

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



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Case No. 1:25-cv-384

AUGUST IMAGE, LLC,

Plaintiff,

v.

STATIC MEDIA INC. f/k/a 7HOPS.COM
INC.,

Defendant.

COMPLAINT

August Image, LLC (“Plaintiff”) sues defendant Static Media Inc. f/k/a 7Hops.com Inc. (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the State of New York with its principal place of business located in New York, NY.

2. Defendant is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 11787 Lantern Rd, Ste 201, Fishers, IN 46038. Defendant’s agent for service of process is C T Corporation System, 334 North Senate Avenue, Indianapolis, IN 46204.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because it has maintained sufficient minimum contacts with this State such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “A defendant in a copyright action ‘may be found’ in a district where he is subject to the district court's personal jurisdiction.” Martino v. Orchard Enters., No. 20 C 2267, 2020 U.S. Dist. LEXIS 199687, at *18 (N.D. Ill. Oct. 27, 2020); see also Store Decor Div. of Jas Int’l, Inc. v. Stylex Worldwide Indus., Ltd., 767 F. Supp. 181, 185 (N.D. Ill. 1991) (“Thus, if a court has personal jurisdiction over the defendants in a copyright infringement action, venue in that court’s district is proper.”).

FACTS

I. Plaintiff’s Business

6. From its offices in New York City and London, Plaintiff represents (all around the world) over 100 of some of the most creative and innovative contemporary photographers working today.

7. Plaintiff boasts a wide collection of portrait, lifestyle, beauty and fashion photography for editorial and commercial licensing. Some of Plaintiff’s image collection and a list of the photographers it represents is available on its website (at <https://www.augustimage.com/>).

8. Plaintiff sets itself apart from others because it is knowledgeable about its exclusive images and strives to provide a high level of customer satisfaction. In order to make its rights managed collection available to its clients, Plaintiff has spent years to secure the relationships, information and team to efficiently acquire the releases as necessary.

II. The Work at Issue in this Lawsuit

9. Peter Yang and Benedict Evans are some of the many photographers represented by Plaintiff (see <https://www.augustimage.com/Photographers>).

10. Peter Yang lives in Los Angeles, hails from the great state of Texas, and photographs subjects all over the world. Mr. Yang is a contributor to GQ, Rolling Stone, Esquire and The New York Times Magazine, and has shot campaigns for Coca-Cola, Comedy Central, and Bank of America, among others. His work has been recognized by American Photography and Communication Arts. Mr. Yang's work can be viewed on his professional website (at <https://peteryang.com/>).

11. Benedict Evans is a New York City-based photographer from Bristol, England. He studied English Literature at Sheffield University and filmmaking at the New York Film Academy. Mr. Evans' work is often seen in the likes of ESPN, Variety, Esquire, New York Magazine, and W. He has been commissioned by brands such as Budweiser, Cadillac, US Bank, and PETA. Mr. Evans was selected as one of PDN's 30 photographers under 30 and has been recognized by American Photography, Communication Arts, and The National Headliner Awards, among others. Mr. Evans' work can be viewed on his professional website (at <https://www.benedictevans.com/>).

A. *The First Photograph*

12. Mr. Yang created a professional photograph of musician Eddie Van Halen and his son Wolfgang Van Halen titled "AU1243351" (the "First Photograph"). A copy of the First Photograph is displayed below:



13. The First Photograph was registered by Mr. Yang with the Register of Copyrights on June 5, 2019 and was assigned Registration No. VA 2-156-010. A true and correct copy of the Certificate of Registration pertaining to the First Photograph is attached hereto as **Exhibit “A.”**

14. Mr. Yang is the owner of the First Photograph and has remained the owner at all times material hereto.

B. The Second Photograph

15. Mr. Evans created a professional photograph of American online streamer and professional gamer Tyler “Ninja” Blevins titled “AU11289684” (the “**Second Photograph**”). A copy of the Second Photograph is displayed below:



16. The Second Photograph was registered by Mr. Evans with the Register of Copyrights on August 14, 2023 and was assigned Registration No. VA 2-361-537. A true and correct copy of the Certificate of Registration pertaining to the Second Photograph is attached hereto as **Exhibit “B.”**

17. Mr. Evans is the owner of the Second Photograph and has remained the owner at all times material hereto.

18. The First Photograph and Second Photograph are collectively referred to herein as the **“Work.”**

19. For all times relevant to this action, Plaintiff and the above-named photographer(s) were parties to one or more written agreements whereby such photographer(s) conveyed to Plaintiff certain exclusive rights in the Work, including but not limited to the exclusive right to reproduce the Work in copies and the exclusive right to distribute copies of the Work to the public by sale and/or licensing. Such written agreement(s) likewise convey the exclusive right to pursue any infringements of the Work, whether such infringements arose prior to execution of the written agreement(s) or thereafter. As such, Plaintiff is entitled to institute and maintain this action for copyright infringement. See 17 U.S.C. § 501(b).

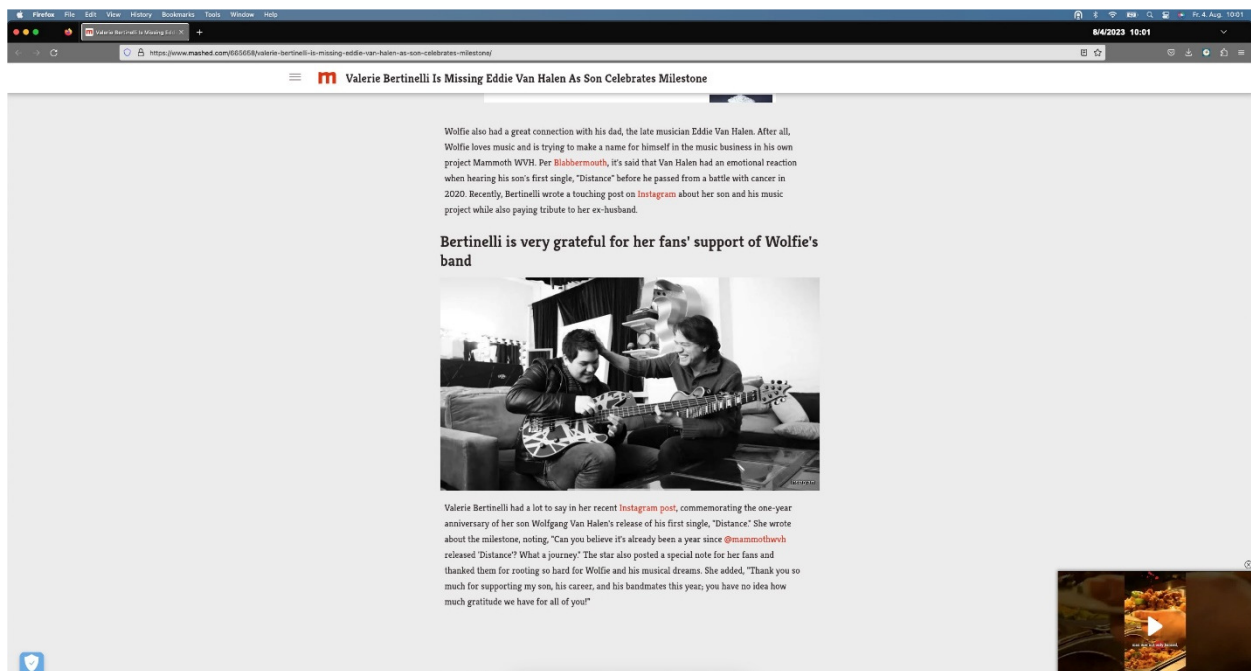
III. Defendant's Unlawful Activities

20. Defendant owns and operates an ever-growing family of websites and brands that cover a wide range of interests. Defendant's websites have amassed 170 million unique visitors, 22 million YouTube subscribers, 18 million Facebook followers, and 9 million snapchat subscribers.

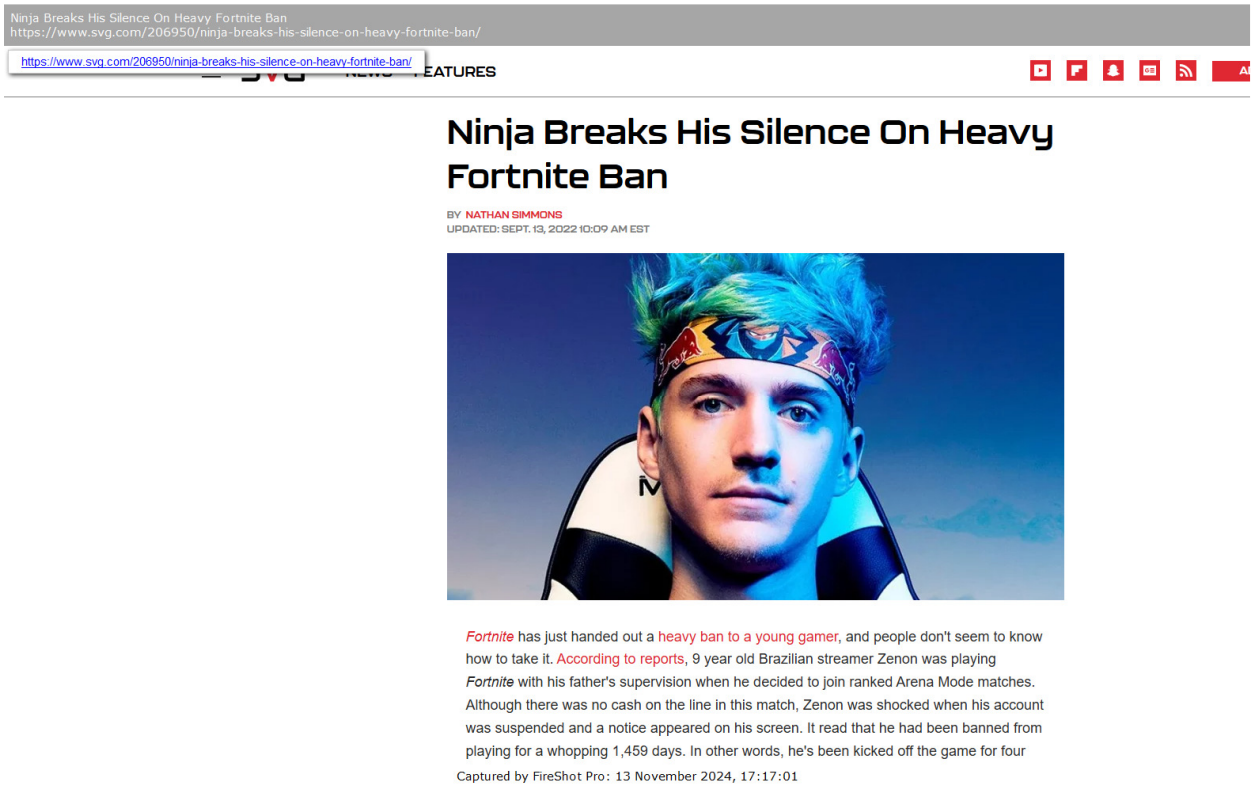
21. Two such examples of websites/brands that Defendant owns and operates include both Mashed and SVG.

22. Defendant advertises/markets its business primarily through the websites (e.g., <https://www.static.com/>), social media, and other forms of advertising for both itself and each of its brands.

23. On November 19, 2021 (after the above-referenced copyright registration of the First Photograph), Defendant displayed and/or published the First Photograph on its website, webpage, and/or social media (at <https://www.mashed.com/665658/valerie-bertinelli-is-missing-eddie-van-halen-as-son-celebrates-milestone/>):



24. On May 5, 2020 (before the above-referenced copyright registration of the Second Photograph), Defendant displayed and/or published the Second Photograph on its website, webpage, and/or social media (at <https://www.svg.com/206950/ninja-breaks-his-silence-on-heavy-fortnite-ban/>):



25. A true and correct copy of screenshots of Defendant’s website, webpage, and/or social media, displaying the copyrighted Work, is attached hereto as **Exhibit “C.”**

26. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its website, webpage, social media - even though the Work that was copied is clearly professional photography that would put Defendant on notice that the Work was not intended for public use.

27. Defendant utilized the Work for commercial use.

28. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

29. Through its ongoing diligent efforts to identify unauthorized use of its photographs, Plaintiff discovered Defendant's unauthorized use/display of the First Photograph in May 2023, and the Second Photograph in February 2024. Following Plaintiff's discovery, Plaintiff notified Defendant in writing of such unauthorized use.

30. All conditions precedent to this action have been performed or have been waived.

COUNT I – COPYRIGHT INFRINGEMENT
(The First Photograph)

31. Plaintiff re-alleges and incorporates paragraphs 1 through 30 as set forth above.

32. The First Photograph is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

33. Mr. Yang owns a valid copyright in the First Photograph, having registered such photograph with the Register of Copyrights.

34. Plaintiff has standing to bring this lawsuit and assert the claim(s) herein as it has sufficient rights, title, and interest to such copyrights (as Plaintiff was conveyed certain exclusive rights to reproduce and distribute the First Photograph by the subject photographer(s)).

35. As a result of Plaintiff's reproduction, distribution, and public display of the First Photograph, Defendant had access to the First Photograph prior to its own reproduction, distribution, and public display of the First Photograph on its website, webpage, and/or social media.

36. Defendant reproduced, distributed, and publicly displayed the First Photograph without authorization from Plaintiff.

37. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501. Defendant's infringement was either direct, vicarious, and/or contributory.

38. Defendant's infringement was willful as it acted with actual knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website ("© 2024 Static Media® / Mashed.com / All Rights Reserved"), indicating that Defendant understands the importance of copyright protection/intellectual property rights and is actually representing that it owns each of the photographs published on its website. See, e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018 U.S. Dist. LEXIS 127717, at *3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of ROI's infringement is evidenced by the fact that at the bottom of the webpage on which the Indianapolis photograph was unlawfully published appeared the following: 'Copyright © 2017.' By placing a copyright mark at the bottom of its webpage that contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell asserts ROI willfully infringed his copyright by claiming that it owned the copyright to everything on the webpage."); John Perez Graphics & Design, LLC v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist. LEXIS 61928, at *12-13 (N.D. Tex. May 1, 2013) ("Once on Defendant's website, Defendant asserted ownership of Plaintiff's Registered Work by including a copyright notice at the bottom of the page. Based on these allegations, the Court finds Plaintiff has sufficiently pled a willful violation...."). Defendant clearly understands that professional photography such as the First Photograph is generally paid for and cannot simply be copied from the internet.

39. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

40. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the First Photograph and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the First Photograph, which amounts shall be proven at trial.

41. Alternatively, and at Plaintiff's election, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed proper by the Court.

42. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its costs and attorneys' fees as a result of Defendant's conduct.

43. Defendant's conduct has caused, and any continued infringing conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the First Photograph;
- b. A declaration that such infringement is willful;
- c. An award of actual damages and disgorgement of profits as the Court deems proper or, at Plaintiff's election, an award of statutory damages for the First Photograph;
- d. Awarding Plaintiff its costs and reasonable attorneys' fees pursuant to 17 U.S.C. § 505;
- e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- f. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and

participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and

g. For such other relief as the Court deems just and proper.

COUNT II – COPYRIGHT INFRINGEMENT
(The Second Photograph)

44. Plaintiff re-alleges and incorporates paragraphs 1 through 30 as set forth above.

45. The Second Photograph is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

46. Mr. Evans owns a valid copyright in the Second Photograph, having registered such photograph with the Register of Copyrights.

47. Plaintiff has standing to bring this lawsuit and assert the claim(s) herein as it has sufficient rights, title, and interest to such copyrights (as Plaintiff was conveyed certain exclusive rights to reproduce and distribute the Second Photograph by the subject photographer(s)).

48. As a result of Plaintiff's reproduction, distribution, and public display of the Second Photograph, Defendant had access to the Second Photograph prior to its own reproduction, distribution, and public display of the Second Photograph on its website, webpage, and/or social media.

49. Defendant reproduced, distributed, and publicly displayed the Second Photograph without authorization from Plaintiff.

50. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 501. Defendant's infringement was either direct, vicarious, and/or contributory.

51. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

52. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the Second Photograph, and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Second Photograph, which amounts shall be proven at trial.

53. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its costs as a result of Defendant's conduct.

54. Defendant's conduct has caused, and any continued infringing conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the Second Photograph;
- b. An award of actual damages and disgorgement of profits as the Court deems proper;
- c. Awarding Plaintiff its costs pursuant to 17 U.S.C. § 505;
- d. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;

- e. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Second Photograph or to participate or assist in any such activity; and
- f. For such other relief as the Court deems just and proper.

Dated: February 26, 2025

MAGINOT, MOORE & BECK LLP
150 W. Market St., Suite 800
Indianapolis, IN 46204
Telephone: 317-644-8323
maswift@maginot.com

By: /s/ Michael A. Swift
Michael A. Swift (Ind. Bar no. 17779-49)