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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LARRY G. PHILPOT, an Indiana)	Case No. 1:20-cv-2712
resident,	:	
)	
Plaintiff,	:	
)	<u>COMPLAINT</u>
v.	:	
)	(JURY TRIAL DEMANDED)
MUSTARD SEED MEDIA, LLC,	:	
an Indiana limited liability company,)	
150 W. Market Street, Suite 500	:	
Indianapolis, IN 46204,)	
	:	
Also serve:)	
	:	
Registered Agent)	
Kurt Luidhardt	:	
150 W. Market Street, 500)	
Indianapolis, IN 46143	:	
)	
and	:	
)	
THE PROSPER GROUP	:	
CORPORATION,)	
an Indiana for-profit corporation	:	
150 W. Market Street, Suite 500,)	
Indianapolis, IN 46204,	:	
)	
Also serve:	:	
)	
Registered Agent	:	
Kristen C. Luidhardt)	
2005 Eagle Trace Drive	:	
Greenwood, IN 46143)	
	:	
Defendants.)	
	:	
)	

The plaintiff, Larry G. Philpot, by and through his undersigned counsel, and for his causes of action against Defendants Mustard Seed Media, LLC (“Mustard Seed”) and The Prosper Group Corporation (“Prosper Group”), states as follows:

INTRODUCTION

1. This is an action for copyright infringement arising out of Mustard Seed’s and Prosper Group’s intentional, unauthorized, and unlawful infringements of a copyrighted photograph of music artist Kid Rock (“the Subject Photo”) created and owned by Mr. Philpot.

THE PARTIES

2. Mr. Philpot is an individual and resident of the state of Indiana.

3. Mr. Philpot is a well-known photographer of musicians and concerts across the country who licenses his work to premiere publishers and musicians.

4. Mustard Seed is an Indiana corporation, which at all relevant times, in cooperation and conjunction with Prosper Group, owned and operated the website, dcstatesman.com (“DC Statesman Website”).

5. Prosper Group is an Indiana corporation, which at all relevant times, in cooperation and conjunction with Mustard Seed, owned and operated the DC Statesman Website.

JURISDICTION AND VENUE

6. This is a civil action seeking relief for copyright infringement under the Copyright Act of 1976, 17 U.S.C, §§ 101, *et seq.*

7. The Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

8. The Court has personal jurisdiction over Mustard Seed and Prosper Group due to their joint ownership and operation of the DC Statesman Website out of their shared principal office in Indianapolis, Indiana, and because the actions giving rise to this Complaint occurred in this judicial district.

9. Venue of this action in the United States District Court for the Southern District of Indiana is proper pursuant to 28 U.S.C. § 1400(b), as the relevant actions took place in this judicial district for purposes of 28 U.S.C. § 1400(b).

FACTUAL BACKGROUND

10. In the course of his work, Mr. Philpot took the Subject Photo. A true and accurate copy of the Subject Photo is attached as Exhibit A.

11. On December 9, 2013, Mr. Philpot obtained a copyright registration, No. VAu 1-182-727, with the U.S. Copyright Office for the Subject Photo. A true and accurate copy of the certificate of registration for the Subject Photo is attached as Exhibit B.

12. On or after October 19, 2017, Mr. Philpot discovered that Mustard Seed and Prosper Group used, copied, published, and/or displayed his Kid Rock image on the DC Statesman Website, at the following publicly viewable web addresses (“Kid Rock Links”):

- i. <https://www.dcstatesman.com/kid-rock-ahead-michigan-polls/>
- ii. <https://www.dcstatesman.com/wp-content/uploads/2017/02/kid-rock.jpg>

True and accurate screenshots of the infringing uses of the Kid Rock image are attached as Exhibit C.

13. The DC Statesman Website was and is promotional in nature, and intended to engage and interact with the public to encourage and increase traffic to its site; therefore, it was

and is inherently commercial in nature.

14. Neither Mustard Seed nor Prosper Group had permission or license to use, copy, publish, or display the Subject Photo.

15. At no point has Mustard Steed or Prosper Group obtained or attempted to obtain a license for the use, copying, publication, or display of the Subject Photo.

16. At some point after October 19, 2017 the first infringing post displaying the Subject Photo was removed. The second infringing post continues to display the Subject Photo.

COUNT ONE - COPYRIGHT INFRINGEMENT (MUSTARD SEED)

17. The allegations of the above and foregoing paragraphs of this Complaint are re-alleged and incorporated herein by reference.

18. The Subject Photo is an original work of Mr. Philpot, copyrightable and copyrighted under the laws of the United States.

19. At all times relevant hereto, Mr. Philpot has been and remains the owner of all copyrights in and to the Subject Photo, and he has not ever assigned, licensed, or otherwise given permission to Mustard Seed to use, copy, publish, or display his work.

20. Mustard Seed had access to the Subject Photo on the internet.

21. Mustard Seed used and displayed the Subject Photo on the DC Statesman Website without permission or license to do so.

22. By its conduct described herein, Mustard Seed infringed on Mr. Philpot's copyrights in the Subject Photo.

23. Mustard Seed's wrongful acts have caused injury to Mr. Philpot.

24. Thus, Mustard Seed is liable to Mr. Philpot for all remedies available under the

Copyright Act, including, but not limited to, actual compensatory damages, the disgorgement of profits, or statutory damages, at Mr. Philpot's election; and his costs and attorneys' fees, pursuant to 17 U.S.C. §§ 504 and 505.

COUNT TWO - COPYRIGHT INFRINGEMENT (PROSPER GROUP)

25. The allegations of the above and foregoing paragraphs of this Complaint are re-alleged and incorporated herein by reference.

26. The Subject Photo is an original work of Mr. Philpot, copyrightable and copyrighted under the laws of the United States.

27. At all times relevant hereto, Mr. Philpot has been and remains the owner of all copyrights in and to the Subject Photo, and he has not ever assigned, licensed, or otherwise given permission to Prosper Group to use, copy, publish, or display his work.

28. Prosper Group had access to the Subject Photo on the internet.

29. Prosper Group used and displayed the Subject Photo on the DC Statesman Website without permission or license to do so.

30. By its conduct described herein, Prosper Group infringed on Mr. Philpot's copyrights in the Subject Photo.

31. Prosper Group's wrongful acts have caused injury to Mr. Philpot.

32. Thus, Prosper Group is liable to Mr. Philpot for all remedies available under the Copyright Act, including, but not limited to, actual compensatory damages, the disgorgement of profits, or statutory damages, at Mr. Philpot's election; and his costs and attorneys' fees, pursuant to 17 U.S.C. §§ 504 and 505.

WHEREFORE, Plaintiff Mr. Philpot respectfully requests that this Court:

- A. Find Mustard Seed individually liable on Count One as described herein;
- B. Find Prosper Group individually liable on Count Two as described herein;
- C. In the alternative, find Mustard Seed and Prosper Group jointly and severally liable on Counts One and Two as described herein;
- D. Award Mr. Philpot his actual, compensatory damages, the disgorgement of profits, or statutory damages, at Mr. Philpot's election, to the full extent provided by 17 U.S.C. § 504, in an amount to be determined at trial;
- E. Award Mr. Philpot's attorneys' fees and costs to the full extent provided by 17 U.S.C. § 505; and
- F. Grant such other relief as this Court deems equitable and just.

Of Counsel:

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Respectfully submitted,

/s/ J. Stephen Smith

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