

4. This Court has personal jurisdiction over the Defendant by virtue of its transacting, doing, soliciting business, and because a substantial part of the property that is the subject of this action is situated here.

5. Venue is proper in this district pursuant to 28 U.S.C. §1400(a) because the defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and defendant resides and does business in this District.

Factual Background

6. Plaintiff is a professional photographer and is the owner of (380) photographs taken March 22, March 23, and April 4, 2019). A copy of the photographs are attached as Exhibit A, hereinafter referred to as the “Photos”. The Photos were registered with the United States Copyright Office on August 14th 2019 and were provided Registration Number **VAu 1-381-446**.

7. Defendant manufactures certain audio equipment including without limitation speakers and headphones which it markets and sells online at, including without limitation, www.klhaudio.com, www.crutchfield.com, www.amazon.com, www.worldwidesterio.com, and www.parkergwen.com.

8. Defendant operates certain social media accounts through Facebook and Instagram which is uses to market and sell its audio equipment.

9. On or about March 20, 2020, Plaintiff and Defendant entered into an agreement for the sale of the rights to use the Photos.

10. Despite copying and publishing the Photos through the aforementioned online retail websites and social media accounts, Defendant has failed to pay for said use or obtain the necessary authorization from the Plaintiff, the copyright owner.

COUNT I – COPYRIGHT INFRINGEMENT

11. Defendants copied and published the Photos for its commercial use without paying for said use and without obtaining the necessary authorization from the Plaintiff, the copyright owner, which constitutes copyright infringement.

12. Plaintiff filed this action within three years of discovery of the purported infringement.

13. 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.

14. Plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyrights in the Photos as referenced above.

15. Defendant'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.

16. On information and belief, Plaintiff alleges that, as a direct and proximate result of its wrongful conduct, Defendant has realized and continues to realize profits and other benefits rightfully belonging to Plaintiff. Accordingly, Plaintiff seeks an award of damages pursuant to 17 U.S.C. §§ 504 and 505.

17. 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.

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

19. Examples of these willful and deliberate Acts, include but not limited to the following:

a. Defendant downloaded the Photos and included said photo on the aforementioned online retailer websites and social media accounts knowing its obligation to pay for rights to same and knowing that it had not paid.

b. Defendant failed to designate the source of the Photos 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 including the Photos.

20. As a consequence of this dispute between the parties as to the rights, title, and interest in the copyrighted Photos described above, and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff also seeks a resolution of this ongoing controversy by a declaration of this Court as to the rights of the respective parties in this matter.

THEREFORE, Plaintiff prays for judgment against Defendant 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, its 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. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by its infringement of Plaintiff's copyrights or such damages as are proper, and since Defendant intentionally and willfully infringed Plaintiff's copyrights, for the maximum allowable statutory damages for each violation;

d. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;

e. Awarding Plaintiff its costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505; and

f. Awarding Plaintiff such other and further relief as is just and proper.

COUNT II – BREACH OF CONTRACT

21. The Plaintiff realleges and incorporates by reference as if fully set forth herein the allegations contained in all preceding paragraphs.

22. On or about March 20, 2020, Plaintiff and Defendant entered into an agreement pursuant to which Plaintiff agreed to take certain photos in exchange for Defendant paying for the

rights to use said photos (the “Agreement”). Defendant is indebted to Plaintiff in the sum of \$1,950.00, as shown by the Statement of Account attached hereto as Exhibit B and made a part hereof.

23. The sum of \$1,950.00 is now due and unpaid and there has been a long and unreasonable delay in the payment of said sum which Defendant has failed and refused to pay despite Plaintiff’s repeated demands for payment.

24. Plaintiff provided a statement of account to Defendant.

25. Defendant did not dispute the charges shown on Plaintiff’s invoice within a reasonable time after receipt thereof and, as a result, an account stated has arisen between parties.

THEREFORE, Plaintiff prays for Damages in the amount of \$1,950.00 and for such other relief as is just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully Submitted,

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