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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

**TARA MAPES,
25773 Easy Way Drive
Guilford, IN 47022**

Plaintiff,

CASE NO.

DEMAND FOR JURY TRIAL

v.

**TOP TIER MARKETERS LLC D/B/A
ARTFILY
c/o Dean Broadwater, Registered Agent
921 Strangler Fig Lane
Sanibel, FL 33967,**

**MEAGAN BROADWATER,
Individually and d/b/a Creatiuns,
921 Strangler Fig Lane
Sanibel, FL 33967, and**

**DEAN BROADWATER,
Individually and d/b/a Creatiuns,
921 Strangler Fig Lane
Sanibel, FL 33967,**

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Tara Mapes ("Mapes"), by and through her undersigned counsel, hereby sues Defendants Top Tier Marketers LLC d/b/a Artfily ("Artfily"), Megan Broadwater, and Dean Broadwater (collectively "Defendants") and alleges as follows:

THE PARTIES

1. Plaintiff Mapes is an individual residing in 25773 Easy Way Drive, Guilford, IN 47022.

2. Defendant Artfily is a Florida limited liability company having its principal place of business at 921 Strangler Fig Lane, Sanibel, FL 33967.

3. Defendants Megan and Dean Broadwater are individuals residing at 921 Strangler Fig Lane, Sanibel, FL 33967. They also conduct business under several "d/b/a" entities, including, upon information and belief, Artfily, Creatiuns, and others.

4. Mapes is informed and believes, and thereon alleges, that Defendants regularly conduct business in, and have committed the acts alleged herein, within this judicial district. Artfily operates a website advertising, offering to sell, and, upon information and belief, selling products throughout the United States, including in this judicial district. The Broadwaters, individually and through their d/b/a businesses, advertise, offer to sell, and, upon information and belief, sell products throughout the United States, including in this judicial district.

JURISDICTION AND VENUE

5. This is an action for copyright infringement under 17 U.S.C. § 101, et seq.

6. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) over the claims arising under the laws of the United States.

7. This Court has personal jurisdiction over Defendants under the Indiana long-arm statute, Indiana Trial Rule 4.4, at least because Defendants, on information and belief, (1) regularly do business in Indiana, (2) supply or contract to supply goods in Indiana, and (3) cause tortious injury to Mapes in Indiana and regularly do or solicit business, engage in persistent course of conduct, and derive substantial revenue from goods used in Indiana.

8. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) – (c) because a substantial part of the events giving rise to the claim occurred in this district and the property that

is the subject of the claim is situated in this district, and because Defendants are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. Plaintiff Mapes is a well-known photographer specializing in fashion and fine art photography. She does business through the name Tara Mapes Fine Art Photography and through the name Enchanted Eye Creations.

10. In addition to other aspects of her business, Mapes sells digital backgrounds for photographers through an Etsy store called Enchanted Eye Creations by Tara Mapes. Those digital backgrounds are sold with limited licenses for personal use and for use by photographers to Photoshop in their own subjects.

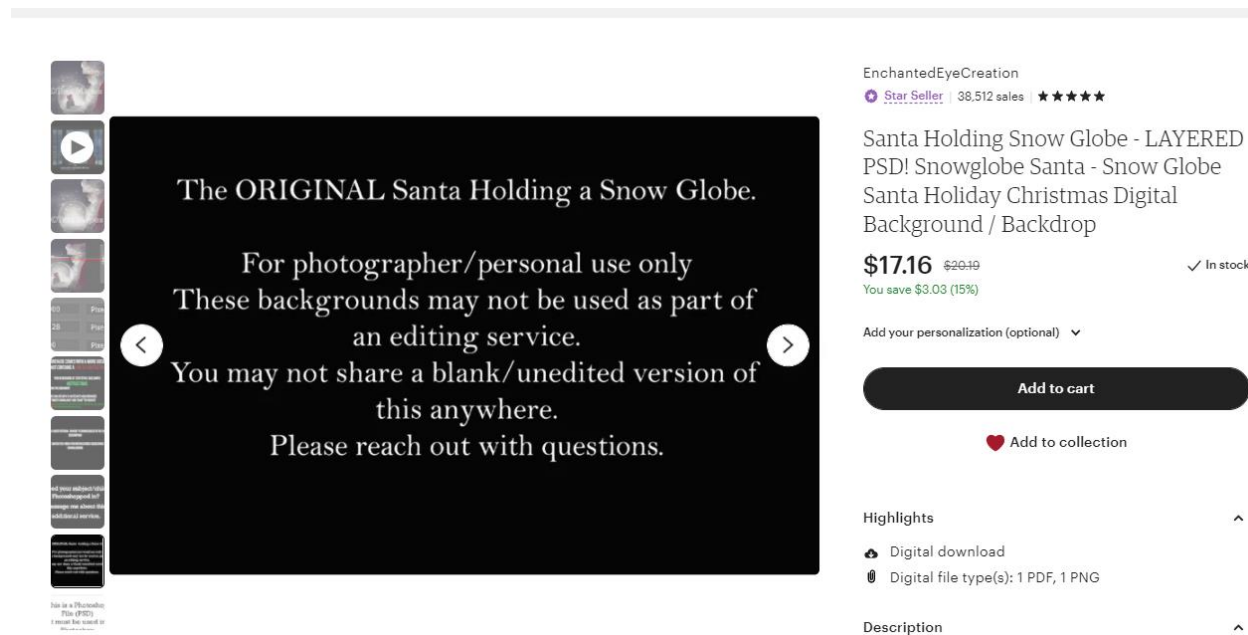
11. One such digital background sold on Mapes's Etsy store is "Santa Holding Snow Globe":



12. Mapes owns a copyright registration for the above background, named "Santa with Magic Snow Globe," Copyright Registration Number VA 2-151-851, with an effective registration date of December 17, 2018. A true and correct copy of the registration is attached hereto as **Exhibit A**.

13. Mapes includes the limitations on the license under which she sells the digital backgrounds on her Etsy store in numerous places.

14. First, the product images include a black rectangle with prominent white lettering highlighting the limitations on the license:



15. Second, the listing itself includes detailed information regarding the limitations on the license:

NOTICE:

This license is for PERSONAL AND/OR
PROFESSIONAL PHOTOGRAPHY COMPOSITE USE
ONLY.

This license is only between Enchanted Eye
Creations and the buyer.

What you CAN do:

You can provide the image to your photography
clients after you've personally taken their picture
and added them to the image.

What you CAN'T DO:

PROHIBITED:

***You cannot redistribute or resell this image as a
background, in any printed or digital
merchandise, as stock or any other item for resale
or sale.

***Even if you add something to it—you cannot
sell it as your own background or product.

***You cannot offer to edit someone in as part of
an editing service or online group.

***You cannot send it to someone else to add you
or anyone else in it for you. I offer this service.

***You cannot use in tutorials.

***You cannot post online without your subject or
watermark.

***You cannot enter into contests, magazines or
other exhibits.

***You also cannot share the original digital file
with someone else, even if it is your own
photographer.

***Sharing the file with others is strictly
prohibited.

***ALL of these things violate my copyright and/or
license.

16. Third, the receipt includes detailed information regarding the limitations of the license:

Message to Buyers

Thank you for your purchase!

If you have questions regarding your order, please send a direct message. Digital shop owners don't process orders, so "buyer's notes" may not be seen.

If you need editing assistance, please join my group with free tutorials and post your questions there:
<https://www.facebook.com/groups/photoeditingandcompositing>

Youtube channel:
https://www.youtube.com/channel/UCoOt9utynBzg_Yfvdkm1ObA

PROMOS & DEALS! You are now eligible to receive promo codes and sales. Subscribe and opt out here <https://www.taramapes.com/newsletter-sign-up>

Terms:
Please note, all of my background licenses are for your personal use only or to be used with your photography client sessions only. You must take the picture of your clients yourself to use.

It cannot be used as part of an editing service or remote editing as I offer this service and doing so would directly compete with my business.

Please also note, no elements may be separated from this file and used to make new backgrounds. The background may not be redistributed, shared with anyone, resold or incorporated into any design for sale or for free.

These terms are also available for review in the listing description.

*Please see original listing for full terms and conditions of use.

If you are dissatisfied in any way, please reach out before reviewing to give me the opportunity to resolve any issues.

Stay enchanted!!

****PLEASE READ THE FOLLOWING ONLY IF YOU PURCHASED A PSD FILE****

17. Fourth, Etsy's terms of service include an agreement that by making a purchase on Etsy, the buyer has read the item description and shop policies:

3. Purchasing an Item on Etsy

When you buy from a shop on Etsy, you're directly supporting an independent business, each with its unique listings, policies, and processing times. By making a purchase from a seller on Etsy, you agree that you have:

1. Read the item description and shop policies before making a purchase;
2. Submitted appropriate payment for item(s) purchased; and
3. Provided accurate shipping information to the seller.

You also agree to comply with our [Etsy Gift Card, Credits & Coupons Policy](#) when you purchase or redeem Etsy Gift Cards, Etsy Credits or Etsy Coupons.

18. Finally, upon downloading the background, the purchaser received the following:

TM

TARA MAPES FINE ART PHOTOGRAPHY

Thank you for purchasing Santa Holding a Snow Globe!

Please note, all of my background licenses are for your personal use only or to be used with your photography client sessions only. You must take the picture of your clients yourself to use.

It cannot be used as part of an editing service or remote editing as I offer this service and doing so would directly compete with my business.

Please note, no elements may be separated from this file and used to make new backgrounds. The background may not be redistributed, resold or incorporated into any design for sale.

These terms are also available for review in the listing description.

Enjoy!!

Please download the Photoshop file here: <https://www.dropbox.com/s/6zv1ju6deewtg7/Santa%20Holding%20Snow%20Globe%20Tara%20Mapes.psd?dl=0>

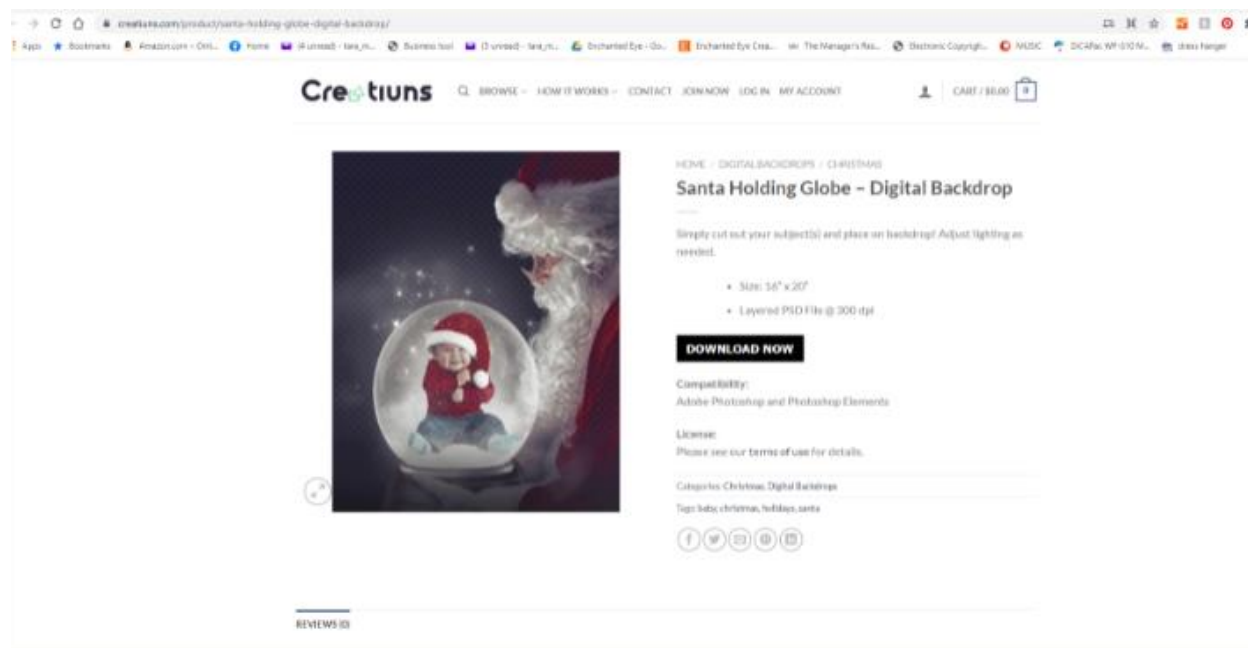
Please note, this link will **not** remain active for multiple downloads. It is updated randomly to protect against hacking/sharing. Please save your download to your computer.

Tara Mapes

Note: My license prohibits the sharing of this link with anyone. This DropBox folder is monitored to ensure my copyright and license are not violated.

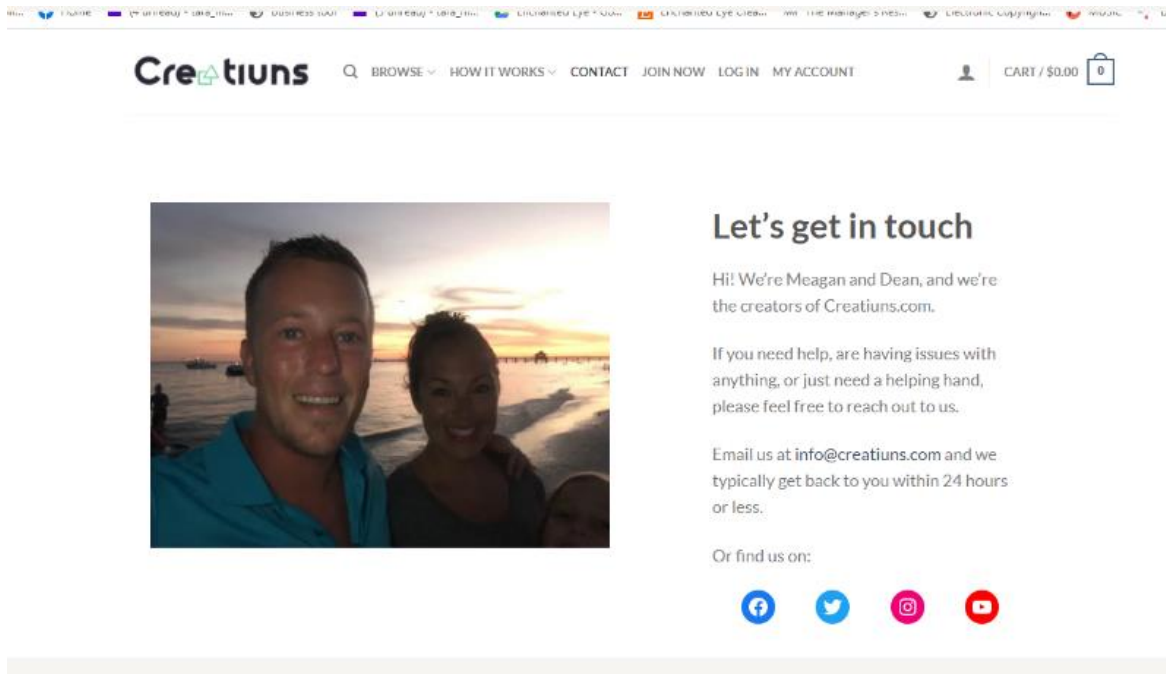
19. On September 7, 2021, Meagan Broadwater purchased and downloaded the "Santa Holding Snow Globe" digital background. In doing so, she would have been exposed to and agreed to the terms of the license for that image, in all of the forms described in Paragraphs 12 – 18, above.

20. In violation of the license, Defendants listed the "Santa Holding Snow Globe" background for sale on their own Creatiuns website, indicating that it was subject to their own license and attempting to pass it off as their own intellectual property:

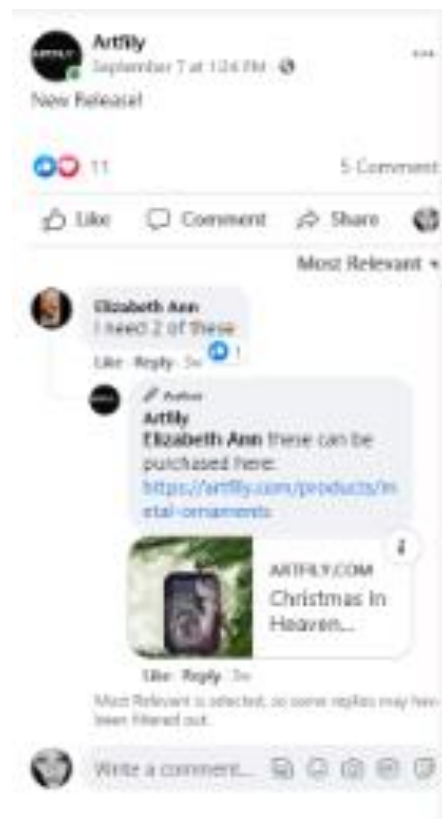


21. In the Creatiuns listing, Defendants renamed the file in an attempt to modify and eradicate the copyright information on Mapes's "Santa Holding Snow Globe" image.

22. Although the Defendants have since taken the website down, the Creatiuns website indicated that it was run by Meagan and Dean Broadwater:

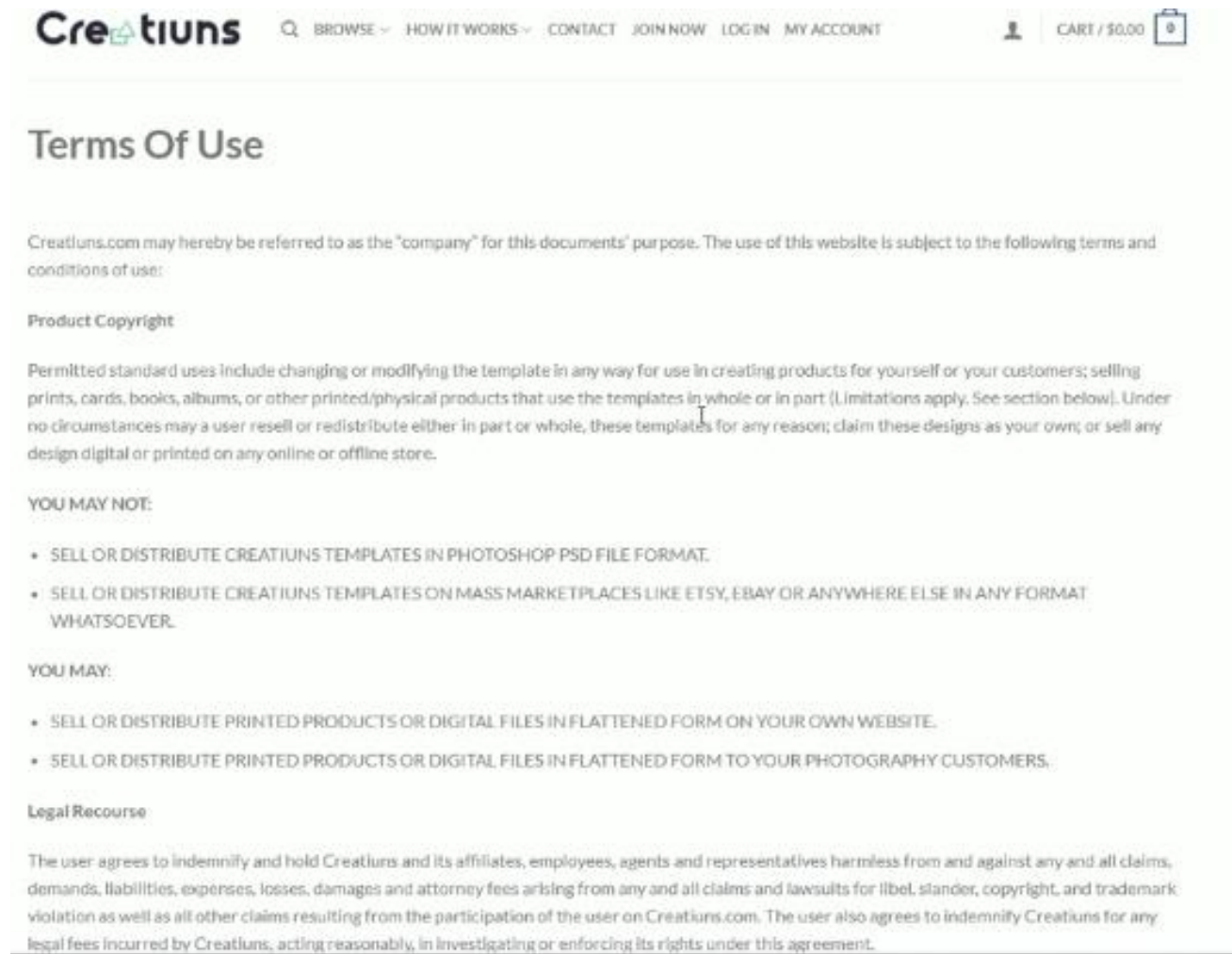


23. Defendants further advertised selling the image under their "Artfily" business name and directed potential purchasers to artfily.com to purchase it:



24. Defendants have engaged in similar behavior with respect to other creators—purchasing images under limited license and reselling those images as their own work and intellectual property.

25. Defendants have demonstrated an understanding of copyright law, including on the now-deleted Creatiuns website "Terms of Use" that discuss the copyright product of the images (at least some of which stolen from other creators) sold by Creatiuns:



26. The Creatiuns Terms of Use clearly indicate that the actions taken by the Defendants in this case are copyright infringement and that Defendants knew those acts constituted copyright infringement.

27. Defendants' business model, across a number of "doing business as" names, appears to be purchasing digital images under a limited license and reselling those images as digital downloads or on physical products as Defendants' own intellectual property.

28. Upon learning of Defendants' infringements, Mapes reached out on social media and via email correspondence, indicating that she had recorded all online evidence of the infringement, demanding removal of the images, revoking the licenses, and demanding certain information regarding the sales.

29. Initially, Defendants blocked Mapes, while continuing to sell her copyrighted work.

30. Meagan Broadwater eventually responded on behalf of "Creatiuns" regarding destruction of the images and removal of them from the subject websites. She further threatened a defamation action if Mapes continued to inform other victims of Defendants' infringement. Copies of the referenced email communication between Mapes and Meagan Broadwater is attached hereto as **Exhibit B**.

31. Defendants changed their website to make the templates hidden to the public so that Mapes could not confirm removal and destruction of her copyrighted material.

32. On November 11, 2021, Mapes sent a letter through counsel to Defendants regarding the infringement of Mapes's copyrighted photograph. A true and correct copy of that letter is attached hereto as **Exhibit C**.

33. Although Defendants initially provided some responses through counsel, they have apparently stopped responding to their counsel.

34. After Mapes informed Defendants, through counsel, that a complaint would be filed shortly if no satisfactory resolution were reached, Defendants deleted the Creatiuns website in an apparent attempt to hide evidence of their infringement.

35. Defendants' actions as described herein have been done with intent to infringe, with full knowledge of their infringing nature, and with willful disregard for the law and the rights of Mapes and others.

36. Defendants' actions have caused and continue to cause injury to Mapes. Further, if Defendants are permitted to continue their willful and intentional infringement, Mapes will be irreparably harmed.

COUNT ONE

(Copyright Infringement under the Copyright Act, 17 U.S.C. § 101, et seq.)

37. Mapes incorporates paragraphs 1 through 36 above as if fully rewritten herein.

38. Mapes owns a valid copyright registration for the "Santa with Magic Snow Globe" image.

39. Mapes has complied in all respects with Title 17 of the United States Code, secured the exclusive rights and privileges in and to her copyright, and in compliance with the law has received from the Register of Copyrights the appropriate Certificate of Registration, which constitutes prima facie evidence of the validity of the copyright and the facts stated in the certificate.

40. Defendants were granted only a limited license to use the copyright image as a background for the work of the buyer—Meagan Broadwater. Defendants have never sought, and Mapes has never granted to Defendants, any license to make or market unauthorized and unlicensed products using Mapes's copyrighted image.

41. By creating, manufacturing, distributing, offering for sale, and selling to the public and/or consumers digital downloads and products using the "Santa Holding Snow Globe" image, Defendants have infringed and continue to infringe Mapes's copyright.

42. Defendants' unauthorized acts relating to the infringement constitute willful and deliberate infringement of Mapes's copyright.

43. Through its infringement of Mapes's copyright, Defendants have unlawfully derived, and will continue to derive, income and profits from their infringing acts, and Mapes has sustained and will continue to sustain substantial injury.

44. As a direct and proximate result of Defendants' infringement of Mapes's copyright, Mapes is entitled to actual damages and Defendants' profits under 17 U.S.C. § 504(b) or, in the alternative, the maximum statutory damages in the amount of \$150,000 under 17 U.S.C. § 504(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mapes requests of the Court the following relief:

- A. A Declaration that Defendants have infringed Mapes's copyright;
- B. An Order preliminarily and permanently enjoining and restraining Defendants from manufacturing, distributing, licensing, using, copying, reproducing, displaying, adapting, offering for sale, and/or selling any product (including, but not limited to, digital downloads) that infringes Mapes's copyright;
- C. An Order permanently enjoining and restraining Defendants from engaging in any act of copyright infringement of Mapes's copyright;
- D. An Order directing Defendants to remove any copyright images or products using such images from all of Defendants' products, as well as from any websites or promotional materials, whether electronic, printed or otherwise, under Defendants' direct or indirect dominion and control, and ordering the destruction of all copies thereof under 17 U.S.C. § 503;
- E. An Order directing an accounting to determine Defendants' profits resulting from its unlawful activities set forth herein;
- F. An Order awarding Mapes compensation for any and all damages, injury, and harm pursuant to 17 U.S.C. § 504 and Indiana law;

G. An Order directing Defendants to pay, jointly and severally, full restitution and/or disgorgement of all profits, including any lost profits, and benefits that may have been obtained by Defendants as a result of its wrongful conduct, or alternatively statutory damages, pursuant to 17 U.S.C. § 504 and Indiana law;

H. An Order awarding Mapes her costs and reasonable attorneys' fees under 17 U.S.C. § 505; and

I. An Order awarding Mapes any further relief this Court shall deem just and equitable.

JURY DEMAND

Plaintiff Mapes demands a trial by jury for all issues so triable.

Dated: April 4, 2022

Respectfully submitted,

/s/ Michelle L. Casper

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