

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA



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MATTHEW SAGER,

Plaintiff,

- against -

VINTAGE AVIATION PUBLICATIONS, LLC

Defendant.

Docket No. 1:18-cv-394

JURY TRIAL DEMANDED

### **COMPLAINT**

Plaintiff Matthew Sager (“Sager” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Vintage Aviation Publications, LLC (“Vintage Aviation” 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 fighter jets, owned and registered by Sager, a professional photographer. Accordingly, Sager 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. Sager is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 29792 Millsboro Hwy, Millsboro, DE 19966.

6. Upon information and belief, Vintage Aviation is a domestic limited liability company duly organized and existing under the laws of the State of Indiana, with a place of business 1355 Waco Drive, Huntington, IN 46750. Upon information and belief Vintage Aviation is registered with the Indiana Department of State Division of Corporations to do business in the State of Indiana. At all times material, hereto, Vintage Aviation has owned and operated a website at the URL: <https://warbirddigest.com> (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photographs**

7. Sager photographed fighter jets (the “Photographs”). A true and correct copy of these Photographs are attached hereto as Exhibit A.

8. Sager then published the Photographs on his photography website. See URL: <https://matthewsagerphotography.com/harrierdov2017>. Sager’s name was featured in a watermark credit identifying him as the photographer of the Photographs. A true and correct copy of this webpage is attached hereto as Exhibit B.

9. Sager 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 was registered with the United States Copyright Office and was given registration number VA 2-122-899 and titled “10022017SeaHarrier-100,” and “10022017SeaHarrier-209.” See Exhibit C.

**B. Defendant’s Infringing Activities**

11. On or August 1, 2018, Vintage Aviation ran an article published as their July/August issue on the Website titled *TWO WEEKS THE UPD AND DOWNS OF FLYING THE WORLD’S ONLY “JUMP JET” WARBIRD*. See URL: <https://warbirddigest.com/product/issue-seventy-nine/>. The article was also featured with a print addition and both the online version and print version are available for sale on the Website. The article prominently featured the Photographs. A true and correct copy for both versions of the article is attached hereto as Exhibit D.

12. Vintage Aviation did not license the Photographs from Plaintiff for its article, nor did Vintage Aviation 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. Vintage Aviation infringed Plaintiff’s copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Vintage Aviation 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.

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

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Upon information and belief, in its article on the Website, Defendant cropped off Plaintiff's watermark.

20. Upon information and belief, Vintage Aviation intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.

21. The conduct of Vintage Aviation violates 17 U.S.C. § 1202(b).

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

23. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Vintage Aviation intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs. Vintage Aviation 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.

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

25. Alternatively, Plaintiff may elect to recover from Vintage Aviation 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 Vintage Aviation 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 Vintage Aviation 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 Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;

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 his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. That Plaintiff be awarded attorney's and costs;
9. That Plaintiff be awarded pre-judgment interest; and
10. 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  
November 29, 2018

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