date, Indiana University has adopted and used in interstate commerce the mark INDIANA BASKETBALL in connection with a wide range of products, including clothing, sporting goods, posters, calendars and gift items (the "INDIANA BASKETBALL Mark").

15. Indiana University obtained United States Trademark Registration No. 1,705,521 for the INDIANA BASKETBALL Mark for services in class 41, including sporting events. A true copy of registration 1,705,521 is attached as Exhibit C.

16. Indiana University obtained United States Trademark Registration No. 2,868,784 for the INDIANA BASKETBALL Mark for products in class 25, including clothing, jerseys, sweat shirts and other clothing items. A true copy of registration 2,868,784 is attached as Exhibit D.

17. Indiana University obtained United States Trademark Registration No. 1,728,274 for the INDIANA HOOSIERS Mark for services in class 41, including sporting events. A true copy of registration 1,728,274 is attached as Exhibit E.

18. Indiana University obtained United States Trademark Registration No. 4,925,141 for the HOOSIERS Mark for a wide range of products, including products in classes 14, 16, 18, 20, 21, 25 and 28. A true copy of registration 4,925,141 is attached as Exhibit F.

19. Indiana University has used the IU Trident Logo, the INDIANA BASKETBALL Mark and the HOOSIERS Mark (collectively the “IU Marks”) continuously, notoriously and extensively with respect to and in association with its products and services since their original introductions, and further has marked its materials with the appropriate “TM” or “®” legends.

20. Indiana University has expended a substantial amount of money and effort in advertising and promoting the IU Marks. Indiana University’s IU Marks are famous and consumers know, rely upon, and recognize the IU Marks as identifying Indiana University’s goods and services. As a result of Indiana University’s academic and athletic excellence, substantial promotional, advertising, publicity, and public relations activities, the IU Marks have acquired substantial goodwill and are valuable commercial assets.

21. The IU Marks are inherently distinctive, serving to identify and indicate the source of Indiana University's goods and services to the consuming public, and to distinguish Indiana University's goods and services from those of others.

**Indiana University's Copyrighted Student-Athlete Photographs**

22. Indiana University maintains photographs of its student-athletes, including individual and team photos, for use by the Athletic Department in promoting Indiana University and its athletic programs and events (the "IU Student-Athlete Photographs").

23. It is Indiana University's policy to prohibit any profits from being made, either by itself or by a third-party, from upon the use of a student-athlete's name, image or likeness. Indiana University's use of a student-athlete's name, image or likeness is limited to use in connection with items used to promote them, their teams, and their games but which are not sold or sponsored.

24. While Indiana University permits use of the IU Student-Athlete Photographs by the media for information purposes, Indiana University does not permit use of the IU Student-Athlete Photographs by third-parties for commercial purposes.

25. A copy of the representative portions of the IU Student-Athlete Photographs for the 2017-2018 and 2018-2019 seasons, which consist of the photograms for the Men's Basketball teams, are attached hereto as Exhibit G.

26. On October 3, 2018, Indiana University filed an expedited application with the United States Copyright Office to register the 2017-2018 IU Student-Athlete Photographs. This Copyright application has since been registered as VA0002121460. The original Certificate of Registration has not yet been received. A placeholder is being submitted until a true, complete, and correct copy can be filed, attached hereto as Exhibit H.

27. On October 3, 2018, Indiana University filed an expedited application with the United States Copyright Office to register the 2018-2019 IU Student-Athlete Photographs. This Copyright application has since been registered as VA0002121461. The original Certificate of Registration has not yet been received. A placeholder is being submitted until a true, complete, and correct copy can be filed, attached hereto as Exhibit I.

### **Background Facts**

28. Mid-America is a publishing company engaged in the business of producing, promoting and selling posters, calendars, cards and other printed materials.

29. On information and belief, Mid-America previously began selling a poster including reproductions of photographs of the members of the Indiana University Men's Basketball team and a listing of the games for the Indiana University Men's Basketball team's upcoming season, including the dates and opponents (the "Mid-America IU Basketball Poster").

30. The Mid-America IU Basketball Poster included one or more trademarks owned by Indiana University.

31. An image taken from Mid-America's [www.iuscheduleposter.com](http://www.iuscheduleposter.com) website showing numerous versions of the Mid-America IU Basketball Poster is attached as Exhibit J.

32. Mid-America primarily sold the Mid-America IU Basketball Poster in bulk to Indiana businesses, including Indiana Farm Bureau Insurance and National Bank of Indianapolis, and would customize a blank portion of the poster with each business's desired information so that they could provide these posters to their customers as a free promotional item.

33. Prior to and until April of 2012, there was an understanding between Indiana University and Mid-America regarding the production and sale of the Mid-America IU Basketball Poster and use of the Indiana University trademarks.

34. In April of 2012, the parties' understanding was formalized when Mid-America and Indiana University (via its exclusive athletic licensing partner, Indiana University Sports Properties, LLC) entered into a multi-year Marketing and Sponsorship Agreement which, in addition to other rights and obligations, provided Mid-America "the right to use Indiana University logos/marks for production of the Mid-America IU Basketball Poster...". A copy of this Agreement is attached as Exhibit K.

35. In the Agreement, Mid-America agreed that its use of Indiana University's trademarks "is non-exclusive, limited and non-transferrable and must be approved ... prior to its use." Moreover, Mid-America agreed that it would "not make use of any student-athlete's name or likeness (as defined by the NCAA) without advance written approval of [Indiana] University's compliance officer." Exhibit K, ¶ 8.

36. Mid-America produced and sold the 2012-2013, 2013-2014, 2014-2015 and 2015-2016 versions of the Mid-America IU Basketball Poster in accordance with the Marketing and Sponsorship Agreement.

37. As early as May 2, 2016, Indiana University informed Mid-America that IU would not be continuing its license to Mid-America. Specifically, Indiana University informed Mid-America that in 2015 Indiana University adopted a new policy that it would require that its third-party licensees no longer utilize any student-athlete name, image or likeness for a commercial purpose.

38. To provide Mid-America with a phasing out period, Indiana University and Mid-America executed a First Amendment to the Marketing and Sponsorship Agreement on June 1, 2016 which extended its term by one year to include the 2016-2017 season. A copy of this First Amendment to the Marketing and Sponsorship Agreement is attached as Exhibit L.

39. In the Amended Agreement, Mid-America expressly agreed that it “may not produce the [Mid-America IU Basketball Poster] until [it] has received approval of the proposed artwork in writing...” Exhibit L, ¶ 3.

40. At the time of the Amended Agreement, Mid-America was informed that the 2016-2017 version was the last Mid-America IU Basketball Poster that would be allowed to use the student-athlete names or likenesses and that no commercial use of the student-athlete names or likenesses would be permitted moving forward.

41. Mid-America subsequently produced and sold the 2016- 2017 version of the Mid-America IU Basketball Poster in accordance with the Marketing and Sponsorship Agreement, as amended.

42. The Marketing and Sponsorship Agreement terminated according to its own terms on June 30, 2017.

### **Mid-America’s Unlawful Conduct**

#### ***The 2017-2018 Season***

43. On October 9, 2017, Mr. Self, personally and on behalf of Mid-America Publishing, Inc., submitted an Application for License Agreement to Indiana University (the “Mid-America Application”). A copy of the Mid-America Application is attached as Exhibit M.

44. With the Mid-America Application, Mid-America sought permission from Indiana University to utilize Indiana University’s trademarks in producing the 2017-2018 version of the Mid-America IU Basketball Poster. Mid-America did not make a request to use any student-athlete names or likenesses.

45. In response to the Mid-America Application, Indiana University provided Mid-America with a Trademark License Agreement for consideration. The Trademark License



Agreement provided in section 5.3 that “Licensee shall not display any Licensed Products or sample thereof using the Property without Licensor’s prior written approval of such Licensed Products or sample thereof.” The Trademark License Agreement did not contain any license to use the name, image or likeness of any student-athlete, and Mid-America was informed of that fact.

46. Mid-America indicated its agreement with the terms of the Trademark License Agreement by executing it on October 28, 2017.

47. Indiana University did not execute the Trademark License Agreement, as it learned that Mid-America had already begun selling an unapproved 2017-2018 version of the Mid-America IU Basketball Poster including the IU Marks as well as the IU Student-Athlete Photographs and the names of the student-athletes themselves, which Mid-America knew Indiana University would not allow. A copy of Mid-America’s 2017-2018 version of the Mid-America IU Basketball Poster is attached as Exhibit N.

48. The images of the team members which appear on the 2017-2018 version of the Mid-America IU Basketball Poster are copies of the IU Student-Athlete Photographs.

49. Indiana University’s Assistant General Counsel reached out repeatedly attempting to speak with Mid-America in hopes of resolving the situation. Mid-America failed to return any and all calls or otherwise respond to Indiana University.

50. On December 7, 2017 Indiana University’s outside counsel sent a certified letter to Mid-America similarly attempting to resolve the situation. The certified letter was returned as unclaimed.

51. Given Mid-America’s apparent avoidance of the issue, Indiana University investigated and identified the print companies who were utilized by Mid-America to print the

2017-2018 version of the Mid-America IU Basketball Poster (hereinafter the “Printers.”). Upon identifying the Printers, Indiana University reached out and explained to them that Mid-America did not have Indiana University’s authorization to print the 2017-2018 version of the Mid-America IU Basketball Poster.

52. Indiana University learned from the Printers that Mid-America fraudulently induced them to print the 2017-2018 version of the Mid-America IU Basketball Poster by passing off the expired Marketing and Sponsorship Agreement as a current agreement authorizing Mid-America’s continued use of the IU Marks, the IU Student-Athlete Photographs and the student-athlete’s names.

53. The Printers agreed to cease and future production of the 2017-2018 Mid-America IU Basketball Posters without Indiana University’s approval, identified to Indiana University the quantity of 2017-2018 Mid-America IU Basketball Posters that they had printed and delivered to Mid-America, and also agreed to destroy any remaining inventory that they currently held of the 2017-2018 Mid-America IU Basketball Poster.

54. While no resolution with Mid-America was reached, Indiana University believed that it has resolved the problem without the need for litigation.

#### ***The 2018-2019 Season***

55. Despite its great efforts to resolve the unauthorized production of the 2017-2018 Mid-America IU Basketball Posters, on August 29, 2018, Mid-America began offering for sale its 2018-2019 version of the Mid-America IU Basketball Poster. A copy of Mid-America’s 2018-2019 version of the Mid-America IU Basketball Poster is attached as Exhibit O. Mid-America has chosen not to include the IU Student-Athlete Photographs, but has included the INDIANA BASKETBALL Mark.

56. At the same time, Mid-America also introduced its new Hoops Hysteria Handbook which includes the schedule of each Division 1 college in Indiana, including that of Indiana University. A copy of the Hoops Hysteria Handbook is attached as Exhibit P. The Hoops Hysteria Handbook also includes a centerfold which does include the IU Student-Athlete Photographs in the same style as that of the 2017-2018 version of the Mid-America IU Basketball Poster. No other similar style inserts for any of the other Division 1 colleges in Indiana is provided.

57. In an e-mail sent by Mid-America to prospective customers, a copy of which is included as Exhibit Q, the Hoops Hysteria Handbook is offered for “Free” with each copy of Mid-America’s 2018-2019 version of the Mid-America IU Basketball Poster.

58. In the same e-mail, Mid-America instructs that “one could remove the centerfold and overlay it on the [2018-2019 version of the Mid-America IU Basketball Poster] and have something that resembles what folks have been collecting for the past 35 years.” See Exhibit Q.

59. Mid-America also offers to imprint a custom advertisement on the back of the “free” Hoops Hysteria Handbook for an additional charge of \$0.20 per booklet. See Exhibit Q.

#### **COUNT I: TRADEMARK INFRINGEMENT AND COUNTERFEITING**

60. Indiana University incorporates by reference the averments contained in paragraphs 1 through 59.

61. Mid-America’s unauthorized use of the IU Marks is identical to, and certainly confusingly similar to, Indiana University’s use of the IU Marks. Mid-America’s unauthorized use of IU Marks is likely to cause confusion or mistake or to deceive consumers into believing that Mid-America’s unauthorized products and services advertised, promoted, and offered in

conjunction with the IU Marks are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Indiana University.

62. The acts of Mid-America complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute trademark infringement and counterfeiting in violation of Section 32 and 43(a) of the Lanham Act, 15 U.S.C. § 1114 *et seq.* and the common law.

**COUNT II: FALSE AND DECEPTIVE LABELING AND UNFAIR COMPETITION**

63. Indiana University incorporates by reference the averments contained in paragraphs 1 through 62.

64. The pattern of conduct and actions of Mid-America complained of herein constitute false and deceptive labeling and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**COUNT III: COPYRIGHT INFRINGEMENT**

65. Indiana University incorporates by reference the averments contained in paragraphs 1 through 64.

66. Mid-America unlawfully copied a portion of Indiana University's copyrighted IU Student-Athlete Photographs without permission or license from Indiana University.

67. Indiana University did not authorize Mid-America's reproduction of any of its copyrighted works in conjunction with the Mid-America IU Basketball Poster for the 2017-2018 season.

68. Mid-America's reproduction of Indiana University's copyrighted works is a violation of the copyright laws of the United States, specifically, 17 U.S.C. §§ 106 and 501.

69. Pursuant to 17 U.S.C. § 504, Mid-America is liable for Indiana University's actual damages, including lost profits.

70. Pursuant to 17 U.S.C. § 504, Mid-America is liable for all of their profits attributable to the infringement, including but not limited to all profits from the sale of the 2017-2018 Mid-America IU Basketball Poster and the 2018-2019 Mid-America IU Basketball Poster and its associated Hoops Hysteria Handbook.

71. Pursuant to 17 U.S.C. § 504, Mid-America is liable for statutory damages.

72. Pursuant to 17 U.S.C. § 505, Mid-America is liable for Indiana University's costs and reasonable attorneys fees incurred in this action.

73. Indiana University's remedy at law is inadequate.

### **Prayer for Relief**

In light of the foregoing, Indiana University prays that this Court:

A. Enter judgment that the unauthorized use of the IU Marks by Mid-America in the 2017-2018 Mid-America IU Basketball Poster and the 2018-2019 Mid-America IU Basketball Poster / booklet, and all commercial advertising, marketing and/or promotion thereof, constitutes and creates a likelihood of confusion, mistake and/or deception among relevant consumers and therefore infringes the IU Marks.

B. Enter judgment that Mid-America has engaged in counterfeiting with respect to the IU Marks.

C. Enter judgment that Mid-America has engaged in copyright infringement with respect to the IU Student-Athlete Photographs.

D. Enter judgment that Mid-America's acts of infringement were willful.

E. Order that all infringing items in the possession of, and/or subject to control by Mid-America or any employees, agents or servants thereof, infringing on the IU Marks, and all labels, signs, prints, packages, wrappers, receptacles, and advertisements (including webpages) containing infringing marks and/or works be delivered up and destroyed or altered to eliminate any possibility of further infringement.

F. Permanently enjoin Mid-America, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from advertising and offering for sale or selling any products or services which have caused actual confusion, mistake or deception or are likely to cause confusion, mistake or deception with Indiana University's IU Marks.

G. Permanently enjoin Mid-America, its officers, agents, employees and attorneys, and those in active concert or participation therewith, from engaging in any form of false, misleading and/or deceptive advertising of products or services bearing or resembling the IU Marks which have caused actual confusion, mistake or deception of the public or the likelihood thereof as being similar thereto or therewith.

H. Permanently enjoin Mid-America its officers, agents, employees and attorneys, and those in active concert or participation therewith, from engaging in any use of Indiana University's copyrighted works, including all current and future IU Student-Athlete Photographs.

I. An award to Indiana University of treble Defendants' profits under 15 U.S.C. §1117(a) and (b).

J. An award to Indiana University of statutory damages for counterfeiting up to the maximum permitted by law, as the Court considers just, pursuant to 15 U.S.C. § 1117(c).

K. Award Indiana University all other damages, statutory damages, costs, attorney's fees and/or expenses associated with Mid-America's violations of Indiana University's rights.

L. Increase the amounts awarded to Indiana University as damages and/or profits from Mid-America to the maximum amounts allowed or permitted under 15 U.S.C. § 1117 and 17 U.S.C. §504.

M. Grant all such other relief that the Court deems just.

**Jury Demand**

Indiana University respectfully demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: October 23, 2018

s/William A. McKenna  
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