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

RICHARD N. BELL,)	
)	
Plaintiff,)	
)	
v.)	Cause No: 1:19-cv-209
)	
EMBASSY SUITES MANAGEMENT LLC)	
)	
Defendant.)	

**COMPLAINT
Summary of lawsuit**

1. The Plaintiff, Richard N. Bell, took photograph of the Indianapolis Skyline in 2000 and the “Indianapolis Nighttime Photo” was registered with the U.S. Copyright office. In 2018, the Plaintiff discovered that the Defendant EMBASSY SUITES MANAGEMENT LLC (“EMBASSY”) had published the “Indianapolis Nighttime Photo” (“Exhibit A”) in advertising which appears on a website owned by Defendant EMBASSY, even though the Defendant had no rights or authority to publish the Indianapolis Nighttime Photo. The Plaintiff requests damages against Defendant EMBASSY for violations of the Lanham Act and U.S. Copyright laws.

JURISDICTION AND VENUE

- 2. This copyright infringement action arises under 17 U.S.C. § 101 et seq. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (acts of Congress related to copyright and Lanham Act).
- 3. This Court has personal jurisdiction over the Defendant by virtue of their transacting, doing, and soliciting business in this District, and because a substantial

part of the relevant events occurred in this District and because a substantial part of the property that is the subject of this action is situated here.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because the named plaintiff Richard N. Bell resides in this district and because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; and/or conduct business in this district.

PARTIES

5. The Plaintiff, Richard N. Bell is an attorney and a professional photographer and lives in McCordsville, Indiana.

6. Defendant EMBASSY SUITES MANAGEMENT LLC (“EMBASSY”) has conducted and does conducts business in this district. EMBASSY created a website with the domain name of <https://embassysuites3.hilton.com> for its business. (See Exhibit B).

7. EMBASSY does business in this district.

FACTS

8. In March 2000, the Plaintiff, a United States citizen, took a photograph of downtown Indianapolis skyline from overlooking the canal from St. Clair Avenue.

9. The photograph is an original work that is copyrighted under United States law. A copy of the photo is attached as Exhibit A, hereinafter referred to as “Indianapolis Nighttime Photo”.

10. Since March 2000, the Plaintiff has either published or licensed for publication all copies of the Indianapolis Nighttime Photo in compliance with the copyright laws and has remained the sole owner of the copyright.

11. Indianapolis Nighttime Photo was first published on the World Wide Web on August 29, 2000 by the user’s account on Web shots. It was recently published on a website created by the Plaintiff under the domain name: www.richbellphotos.com

12. The “Indianapolis Nighttime Photo” was registered on August 4, 2011 with the United States Copyright Office and assigned Registration Number VA0001785115.

13. Plaintiff has used the Indianapolis Nighttime Photo in advertising to such an extent that the Indianapolis Nighttime Photo is identified by the public as being created by the Plaintiff.

14. Plaintiff has used the Indianapolis Nighttime Photo in advertising to promote his photography business.

COUNT I

COPYRIGHT INFRINGEMENT

15. Defendant EMBASSY created a website with the domain name of <https://embassysuites3.hilton.com> to promote and advertise EMBASSY’s business

in Indianapolis and used the Indianapolis Nighttime Photo on said website. (Exhibit B Screen Shot of Infringement)

16. Defendant EMBASSY used the Indianapolis Nighttime Photo to draw or attract prospective customers to Defendant's business.

17. Defendant EMBASSY is liable to Plaintiff because he had the right and ability to control and supervise the content of and to control and supervise the access of third party Internet users to that website.

18. Upon information and belief, the Defendant EMBASSY downloaded or took the Indianapolis Nighttime Photo from the internet without permission from the owner.

19. In late 2018, the Plaintiff discovered through the computer program google images that the website of contained the Indianapolis Nighttime Photo at https://embassysuites3.hilton.com/resources/media/es/INDWWES/en_US/img/share_d/full_page_image_gallery/main/es_downtownnight_9_712x342_FitToBoxSmallDimension_Center.jpg and was visible to world viewers in December 2018. (Exhibit B Screen Shot of Infringement)

20. Defendant did not disclose the source of the stolen Indianapolis Nighttime Photo or otherwise conferred credit to the owner; instead, the Defendant willfully and recklessly falsely claimed that Defendant EMBASSY owned the copyrights of all images and photos contained on the website of

https://embassysuites3.hilton.com/resources/media/es/INDWWES/en_US/img/share_d/full_page_image_gallery/main/es_downtownnight_9_712x342_FitToBoxSmallDimension_Center.jpg including Indianapolis Nighttime Photo.

21. During the years 2018 and 2019, the website of Defendant EMBASSY published the Indianapolis Nighttime Photo for its commercial use without paying for said use and without obtaining the necessary authorization from the Plaintiff, the copyright owner.

22. While the Defendant will know the exact date of first publication, based upon the Plaintiff's investigation, during the year 2018, Defendant began publishing the Indianapolis Nighttime Photo and used the Indianapolis Nighttime Photo for their commercial use without paying for said use and without obtaining the necessary authorization from the Plaintiff in approximately in 2018 and continues to publish the Indianapolis Nighttime Photo.

23. The Defendant knew that he did not own Indianapolis Nighttime Photo and knew the Defendant had not obtained the rights to publish the Indianapolis Nighttime Photo, but recklessly and falsely represented to the world otherwise.

24. Defendant EMBASSY has not paid anyone for the right to publish the Indianapolis Nighttime Photo.

25. Defendant refuses to pay for the unauthorized use of Indianapolis Nighttime Photo.

26. Defendant has not agreed be enjoined from using the Indianapolis Nighttime Photo.

27. After the Defendant published the Indianapolis Nighttime Photo, Defendant permitted third parties to access to the webpage

https://embassysuites3.hilton.com/resources/media/es/INDWWES/en_US/img/share_d/full_page_image_gallery/main/es_downtownnight_9_712x342_FitToBoxSmallDimension_Center.jpg and copy the Indianapolis Nighttime Photo to third party Internet User's computers.

28. Defendant is vicariously liable for each such downloaded copy of the Indianapolis Nighttime Photo initiated by each third-party Internet User regardless of whether Defendant was aware that the third party was creating the downloaded copy.

29. Defendant is liable for all profits resulting from each downloaded copy of the Indianapolis Nighttime Photo created by each such third-party Internet User.

30. Defendant is liable for copyright infringement regardless of whether Defendant knew that any use of the Indianapolis Nighttime Photo would infringe copyrights Plaintiff owns.

31. Plaintiff has complied in all respects with 17 U.S.C. §§ 101 et seq., and secured the exclusive rights and privileges in and to the copyrights of the above-referenced works.

32. Plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyrights in their respective works as referenced above.

33. Defendant EMBASSY 's conduct violates the exclusive rights belonging to Plaintiff as owner of the copyrights, including without limitation Plaintiff's rights under 17 U.S.C. § 106.

34. Plaintiff seeks damages for Defendant's use of Plaintiff's advertising idea comprising the Indianapolis Nighttime Photo.

35. On information and belief, Plaintiff alleges that, as a direct and proximate result of their wrongful conduct, Defendant EMBASSY has realized and continues to realize profits and other benefits rightfully belonging to Plaintiff. Accordingly, Plaintiff seek an award of damages pursuant to 17 U.S.C. §§ 504 and 505; and 15 U.S.C. § 1125(a).

36. Defendant's infringing conduct has also caused and is causing substantial and irreparable injury and damage to Plaintiff in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving the Plaintiff with no adequate remedy at law.

37. Defendant has willfully and deliberately engaged in, and, is willfully engaging in, the acts complained of with oppression, fraud, and malice ("Acts") and in conscious disregard of the rights of Plaintiff. Plaintiff is, therefore, entitled to the maximum statutory damages allowable.

38. Examples of these willfully and deliberately Acts, include but not limited to the following:

- a. Defendant EMBASSY downloaded or took the Indianapolis Nighttime Photo from the internet and included said photo on the Defendant's website.
- b. Defendant failed to designate the source of the stolen Indianapolis Nighttime Photo or otherwise confer credit to the owner.
- c. Defendant recklessly, willfully and falsely asserted that the Defendant owned the copyrights of all content, images and photos contained in the Defendant's website
https://embassysuites3.hilton.com/resources/media/es/INDWWES/en_US/img/shared/full_page_image_gallery/main/es_downtownnight_9_712x342_FitToBoxSmallDimension_Center.jpg
- d. Defendant knew that it did not own Indianapolis Nighttime Photo and knew the Defendant had not obtained the rights to publish the Indianapolis Nighttime Photo, but deliberately and falsely represented to the world otherwise.
- e. Defendants has not paid anyone for the right to use Indianapolis Nighttime Photo,

THEREFORE, Plaintiff prays for judgment against Defendant EMBASSY as follows:

- a. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under common law and the Federal Copyright Act;
- b. Immediately and permanently enjoining Defendant EMBASSY, their members, 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 any of Plaintiff's copyrighted articles or copyrighted material without consent or otherwise infringing Plaintiff's copyrights or other rights in any manner;
- c. Enjoin Defendant from "republishing" any of your copyrighted materials that, if granted, would require that the Indianapolis Nighttime Photo not be available on <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg> would thereby make it impossible for third party Internet users to download copies of the Indianapolis Nighttime Photo from said webpage.
- d. Ordering Defendant EMBASSY to account to Plaintiff for all gains, profits, and advantages derived by Defendants, and third-party users by their infringement of Plaintiff's copyrights or such damages as are proper, and since Defendant intentionally infringed plaintiff's copyrights, for the maximum allowable statutory damages for each violation;
- e. Awarding Plaintiff actual and/or statutory damages for Defendant copyright infringement in an amount to be determined at trial;
- f. Awarding Plaintiff their costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505 and 15 U.S.C. 1125(a) and;
- g. Awarding Plaintiff such other and further relief as is just and proper.

Respectfully Submitted:

Date: January 19, 2019

/s Richard N. Bell
Richard N. Bell

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