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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

9 RICHARD N. BELL,

10 Plaintiff,

Case No.:

11 vs.

12
13 WILMOTT STORAGE SERVICES,
14 LLC; and DOES 1-100 and ROE
15 Corporations I-X inclusive,

16 Defendant.

COMPLAINT

17
18 Plaintiff Richard N. Bell ("Plaintiff"), by and through counsel, Ryan Hamilton
19 of Hamilton Law, LLC, alleges the following:

20 **SUMMARY OF LAWSUIT**

21 1. The Plaintiff, Richard N. Bell, took a photograph of the Indianapolis Skyline
22 in 2000 and the "Indianapolis Photo" was registered with the U.S. Copyright office.
23 In 2018, the Plaintiff discovered that the Defendant WILMOTT STORAGE
24 SERVICES, LLC ("WILMOTT") had published the "Indianapolis Photo" ("Exhibit
25

1 A”) in advertising which appears on a website owned by Defendant WILMOTT,
2 even though the Defendant had no rights or authority to publish the Indianapolis
3 Photo. The Plaintiff requests damages against Defendant WILMOTT for violations
4 of the Lanham Act and U.S. Copyright laws.

5 **JURISDICTION AND VENUE**

6
7 2. This copyright infringement action arises under 17 U.S.C. § 101 et seq. This
8 Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28
9 U.S.C. § 1338 (acts of Congress related to copyright and Lanham Act).

10 3. This Court has personal jurisdiction over the Defendant by virtue of its
11 transacting, doing, and soliciting business in this District, and because a substantial
12 part of the relevant events occurred in this District and because a substantial part of
13 the property that is the subject of this action is situated here.

14
15 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a)
16 because a substantial part of the events or omissions giving rise to the claim
17 occurred, or a substantial part of property that is the subject of the action is situated;
18 and/or conduct business in this district.

19 **PARTIES**

20
21 5. The Plaintiff, Richard N. Bell is an attorney and a professional photographer
22 and lives in McCordsville, Indiana.

23 6. Defendant WILMOTT STORAGE SERVICES, LLC (“WILMOTT”) has
24 conducted and does conduct business in this district. WILMOTT created a website
25

1 with the domain name of <http://www.visitusa.com> for its business. WILMOTT
2 advertises it does business in this district. (See Exhibit B).

3 **FACTS**

4 7. In March 2000, the Plaintiff, a United States citizen, took a photograph of the
5 downtown Indianapolis skyline from overlooking the canal from St. Clair Avenue.

6 8. The photograph is an original work that is copyrighted under United States
7 law. A copy of the photo is attached as Exhibit A, hereinafter referred to as
8 “Indianapolis Photo”.
9

10 9. Since March 2000, the Plaintiff has either published or licensed for
11 publication all copies of the Indianapolis Photo in compliance with the copyright
12 laws and has remained the sole owner of the copyright.
13

14 10. Indianapolis Photo was first published on the World Wide Web on August 29,
15 2000 by the Plaintiff’s account on Web shots. It was recently published on a website
16 created by the Plaintiff under the domain name: www.richbellphotos.com

17 11. The “Indianapolis Photo” was registered on August 4, 2011 with the United
18 States Copyright Office and assigned Registration Number VA0001785115.
19

20 12. Plaintiff has used the Indianapolis Photo in advertising to such an extent that
21 the Indianapolis Photo is identified by the public as being created by the Plaintiff.

22 13. Plaintiff has used the Indianapolis Photo in advertising to promote his
23 photography business.
24

25 ///

CLAIM FOR RELIEF

COPYRIGHT INFRINGEMENT

14. Defendant WILMOTT created a website with the domain name of <http://www.visitusa.com> to promote and advertise WILMOTT 's business in Indianapolis and used the Indianapolis Photo on said website. (Exhibit B Screen Shot of Infringement)

15. Defendant WILMOTT used the Indianapolis Photo to draw or attract prospective customers to Defendant's business.

16. Defendant WILMOTT is liable to Plaintiff because he had the right and ability to control and supervise the content of and to control and supervise the access of third-party Internet users to that website.

17. Upon information and belief, the Defendant WILMOTT downloaded or took the Indianapolis Photo from the internet without permission from the owner.

18. On April 5, 2018, the Plaintiff discovered through the computer program Google Images that the website of Defendant contained the Indianapolis Photo at <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg> and was visible to world viewers on April 5, 2018. (Exhibit B Screen Shot of Infringement)

19. Defendant did not disclose the source of the stolen Indianapolis Photo or otherwise confer credit to the owner; instead, Defendant willfully and recklessly falsely claimed that Defendant WILMOTT owned the copyrights of all images

1 and photos contained on the website of

2 <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg> including

3 Indianapolis Photo by adding copyright notice “Copyright © 2014 visitUSA. All

4 Rights Reserved. During the years 2017 and 2018, the website of Defendant

5 WILMOTT published the Indianapolis Photo for its commercial use without

6 paying for said use and without obtaining the necessary authorization from the

7 Plaintiff, the copyright owner.

8
9 20. While the Defendant will know the exact date of first publication, based

10 upon the Plaintiff’s investigation, during the year 2018, Defendant began

11 publishing the Indianapolis Photo and used the Indianapolis Photo for its

12 commercial use without paying for said use and without obtaining the necessary

13 authorization from the Plaintiff in approximately in 2018 and continues to

14 publish the Indianapolis Photo.

15
16 21. The Defendant knew that it did not own Indianapolis Photo and knew the

17 Defendant had not obtained the rights to publish the Indianapolis Photo, but

18 recklessly and falsely represented to the world otherwise.

19
20 22. Defendant WILMOTT has not paid Plaintiff for the right to publish the

21 Indianapolis Photo, but instead fraudulently declared that the Defendant WILMOTT

22 owned the copyrights to the Indianapolis Photo by adding their own copyright notice

23 “Copyright © 2014 visitUSA. All Rights Reserved.”

24
25 23. Defendant refuses to pay for the unauthorized use of Indianapolis Photo.

1 24. Defendant has not agreed be enjoined from using the Indianapolis Photo.

2 25. After the Defendant published the Indianapolis Photo, Defendant permitted
3 third parties to access to the webpage

4 <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg> and copy the
5 Indianapolis Photo to third party Internet User's computers.

6 26. Defendant is vicariously liable for each such downloaded copy of the
7 Indianapolis Photo initiated by each third-party Internet User regardless of whether
8 Defendant was aware that the third party was creating the downloaded copy.
9

10 27. Defendant is liable for all profits resulting from each downloaded copy of the
11 Indianapolis Photo created by each such third-party Internet User.

12 28. Defendant is liable for copyright infringement regardless of whether
13 Defendant knew that any use of the Indianapolis Photo would infringe copyrights
14 Plaintiff owns.
15

16 29. Plaintiff has complied in all respects with 17 U.S.C. §§ 101 et seq., and
17 secured the exclusive rights and privileges in and to the copyrights of the above-
18 referenced works.
19

20 30. Plaintiff has been and still is the sole proprietor of all rights, title, and interest
21 in and to the copyrights in their respective works as referenced above.

22 31. Defendant WILMOTT's conduct violates the exclusive rights belonging to
23 Plaintiff as owner of the copyrights, including without limitation Plaintiff's rights
24 under 17 U.S.C. § 106.
25

1 32. Plaintiff seeks damages for Defendant's use of Plaintiff's advertising idea
2 comprising the Indianapolis Photo.

3 33. On information and belief, Plaintiff alleges that, as a direct and proximate
4 result of their wrongful conduct, Defendant WILMOTT has realized and continues
5 to realize profits and other benefits rightfully belonging to Plaintiff. Accordingly,
6 Plaintiff seek an award of damages pursuant to 17 U.S.C. §§ 504 and 505; and 15
7 U.S.C. § 1125(a).
8

9 34. Defendant's infringing conduct has also caused and is causing substantial and
10 irreparable injury and damage to Plaintiff in an amount not capable of
11 determination, and, unless restrained, will cause further irreparable injury, leaving
12 the Plaintiff with no adequate remedy at law.
13

14 35. Defendant has willfully and deliberately engaged in, and, is willfully
15 engaging in, the acts complained of with oppression, fraud, and malice ("Acts") and
16 in conscious disregard of the rights of Plaintiff. Plaintiff is, therefore, entitled to the
17 maximum statutory damages allowable.
18

19 36. Examples of these willfully and deliberately Acts, include but not limited to
20 the following:

- 21 a. Defendant WILMOTT downloaded or took the Indianapolis Photo
22 from the internet and included said photo on the Defendant's website.
- 23 b. Defendant failed to designate the source of the stolen Indianapolis
24 Photo or otherwise confer credit to the owner.
25

1 c. Defendant recklessly, willfully and falsely asserted that the Defendant
2 owned the copyrights of all content, images and photos contained in the
3 Defendant's website
4 <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg>
5 by adding a copyright notice "Copyright © 2014 visitUSA. All Rights
6 Reserved".

7
8 d. Defendant knew that it did not own Indianapolis Photo and knew the
9 Defendant had not obtained the rights to publish the Indianapolis
10 Photo, but deliberately and falsely represented to the world otherwise.

11 a. Defendants has not paid anyone for the right to use Indianapolis Photo,
12 but instead fraudulently declared that the Defendant owned the
13 copyrights to the Indianapolis Photo on
14 <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg>
15

16 THEREFORE, Plaintiff prays for judgment against Defendant WILMOTT as
17 follows:
18

- 19 a. Declaring that Defendant's unauthorized conduct violates Plaintiff's
20 rights under common law and the Federal Copyright Act;
- 21 b. Immediately and permanently enjoining Defendant WILMOTT, their
22 members, officers, directors, agents, servants, employees,
23 representatives, attorneys, related companies, successors, assigns, and
24 all others in active concert or participation with them from copying and
25 republishing any of Plaintiff's copyrighted articles or copyrighted
material without consent or otherwise infringing Plaintiff's copyrights
or other rights in any manner;

- 1 c. Enjoin Defendant from “republishing” any of your copyrighted
2 materials that, if granted, would require that the Indianapolis Photo not
3 be available on
4 <http://www.visitusa.com/images/states/alabama/cities/mobile/park.jpg>
5 would thereby make it impossible for third party Internet users to
6 download copies of the Indianapolis Photo from said webpage.
- 7 d. Ordering Defendant WILMOTT to account to Plaintiff for all gains,
8 profits, and advantages derived by Defendants, and third-party users by
9 their infringement of Plaintiff’s copyrights or such damages as are
10 proper, and since Defendant intentionally infringed plaintiff’s
11 copyrights, for the maximum allowable statutory damages for each
12 violation;
- 13 e. Awarding Plaintiff actual and/or statutory damages for Defendant
14 copyright infringement in an amount to be determined at trial;
- 15 f. Awarding Plaintiff their costs, reasonable attorneys’ fees, and
16 disbursements in this action, pursuant to 17 U.S.C. § 505 and 15 U.S.C.
17 1125(a) and;
- 18 g. Awarding Plaintiff such other and further relief as is just and proper.

19 DATED this 21st day of August 2018.

20 Respectfully submitted,

21 By: 

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