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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

FILED
09/27/2024
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
Roger A.G. Sharpe, Clerk

DR. KEITH F. BELL §

Plaintiff §

v. §

Case No. 1:24-cv-1692-JMS-KMB

BARTHOLOMEW CONSOLIDATED §
SCHOOL CORPORATION and
TIMOTHY BLESS

JURY TRIAL DEMANDED

Defendants §

§

PLAINTIFF’S ORIGINAL COMPLAINT

Keith F. Bell (“Plaintiff” or “Dr. Bell”) brings this suit against Defendants, Bartholomew Consolidated School Corporation (“Bartholomew”) and Timothy Bless (“Bless”) together “Defendants” and alleges as follows:

INTRODUCTION

1. This matter arises under the United States Copyright Act of 1976.

THE PARTIES

2. Plaintiff, Dr. Keith F. Bell is an individual residing at 3101 Mistyglenn Circle, Austin, TX 78746.

3. Defendant Bartholomew is an Indiana school corporation based in Columbus, Indiana, with its main office located at 1200 Central Avenue, Columbus, Indiana 47201.

4. Bartholomew may be served with process herein by delivery to its Superintendents, Chad Phillips and Dr. Jim Roberts at 1200 Central Avenue, Columbus, Indiana 47201.

5. Bless is an individual residing at 4272 S 370 E Kingman, IN 47952 in Bartholomew County, Indiana.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 (patents, copyrights, trademarks, and unfair competition).

7. This Court has personal jurisdiction over Bartholomew because it is a school corporation organized and existing under Indiana law and maintains its principal place of business in Indiana.

8. This Court has personal jurisdiction over Bless because he is a resident of Indiana.

9. Venue is proper in the Southern District of Indiana pursuant to 28 U.S.C. § 1391 both because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and (ii) Defendants are subject to the Court's personal jurisdiction within this judicial district.

FACTUAL BACKGROUND

10. The only permitted use of Plaintiff's Intellectual Property ("IP" or "works") is limited to purchasing Plaintiff's copyrighted works [See Exhibits: 1 & 2 -

copyrights] at the prevailing price multiplied by: the number of copies made, times the number copies distributed, plus number of copies displayed.

11. Further any and all Internet use is expressly forbidden. Internet use is too damaging.

12. Defendant instantaneously displayed Plaintiff's IP to the at least 5.3 billion persons/entities in the world who have access to the Internet.

13. Damages resulting from display are enormous.

14. Many tens of thousands have purchased Plaintiff's IP (as described in No. 10 above). [See: Exhibit 3 – repeat purchasers]

15. In January of 2020 Plaintiff and Defendants entered into a Settlement Agreement and Release (“Agreement”) to resolve a dispute related to Defendant's previous (2018) unauthorized use of Plaintiff's IP.

16. In the Agreement, Defendants warranted that all reproductions, distributions, displays and other uses within their control and custody had ceased and that they will desist from further use without first obtaining a license from Plaintiff.

17. Plaintiff no longer licenses any use of his IP.

18. On March 23, 2022 Plaintiff discovered that Defendant once again, in a flagrant breach of the Agreement, copied, disseminated, and displayed Plaintiff's IP instantaneously to Defendant's at least 1093 Followers and to at least 5.3 billion persons/entities who have access to the Internet. [Exhibit 4 – Infringement]

19. Defendant had no permission from Plaintiff to use Plaintiff's IP.

20. Defendant's infringing posts do not qualify for any exemptions for fair use.

WINNING ISN'T NORMAL AND THE WIN PASSAGE

21. In 1981, Dr. Bell wrote the book entitled: *Winning Isn't Normal* (“*Winning Isn't Normal*”), which has enjoyed substantial acclaim, distribution, and publicity.

22. The Passage also titled “Winning Isn’t Normal” (“WIN”) appears in the Introduction of the book and not only distills the essence of the book and is the heart of the book, but in fact was the inspiration for the book, the title of the book and the very basis of the book. The rest of the book is extensions and examples of WIN; what in music would often be referred to as “decoration.” [See: Exhibit 5 - Inception] A copy of WIN is attached. [Exhibit 6 – WIN passage]

23. Plaintiff’s IP are original works of authorship fixed in tangible medium.

24. Plaintiff, Dr. Bell, is the sole author of and the exclusive owner of the copyrights to the IP.

25. Plaintiff registered the book, *Winning Isn’t Normal*, with the United States Copyright Office (“USCO”) and he was issued Certificate of Registration no. TX 2,672,644 for it on or about September 21, 1989. A true and correct copy of the registration is attached as Exhibit 1.

26. On or about November 6, 2017 Plaintiff registered WIN with the USCO, and was issued Certificate of Registration no. TX 8,503,571 for it. It is attached as Exhibit 2.

27. Pursuant to 17 U.S.C. § 106, Plaintiff has the exclusive rights at least to: (a) reproduce his IP in copies, (b) distribute copies of his IP to the public, (c) prepare derivatives, and (d) display his IP publicly.

28. Due to the popularity of *Winning Isn’t Normal* Dr. Bell has been able to increase his international recognition as an authority in sports psychology, sports

performance, and human performance in all areas in which success is desired. As a result he has been asked to take on individual clients and to speak at conferences, symposia, and other engagements.

29. Plaintiff has invested substantial time and effort to promoting, distributing, offering to sell, and selling copies of his IP. Currently, Plaintiff's IP are sold through winningisntnormal.com and the website KeelPublications.com.

30. Plaintiff has also made meaningful efforts to create a market for his IP and to protect and enjoy the copyrights to the same. As part of these efforts, Plaintiff created, marketed, and sold works derived from *Winning Isn't Normal*, such as posters and t-shirts that display his IP. [See: Exhibit 7 – posters/shirts]

31. Plaintiff owns the domain keelpublications.com and drkeithbell.com both of which point to winningisntnormal.com, where copies of his IP and derivative works are sold.

32. Plaintiff took reasonable care to provide notice of his copyrights. Pertinent copyright notices are contained in/on physical and electronic copies of his IP and derivative works thereof and of Plaintiff's other works.

33. Copyright notices are also provided on the websites where all or any part of the IP and derivative works are sold; and even contain information on how to contact the Plaintiff about obtaining permission to use his IP or other portions of his IP. Plaintiff marked the digital images of derivative works (such as posters) or excerpts that are posted online or otherwise distributes with conspicuous copyright watermarks.

DEFENDANTS AND THEIR INFRINGEMENT

34. Bartholomew is a public school system in Indiana.

35. Bartholomew operates and/or controls several schools, including: Columbus North High School (“North High”), located at 1400 25th Street, Columbus, Indiana 47201.

36. Bless was employed by Bartholomew as a faculty member at Columbus North High School where Bless taught classes in health and physical education and coached the North High football team.

37. Bless controls and maintains the Twitter account: <https://twitter.com/coachtimbless> (the “Twitter Account”).

38. On information and belief, the Twitter Account follows and is followed by Bartholomew employees, students, student-athletes, and alumni among others.

39. At the time of the infringement Bless operated the Twitter Account in furtherance of his employment by Bartholomew and to his own financial and reputational benefit.

40. Bless’s social media account continues to benefit Bless and Bartholomew.

41. Upon information and belief, Bartholomew financially benefits from the sale of tickets to North High’s football games.

42. Upon information and belief, Bartholomew financially benefits from the sale of refreshments, food, commissaries, and/or other vending occurring at or around North High’s football games.

43. Upon information and belief, Bless’s account promotes and drives attendance to North High’s football games and continues to do so.

44. Upon information and belief, Bless, individually and on behalf of Bartholomew, posted a textual representation of Plaintiff's IP, thereby reproducing, distributing it to the public, and displaying it publicly. [Exhibit 4]

45. Neither Bless or Bartholomew were authorized, or permitted by Plaintiff to reproduce, modify, distribute, display, or otherwise use all or any part of Plaintiff's IP.

46. Defendants knew or should have known that they were not authorized to reproduce, modify, distribute, display, or otherwise use Plaintiff's IP or any part thereof.

47. Bartholomew had the right and ability to supervise and/or power to prevent Coach Bless' infringement, but failed to do so.

48. Upon information and belief, Bartholomew had a direct financial interest in the infringing activity.

49. Upon information and belief, Defendants' unauthorized distribution and display has continued without appreciable gap until if and when it may have been removed.

50. Dr. Bell has not received compensation from Defendants or any third-party for Defendants' reproduction, modification, distribution, display, or other use of the infringed Works subsequent to the 2020 settlement.

MISCELLANEOUS

51. All conditions precedent to bringing this action have been waived or occurred.

52. If Dr. Bell retains counsel for this litigation and is obligated to pay said counsel a reasonable fee for their services. Dr. would be entitled to have said expenses reimbursed.

COUNT ONE: BREACH OF CONTRACT

53. Dr. Bell incorporates the preceding paragraphs 1-52 of this Complaint as if fully set forth herein.

54. The parties indisputably entered into a valid contract: their “Settlement Agreement” executed in January of 2020. [See: Exhibit 8]

55. In Recital E of said 2020 Settlement Agreement Bartholomew and Bless warranted that “all reproductions, distributions, displays and other uses of WIN within their control and custody, including but not limited to those specified in Recital B, have ceased and they will desist from further use of WIN without first obtaining a written license from Bell;”

56. On March 20, 2022 Bartholomew and Bless breached the Agreement by copying, distributing, and displaying the photo of the Passage, reprinted separately from the Book on a on their social media platform. [Exhibit 4]

57. Dr. Bell has been injured by Bartholomew’s and Bless’s breach of the Settlement Agreement. These injuries were natural, probable, and foreseeable consequences of Bartholomew’s and Bless’s breach.

58. Dr. Bell is entitled to his attorneys’ fees and costs pursuant to 17 U.S. Code § 505 and Section 8 of the Settlement Agreement.

COUNT TWO: DIRECT COPYRIGHT INFRINGEMENT
(AGAINST ALL DEFENDANTS)

59. The allegations set forth in paragraphs 1-58 are hereby re-alleged as if fully set forth herein.

60. Dr. Bell created and owns the copyrights to his IP. [Exhibits 1,2]

61. Without Dr. Bell’s authorization, consent, or permission, Defendants at least:

- a. Reproduced the infringed works, in copies as electronic files;
- b. Instantaneously distributed copies of the infringed works, to the public via the Internet and;
- c. Instantaneously displayed the infringed works to the public

62. As a result of the foregoing, Defendants directly infringed Dr. Bell's exclusive rights to:

- a. Reproduce the infringed Works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;
- b. Prepare derivative works based upon the infringed Works, in violation of 17 U.S.C. §§ 106(2) and 501;
- c. Distributed copies of the infringed Works to the public by sale or other transfer of ownership, or by rental lease, or lending, in violation of 17 U.S.C. §§ 106(3) and 501, and;
- d. Displayed Plaintiff's IP publicly, in violation of 17 U.S.C. §§ 106(5) and 501, by (i) displaying Plaintiff's IP in a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and social acquaintances is gathered and/or (ii) transmitting or otherwise communicating said display of Plaintiff's IP by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publicly" display).

63. Defendants are jointly and severally liable for infringing Plaintiff's IP.

64. Defendants' infringement was committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

65. Defendants' wrongful acts were done with reckless disregard to the consequences of their actions

66. As a direct and proximate result of Defendants' wrongful conduct, Dr. Bell has suffered substantial monetary damages.

COUNT THREE: VICARIOUS COPYRIGHT INFRINGEMENT
(AGAINST BARTHOLOMEW ONLY)

67. The allegations set forth in paragraphs 1-66 are hereby re-alleged as if fully set forth herein.

68. Plaintiff created and owns the copyrights that are the subject of this matter. [Exhibits: 1 and 2].

69. Without Plaintiff's authorization, consent, or permission, Defendants at least:

- a. Reproduced Plaintiff's IP, in copies as electronic files;
- b. Distributed copies of Plaintiff's IP to the public.
- c. Instantly displayed Plaintiff's IP, publicly.

70. As a result of the foregoing, Bless directly infringed Plaintiff's IP exclusive rights to:

- a. Reproduce Plaintiff's IP in copies, in violation of 17 U.S.C. §§ 106(1) and 501;
- b. Distribute copies of Plaintiff's IP to the public by sale or other transfer of ownership, or by rental lease, or lending, in violation of 17 U.S.C. §§ 106(3) and 501; and

- c. Display Plaintiff's IP publicly, in violation of 17 U.S.C. §§ 106(5) and 501, by (i) displaying Plaintiff's IP in a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and social acquaintances is gathered and/or (ii) transmitting or otherwise communicating said display of Plaintiff's IP by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publicly" display)

71. Bartholomew had the right and ability to supervise and/or control Bless' directly infringing conduct.

72. Bartholomew failed to exercise its right and ability to supervise and/or control Bless' direct infringing conduct.

73. As a direct and proximate result of such failure, Bless directly infringed Plaintiff's IP.

74. Bartholomew derived a substantial financial benefit from Bless' infringements of Plaintiff's IP.

75. Bartholomew's conduct constitutes vicarious infringement of Plaintiff's IP.

76. Bartholomew's vicarious infringement was committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

77. As a direct and proximate result of Bartholomew's vicarious infringement, Dr. Bell has suffered substantial monetary damages.

COUNT FOUR: DMCA VIOLATION

78. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

79. Defendant knew or should have known that Plaintiff's IP was stripped of any notice of copyright, the author's name, surrounding literary text, or other information identifying the work or the author of the work.

80. The removed or altered information constitutes copyright management information ("CMI") under 17 U.S.C. § 1202(c).

81. Defendant had reasonable grounds to know that the distribution would induce, enable, facilitate, or conceal an infringement of rights under the DMCA.

82. These actions constitute a violation of 17 U.S.C. § 1202(b).

83. Dr. Bell is entitled to injunctive relief and may elect to exercise his entitlement to actual or statutory damages or both.

84. Dr. Bell is entitled to his attorneys' fees, if any, and costs pursuant to 17 U.S.C. § 505.

CONDITIONS PRECEDENT

85. Dr. Bell fully performed his contractual obligations, and all conditions precedent to his claims for relief have been performed, have occurred, or have been excused or waived.

ATTORNEY FEES

86. Pursuant to 17 U.S.C. § 505 and Section 8 of the Settlement Agreement, Dr. Bell is entitled to recover his attorney fees and costs of court.

JURY DEMAND

87. Plaintiff demands a trial by jury.

“PRAYER”

88. **WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

- a. Award Dr. Bell the actual damages suffered as a result of the infringement plus Defendant’s profits that are attributable to the infringement, pursuant to 17 U.S.C. § 504(b), or statutory damages in an amount up to \$150,000 per infringed work, pursuant to 17 U.S.C. § 504(c), at Plaintiff’s election, pursuant to 17 U.S.C. § 504(a);
- b. Award Dr. Bell his reasonable attorneys’ fees, if any, and costs pursuant to 17 U.S.C. § 505;
- c. Grant Plaintiff all such other and further relief this Court deems just and proper.

Date: September 27, 2024

Respectfully submitted,



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