

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA



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CASE NO.: 1:23-cv-2059

SHOICHI MATSUMOTO,

Plaintiff,

v.

PHO REAL LLC,

Defendant.

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**  
**(INJUNCTIVE RELIEF DEMANDED)**

Plaintiff SHOICHI MATSUMOTO by and through his undersigned counsel, brings this Complaint against Defendant PHO REAL LLC for damages and injunctive relief, and in support thereof states as follows:

**SUMMARY OF THE ACTION**

1. Plaintiff SHOICHI MATSUMOTO (“Matsumoto”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Matsumoto's original copyrighted Work of authorship.

2. Matsumoto is a private chef, TV host, food consultant and photographer, who prepares food, styles the food and takes stunning images of the food he has created and styled. He uses Sony DSLR, Sony A100, Sony A550 and Sony A77 (mated to a Carl Zeiss 24-70 f2.8 lens) cameras to capture his work. Matsumoto licenses his photos for both commercial and non-commercial uses.

3. Defendant PHO REAL LLC (“Pho Real”) is a restaurant located in Indianapolis, IN, serving Thai, Vietnamese and Lao cuisine. It offers dine-in, take-out and delivery services.

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At all times relevant herein, Pho Real owned and operated the internet website located at the URL <https://phorealindy.com/> (the “Website”).

4. Matsumoto alleges that Pho Real copied Matsumoto's copyrighted Work from the internet in order to advertise, market and promote its business activities. Pho Real committed the violations alleged in connection with Pho Real’s business for purposes of advertising and promoting sales to the public in the course and scope of the Pho Real’s business.

### **JURISDICTION AND VENUE**

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Indiana.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

### **DEFENDANT**

9. Pho Real LLC is an Indiana limited liability company, organized and existing under the laws of the State of Indiana. Pho Real has its Principal Office at 9611 N College Ave, Carmel, IN 46280 and can be served by serving its Registered Agent/President, Aet Saengkeo Ely, at 12257 Cobblestone Drive, Fishers, IN 46037 or whenever he may be found.

### **THE COPYRIGHTED WORK AT ISSUE**

10. In 2013, Matsumoto created the photograph entitled “yakisoba-4”, which is shown below and referred to herein as the “Work”.



11. Matsumoto registered the Work with the Register of Copyrights on April 3, 2014 and was assigned the registration number VA 1-908-799. The Certificate of Registration is attached hereto as Exhibit 1.

12. Matsumoto's Work is protected by copyright but was not otherwise confidential, proprietary, or trade secrets. The Work in perspective, orientation, positioning, lighting and other details is entirely original, distinctive, and unique. As such, the Work qualifies as subject matter protectable under the Copyright Act.

13. Matsumoto's Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

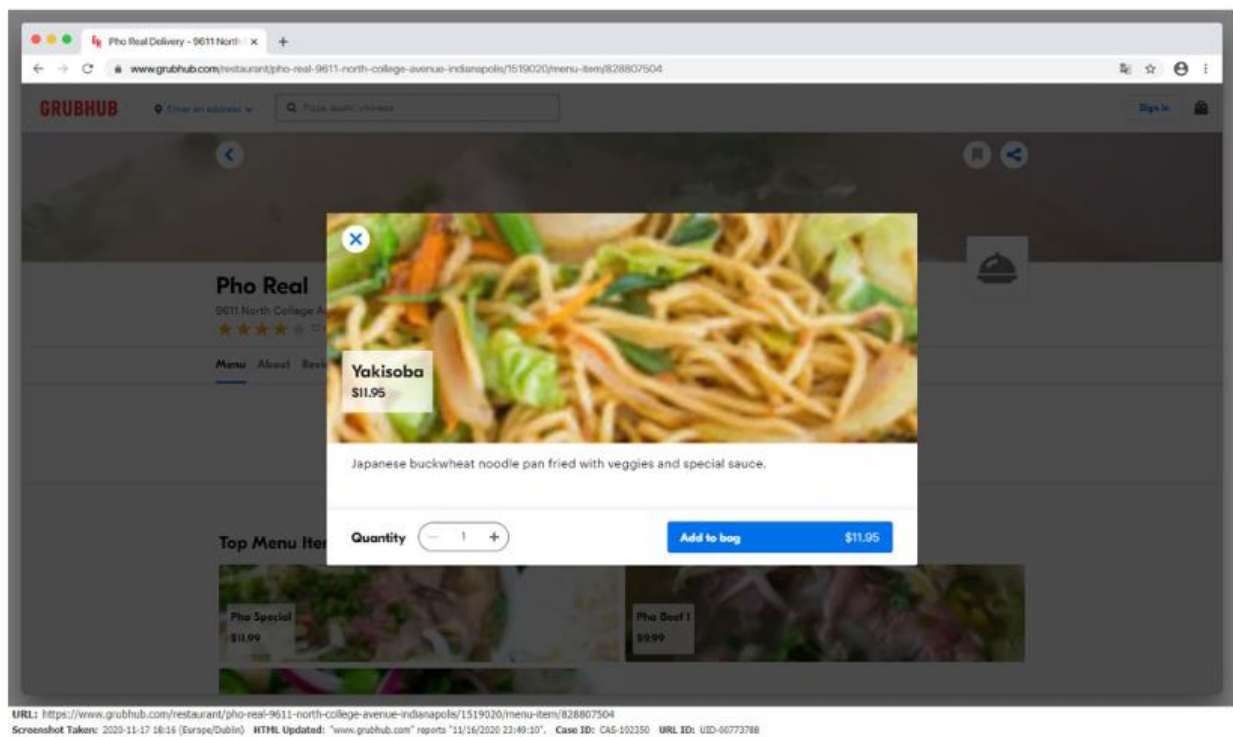
14. At all relevant times Matsumoto was the owner of the copyrighted Work at issue in this case.

### **INFRINGEMENT BY DEFENDANT**

15. Pho Real has never been licensed to use the Work at issue in this action for any purpose.

16. On a date after the Work at issue in this action was created, but prior to the filing of this action, Pho Real copied the Work.

17. On or about November 17, 2020, Matsumoto discovered the unauthorized use of his Work on the American online and mobile prepared food ordering and delivery platform – non-party Grubhub.Inc. A representative example of one of the images from the Grubhub.Inc. website using the Work is shown in part here:



18. Pho Real copied Matsumoto's copyrighted Work without Matsumoto's permission.

19. After Pho Real copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its restaurant business.

Specifically, upon information and belief, Pho Real uploaded the Work to Grubhub Inc.'s website to market its goods and services.

20. Pho Real copied and distributed Matsumoto's copyrighted Work in connection with Pho Real's business for purposes of advertising and promoting Pho Real's business, and in the course and scope of advertising and selling products and services.

21. Pho Real committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

22. Matsumoto never gave Pho Real permission or authority to copy, distribute or display the Work at issue in this case.

23. Matsumoto notified Pho Real of the allegations set forth herein on November 15, 2022 and March 7, 2023. To date, Pho Real has failed to respond to Plaintiff's Notices.

**COUNT I  
COPYRIGHT INFRINGEMENT**

24. Matsumoto incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Matsumoto owns a valid copyright in the Work at issue in this case.

26. Matsumoto registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

27. Pho Real copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Matsumoto's authorization in violation of 17 U.S.C. § 501.

28. Pho Real performed the acts alleged in the course and scope of its business activities.

29. Pho Real's acts were willful.

30. Matsumoto has been damaged.

31. The harm caused to Matsumoto has been irreparable.

WHEREFORE, Plaintiff Shoichi Matsumoto prays for judgment against Defendant Pho Real LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff his actual damages and Pho Real's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Plaintiff be awarded pre- and post-judgment interest; and

e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

### **JURY DEMAND**

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

DATED: November 15, 2023

Respectfully submitted,

*/s/Jay Campbell Miller*

JAY CAMPBELL MILLER

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