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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

KEITH F. BELL,

Plaintiff,

vs.

BARTHOLOMEW CONSOLIDATED
SCHOOL CORPORATION and TIMOTHY
BLESS,

Defendants.

Case No. 1:19-cv-3308

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Dr. Keith F. Bell (“Plaintiff” or “Dr. Bell”), sues Defendants, Bartholomew Consolidated School Corporation (“Bartholomew”) and Timothy Bless (“Coach Bless”) (together “Defendants”), and alleges:

Introduction

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act”).

The Parties

2. Plaintiff Keith Bell is an individual residing in Travis County, Texas. Plaintiff is a citizen of the United States.

3. Defendant Bartholomew is an Indiana school corporation based in Columbus, Indiana, with its main office located at 1200 Central Avenue, Columbus, Indiana 47201.

4. Bartholomew may be served with process herein by delivery to its Superintendent, Dr. Jim Roberts, at 1200 Central Avenue, Columbus, Indiana 47201.

5. Coach Bless is an individual residing in Bartholomew County, Indiana.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (patents, copyrights, trademarks and unfair competition).

7. This Court has personal jurisdiction over Bartholomew because it is school corporation organized and existing under Indiana law and maintains its principal place of business in Indiana.

8. This Court has personal jurisdiction over Coach Bless because he is a resident of Indiana.

9. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. § 1391 both because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and (ii) Defendants are subject to the Court's personal jurisdiction within this judicial district.

Factual Background

Dr. Bell – A Respected Authority in Sports Psychology and Performance Consulting

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

11. 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, North American Soccer Association, and British Swim Coaches Association.

12. 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.

13. Dr. Bell is also a prolific writer, having authored and 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*.

The Infringed Works - Winning Isn't Normal and the WIN Passage

14. In 1981, Dr. Bell wrote the book entitled *Winning Isn't Normal* (“*Winning Isn't Normal*”), which was first published in 1982 and has since enjoyed substantial acclaim, distribution, and publicity.

15. A particular passage from *Winning Isn't Normal* (the “WIN Passage”) distills the essence of the book and is the heart of *Winning Isn't Normal*. A true and correct copy of the WIN Passage from is attached as Exhibit A.

16. *Winning Isn't Normal* and the WIN Passage (together the “Infringed Works”) are original works of authorship fixed in tangible medium.

17. Dr. Bell is the sole author of and the exclusive owner of the copyrights to the Infringed Works.

18. Dr. Bell registered *Winning Isn't Normal* with the U.S. Copyright Office, and he was issued Certificate of Registration no. TX 2,672,644 (the “’644 Registration”) for it on or about September 21, 1989. A true and correct copy of the ’644 Registration is attached as Exhibit B.

19. Dr. Bell registered the WIN Passage with the U.S. Copyright Office, and he was issued Certificate of Registration no. TX 8,503,571 (the “571 Registration”) for it on or about November 6, 2017. A true and correct copy of the ’571 Registration is attached as Exhibit C.

20. Pursuant to 17 U.S.C. § 106, Dr. Bell has the exclusive rights to: (a) reproduce the Infringed Works in copies, (b) prepare derivative works based on the Infringed Works, (c) distribute copies of the Infringed Works to the public, and (d) display the Infringed Works publicly.

21. Due to the popularity of *Winning Isn’t Normal* Dr. Bell has been able to increase his international recognition as an authority in sports psychology and sports performance and been asked to speak at conferences, symposia, and other engagements.

22. Dr. Bell has invested substantial time and effort to promoting, distributing, offering to sell, and selling copies of *Winning Isn’t Normal*. Currently, Dr. Bell sells *Winning Isn’t Normal* through Amazon.com and the website KeelPublications.com, amongst other outlets.

23. 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 copyrights to the same. As part of these efforts, Dr. Bell creates, markets, and sells works derived from *Winning Isn’t Normal*, such as posters and t-shirts that display the WIN Passage.

24. Dr. Bell owns the domain WinningIsntNormal.com, which points to the KeelPublications.com website where Dr. Bell sells copies of *Winning Isn’t Normal*, the WIN Passage, and derivative works thereof.

25. Dr. Bell takes reasonable care to provide notice of his copyrights in *Winning Isn’t Normal* and the WIN Passage. Pertinent copyright notices are contained in/on physical and electronic copies of *Winning Isn’t Normal*, the WIN Passage, and derivative works thereof.

Copyright notices are also provided on the websites where *Winning Isn't Normal*, the WIN Passage, and derivative works thereof are sold, such as [Amazon.com](https://www.amazon.com) and [KeelPublications.com](https://www.keelpublications.com). The Keel Publications website even contains information on how to contact Dr. Bell about obtaining permission to use the WIN Passage or other portions of *Winning Isn't Normal*. Dr. Bell marks the digital images of derivative works (such as posters) or excerpts that he posts online or otherwise distributes with conspicuous copyright watermarks.

26. 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.

Defendants and Their Infringement

27. Bartholomew is a public school system in Indiana.

28. Bartholomew operates and/or controls several schools, including Columbus North High School (“North High”), located at 1400 25th Street, Columbus, Indiana 47201.

29. Timothy Bless (“Coach Bless”) is employed by Bartholomew as a faculty member at North High. Bless teaches classes in health and physical education and coaches the North High football team.

30. Coach Bless controls and maintains the Twitter account [@CoachTimBless](https://twitter.com/CoachTimBless) (<https://twitter.com/CoachTimBless>) (the “Twitter Account”).

31. The Twitter Account follows and is followed by other Bartholomew employees, students, athletes, and alumni.

32. Coach Bless operates the Twitter Account in furtherance of his employment by Bartholomew.

33. Coach Bless operates the Twitter Account for the benefit of Bartholomew, his employer.

34. Upon information and belief, Bartholomew financially benefits from the sale of tickets to North High's football games.

35. Upon information and belief, Bartholomew financially benefits from the sale of refreshments, food, commissions, and/or other vending occurring at or around North High's football games.

36. Upon information and belief, the Twitter Account promoted and drove attendance to North High's football games.

37. Coach Bless, individually and on behalf of Bartholomew, posted a textual representation of the WIN Passage to the Twitter Account, thereby reproducing the WIN Passage, distributing it to the public, and displaying it publicly.

38. Defendants were not licensed, authorized, or permitted by Dr. Bell to reproduce, modify, distribute, display, or otherwise use the Infringed Works.

39. Defendants knew or should have known that they were not authorized to reproduce, modify, distribute, display, or otherwise use the Infringed Works.

40. Bartholomew had the right and ability to supervise and/or power to prevent Coach Bless' infringement, but failed to do so.

41. Bartholomew had a direct financial interest in the infringing activity.

42. Upon information and belief, Defendants' unauthorized distribution and display of the WIN Passage through the Twitter Account continued without appreciable gap until it was removed sometime in or around September 2016.

43. Dr. Bell has not received compensation from Defendants or any third-party for Defendants' reproduction, modification, distribution, display, or other use of the Infringed Works.

Miscellaneous

44. All conditions precedent to bringing this action have occurred or been waived.

45. Dr. Bell has retained counsel for this litigation and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Copyright Infringement
(Against All Defendants)

46. The allegations set forth in paragraphs 1-45 are hereby re-alleged as if fully set forth herein.

47. Dr. Bell created and owns the copyrights to Infringed Works, two (2) separate and distinct original textual works that are the subject of the '571 and '644 Registrations. *See* Exhibits A-C.

48. Without Dr. Bell's authorization, consent, or permission, Defendants:

A. Reproduced the Infringed Works, or an unauthorized derivative thereof, in copies as electronic files;

B. Distributed copies of the Infringed Works, or an unauthorized derivative thereof, to the public via Twitter; and

C. Displayed the Infringed Works, or an unauthorized derivative thereof, publicly, including via Twitter.

49. As a result of the foregoing, Defendants directly infringed Dr. Bell's exclusive rights to:

A. Reproduce the Infringed Works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

B. Prepare derivative works based upon the Infringed Works, in violation of 17 U.S.C. §§ 106(2) and 501;

C. Distribute copies of the Infringed Works to the public by sale or other transfer of ownership, or by rental lease, or lending, in violation of 17 U.S.C. §§ 106(3) and 501; and

D. Display the Infringed Works publicly, in violation of 17 U.S.C. §§ 106(5) and 501, by (i) displaying the Infringed Works in a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and social acquaintances is gathered and/or (ii) transmitting or otherwise communicating said display of the Infringed Works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

50. Defendants are jointly and severally liable for the infringing Dr. Bell's copyrights to the Infringed Works.

51. Defendants' infringement of Dr. Bell's copyrights to each of the two (2) individual Infringed Works constitutes a separate and distinct act of infringement.

52. Defendants' infringement was committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

53. As a direct and proximate result of Defendants' wrongful conduct, Dr. Bell has suffered substantial monetary damages.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

(A) Award Plaintiff the actual damages suffered as a result of the infringement and Defendants' profits that are attributable to the infringement, pursuant to 17 U.S.C. § 504(b), or statutory damages in an amount up to \$150,000 per infringed work, pursuant to 17 U.S.C. § 504(c), at Plaintiff's election, pursuant to 17 U.S.C. § 504(a);

(B) Award Plaintiff his reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

(C) Grant Plaintiff all such other and further relief this Court deems just and proper.

COUNT II
Vicarious Copyright Infringement
(Against Bartholomew Only)

54. The allegations set forth in paragraphs 1-45 are hereby re-alleged as if fully set forth herein.

55. Dr. Bell created and owns the copyrights to Infringed Works, two (2) separate and distinct original textual works that are the subject of the '571 and '644 Registrations. *See* Exhibits A-C.

56. Without Dr. Bell's authorization, consent, or permission, Coach Bless:

A. Reproduced the Infringed Works, or an unauthorized derivative thereof, in copies as electronic files;

B. Distributed copies of the Infringed Works, or an unauthorized derivative thereof, to the public via Twitter; and

C. Displayed the Infringed Works, or an unauthorized derivative thereof, publicly, including via Twitter.

57. As a result of the foregoing, Coach Bless directly infringed Dr. Bell's exclusive rights to:

A. Reproduce the Infringed Works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

B. Prepare derivative works based upon the Infringed Works, in violation of 17 U.S.C. §§ 106(2) and 501;

C. Distribute copies of the Infringed Works to the public by sale or other transfer of ownership, or by rental lease, or lending, in violation of 17 U.S.C. §§ 106(3) and 501; and

D. Display the Infringed Works publicly, in violation of 17 U.S.C. §§ 106(5) and 501, by (i) displaying the Infringed Works in a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and social acquaintances is gathered and/or (ii) transmitting or otherwise communicating said display of the Infringed Works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

58. Bartholomew had the right and ability to supervise and/or control Coach Bless' directly infringing conduct.

59. Bartholomew failed to exercise its right and ability to supervise and/or control Coach Bless' directly infringing conduct.

60. As a direct and proximate result of such failure, Coach Bless directly infringed Dr. Bell's copyrights to the Infringed Works.

61. Bartholomew derived a substantial financial benefit from Coach Bless' infringements of Dr. Bell's copyrights to the Infringed Works.

62. Bartholomew's conduct constitutes vicarious infringement of Dr. Bell's copyrights to the Infringed Works.

63. Bartholomew's vicarious infringement of Dr. Bell's copyrights to each of the separate Infringed Works constitutes a separate and distinct act of infringement.

64. Bartholomew's vicarious infringement was committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

65. As a direct and proximate result of Bartholomew's vicarious infringement, Dr. Bell has suffered substantial monetary damages.

WHEREFORE, Dr. Bell respectfully requests that the Court enter judgment in favor of Dr. Bell and against Bartholomew as follows:

(A) Award Dr. Bell the actual damages suffered as a result of the infringement and Bartholomew's profits that are attributable to the infringement, pursuant to 17 U.S.C. § 504(b), or statutory damages in an amount up to \$150,000 per infringed work, pursuant to 17 U.S.C. § 504(c), at Plaintiff's election, pursuant to 17 U.S.C. § 504(a);

(B) Award Dr. Bell his reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

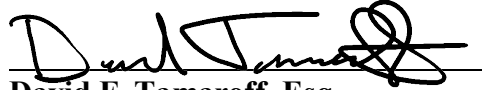
(C) Grant Dr. Bell all such other and further relief this Court deems just and proper.

Demand For Jury Trial

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: August 2, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Tamaroff", written over a horizontal line.

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