

INDIAN LEGAL CLINIC

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Attorneys for Plaintiff Marilou Schultz

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Marilou Schultz,) No.:

Plaintiff,)

vs.)

COMPLAINT

(Jury Demand Endorsed Hereon)

ELSEVIER STM INC., a Florida)
corporation (doing business as "Harcourt,)
Inc." or "Harcourt School Publishers");)
HOUGHTON MIFFLIN HARCOURT)
PUBLISHERS INC., a Delaware)
corporation; HARCOURT, INC.;)
HARCOURT SCHOOL PUBLISHERS;)
LUISA BIRCHWOOD; JOHN and JANE)
DOES I-XX; ABC CORPORATIONS I-)
XX; XYZ PARTNERSHIPS I-XX,)

Defendants)

Marilou Schultz ("Plaintiff Schultz"), by and through the undersigned attorneys,

1 alleges the following against Defendants Elsevier STM Inc., Houghton Mifflin Harcourt
2 Publishers Inc., Harcourt, Inc., Harcourt School Publishers, Luisa Birchwood, John and
3 Jane Does I-XX, ABC Corporations I-XX (together, “Defendants”):

4 **PARTIES**

5 1. Plaintiff Marilou Schultz is a resident of Arizona, residing at 844 East 8th
6 Place, Mesa, Arizona 85203.

7 2. Upon information and belief, Defendant Luisa Birchwood is not a resident
8 of Arizona and is the author of *An Expert Navajo Weaver* (the “Publication”).

9 3. Upon information and belief, Defendant Elsevier STM Inc. is a Florida
10 corporation, with a principal place of business at 6277 Sea Harbor Drive, Orlando,
11 Florida 32887.

12 4. Upon information and belief, Defendant Harcourt, Inc. is the public name
13 used by Elsevier STM Inc., also with a principal place of business at 6277 Sea Harbor
14 Drive, Orlando, Florida 32887, and is the company purported to hold the copyright to the
15 Publication as stated on the Publication’s copyright page.

16 5. Upon information and belief, Defendant Houghton Mifflin Harcourt
17 Publishers Inc. is a Delaware corporation, with a principal place of business located at
18 9205 South Park Center Loop, Orlando, Florida 32819.

19 6. Upon information and belief, Defendant Harcourt School Publishers is the
20 public name used by Harcourt Mifflin Harcourt Publishers Inc. with a principal place of
21 business located at 6277 Sea Harbor Drive, Orlando, Florida 32887 and oversees the
22 operations of Harcourt, Inc.

23 7. Upon information and belief, Defendants John and Jane Does I-XX, ABC
24 Corporations I-XX, and XYZ Partnerships I-XX, are business entities or individuals who
25 reside or do business in the State of Arizona, or elsewhere, and who participated in,
26 carried out, facilitated or assisted in committing the acts complained of herein. The true
27 identity of these fictitiously named defendants is not currently known to Plaintiff Schultz,
28

1 but will be substituted by amendment upon their discovery.

2 **JURISDICTION AND VENUE**

3 8. This Court has jurisdiction over this case as it involves a federal question
4 (copyright infringement under the Copyright Act, 17 U.S.C. §§ 101-1332) under
5 28 U.S.C. §§ 1331. Supplemental state law claims are properly joined to this proceeding
6 under 28 U.S.C. § 1367.

7 9. This Court is the proper venue for this case pursuant to 28 U.S.C. § 1391.
8 A substantial part of the alleged events giving rise to this action occurred in the District
9 of Arizona. Plaintiff Schultz is an Arizona resident, and she maintains her website from
10 her Arizona home. Defendants accessed, copied, and published content from Ms.
11 Schultz’s website without her consent and without giving her proper attribution in the
12 Publication. Defendants market, sell, and distribute the Publication in Arizona.

13 **FACTUAL BACKGROUND**

14 10. Plaintiff Schultz realleges paragraphs 1-9 above.

15 11. Plaintiff Schultz is a Navajo woman who earns a living as an award-
16 winning weaver of traditional and contemporary Navajo rugs and blankets.

17 12. Plaintiff Schultz maintains a website, <http://www.navajorugsart.com/>,
18 where she writes about herself, her craft, and Navajo culture and tradition.

19 13. Since at least 2002, Plaintiff Schultz asserted copyright ownership over the
20 text and images she created and displayed on her website.

21 14. Plaintiff Schultz provides a telephone number and email address at her
22 website inviting members of the public to contact her.

23 15. Plaintiff Schultz is also an educator committed to providing the public with
24 accurate information about Navajo culture and tradition to counteract inaccurate
25 stereotypes about Native Americans.

26 16. The Publication features Plaintiff Schultz prominently and Plaintiff
27 Schultz’s content and biographical information from her website forms the basis of most
28 of the Publication.

1 17. Defendants published the Publication as early as 2008.

2 18. Plaintiff Schultz first became aware of the Publication in 2009.

3 19. Defendants sell or have sold the Publication in print, electronic, and in
4 foreign language formats under multiple ISBNs, including ISBN-10: 0-15-351524-4 and
5 ISBN-13: 978-0-15-351524-8; “Grade 4 Advanced Collection,” ISBN-10: 0-15-351214-8
6 and ISBN-13: 978-0-15-351214-8; “Package of 5,” ISBN-10: 0-15-358114-X and ISBN-
7 13: 978-0-15-358114-4.

8 20. On page 2, Harcourt, Inc. asserts copyright ownership over the entire
9 Publication.

10 21. No copyright registration could be found for the Publication, in any of the
11 Defendants’ names or otherwise.

12 22. The Publication credits Pete Saloutos/CORBIS, Carl & Ann
13 Purcell/CORBIS; Paul Conklin/PhotoEdit, Catherine Karnow/CORBIS, Deborah
14 Davis/PhotoEdit; ARPL/Topham/The Image Works; Christie’s Images/CORBIS; Lowe
15 Art Museum/SuperStock; and Mark Gibson/Index Stock for various images used in the
16 Publication but does not credit Plaintiff Schultz for her content used in the Publication.

17 23. Had Defendants asked, Plaintiff Schultz could have granted Defendants
18 permission to use her name, biographical information, or other material in the
19 Publication, and she could have assisted Defendants by correcting the inaccurate
20 information about Navajo culture in the Publication if given the opportunity, but
21 Defendants failed to contact Plaintiff Schultz at any point before or after Defendants
22 published the Publication.

23 24. Ms. Schultz normally receives an honorarium for providing her expertise in
24 the area of Navajo weaving and was denied the benefit of being paid for her services by
25 Harcourt’s appropriation of Ms. Schultz’s copyrighted biography.

26 25. Ms. Schultz’s reputation as a Navajo master weaver depends on the high
27 quality and authentic Navajo style exhibited in her rugs. Ms. Schultz’s ability to
28 distinguish her work and its authenticity from cheap imitations and poorly crafted work is

1 paramount to her reputation as a master weaver.

2 26. Ms. Schultz relies primarily on the internet and word of mouth to find
3 clients who will spend thousands of dollars on her high quality Navajo rugs, therefore,
4 her reputation is a large part of her ability to profit from her work.

5 **COUNT ONE (COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. §§ 501-513)**

6 27. Plaintiff Schultz realleges paragraphs 1-26 above.

7 28. Plaintiff Schultz is the copyright owner of the “About the Artist” page of
8 her website (Registration No. TXu001688158); the effective date of this copyright
9 registration is April 8, 2010. Plaintiff Schultz is the copyright owner of the website
10 itself (Registration No. TXu001686429); the effective date of this copyright registration
11 is April 15, 2010.

12 29. Plaintiff Schultz’s website is accessible to anyone with a connection to the
13 Internet and can be found by using search engines such as Google and searching for key
14 words such as “Marilou Schultz” or “Navajo weaver.”

15 30. Defendants could have contacted Plaintiff Schultz to seek her permission to
16 use the content from Plaintiff Schultz’s website but failed to do so.

17 31. The Publication contains verbatim text from Plaintiff Schultz’s “About the
18 Artist” webpage taken without Plaintiff Schultz’s knowledge or consent.

19 32. On page 3 of the Publication, Plaintiff Schultz is “quoted” as saying,
20 “[w]eaving has always been part of my life,”; this text is copied verbatim from Plaintiff
21 Schultz’s “About the Artist” webpage, used without Plaintiff Schultz’s permission and
22 without giving Plaintiff Schultz proper attribution.

23 33. On page 5 of the Publication, Plaintiff Schultz is “quoted” as saying,
24 “Navajo weaving has always been and continues to be passed on in my family,”; this text
25 is copied verbatim from Plaintiff Schultz’s “About the Artist” webpage, used without
26 Plaintiff Schultz’s permission and without giving Plaintiff Schultz proper attribution.

27 34. On page 14 of the Publication, Plaintiff Schultz is “quoted” as saying, “I
28 weave because of my love of weaving and the challenge of creating unique weavings,”;

1 this text is copied verbatim from Plaintiff Schultz’s “About the Artist” webpage, used
2 without Plaintiff Schultz’s permission and without giving Plaintiff Schultz proper
3 attribution.

4 35. Taking the Publication as a whole, the Publication substantially relies on
5 content taken from Plaintiff Schultz’s website, including text Plaintiff Schultz wrote
6 regarding her personal life history and her weaving techniques.

7 36. The additions Defendants made to the Publication contain multiple errors
8 and fabrications, including placing an image of a Mexican rug on page 14 of the
9 Publication above the statement, “Marilou is proud to help preserve the Navajo way of
10 weaving,” followed by a “quote” invented by the Defendants claiming Plaintiff Schultz
11 stated, “[t]he techniques I use are the traditional ways of weaving Navajo rugs, and this
12 sets them apart from other weaving traditions.”

13 37. The Publication’s content is substantially similar, and in several places
14 identical, to the content on Plaintiff Schultz’s website, proving Defendants accessed and
15 copied content from Plaintiff Schultz’s website without her knowledge or permission.

16
17 **COUNT TWO (FALSE LIGHT RIGHT OF PRIVACY)**

18 38. Plaintiff Schultz realleges paragraphs 1-37.

19 39. The Publication is replete with factual errors and misstatements based
20 presumably on stereotypical viewpoints of Native Americans.

21 40. On the cover page and on pages 3, 4, 8, and 10, the Publication presents
22 images of women who are not Plaintiff Schultz next to text in a manner suggesting the
23 woman depicted is Plaintiff Schultz.

24 41. Throughout the Publication, factual statements are made that contain
25 accurate and inaccurate information, presented in a manner suggesting that Plaintiff
26 Schultz helped prepare the Publication or endorses the Publication which she does not.

27 42. On pages 3, 5, and 14, the Publication copies content from Plaintiff
28 Schultz’s website verbatim and places the content in quotation marks suggesting that

1 Plaintiff Schultz was interviewed for the Publication or participated in the Publication's
2 preparation, implying that Plaintiff Schultz endorses the Publication which she does not.

3 43. On page 3 of the Publication, it incorrectly states that Plaintiff Schultz's
4 mother "was a Navajo weaver," when in fact her mother still is a weaver.

5 44. On page 4 of the Publication, there is a picture of a girl weaving a Navajo
6 rug, but she is in the incorrect traditional position for weaving.

7 45. On page 5 of the Publication, there are statements that are highly debatable
8 which are, "[a]t first, the Navajo people lived in Canada[]" and "[t]he Pueblo taught the
9 Navajo how to weave." These statements are debatable and likely incorrect; however,
10 the Publication treats them as facts.

11 46. On page 6, the Publication describes the process of shearing sheep adjacent
12 to an image that shows a mohair goat instead of the correct animal used by traditional
13 weavers: a churro sheep. This inaccurate information, combined with the
14 misrepresentation of Plaintiff Schultz's craft, techniques, and history, creates the false
15 impression that Plaintiff Schultz believes this inaccurate information. There are also two
16 additional incorrect statements: first, "[t]he Navajo waited until the wool was long and
17 thick." And second, "[t]hey had to pay close attention to the wool because sometimes it
18 would become infested with insects." These statements are untrue and offensive to a
19 master Navajo weaver.

20 47. On page 7, the Publication states, "Marilou usually buys yarn for her own
21 weaving." This statement has no basis in fact; Plaintiff Schultz shears and dyes her own
22 wool using traditional Navajo techniques and sells the wool she prepares; Plaintiff
23 Schultz bolsters her reputation by using these traditional weaving techniques and sets
24 herself apart from non-traditional weavers in the market who buy yarn.

25 48. The fact that Ms. Schultz does not buy her yarn makes her work more
26 valuable. Her reputation and the value of her work is diminished by the allegation that
27 she buys yarn rather than shearing and dyeing it herself.

28 49. On pages 7-8, the Publication inaccurately describes how yarn is attached

1 to the loom and inaccurately describes the techniques used to weave the yarn, presented
2 in a manner suggesting that Plaintiff Schultz believes these inaccuracies to be true.

3 50. All the text on page 9 and 10 of the Publication incorrectly describes the
4 traditional weaving process, and it is presented in a manner suggesting that Plaintiff
5 Schultz believes these inaccuracies to be true.

6 51. On page 12, the Publication states that “[s]ometimes the Navajo weavers
7 would cut a slit in the center of a Chief Blanket . . . [to] wear the weaving like a poncho.”
8 This statement has no basis in fact and trivializes the work of Plaintiff Schultz, who is
9 featured in the Publication as if she endorses such statements.

10 52. The Publication wrongly describes the blanket that is depicted in the picture
11 on page 12 as a “Chief Blanket,” which is the incorrect term.

12 53. On page 14, the Publication presents an image of a Mexican rug adjacent to
13 text that includes a fabricated quote from Plaintiff Schultz: “Marilou is proud to help
14 preserve the Navajo way of weaving. ‘The techniques I use are the traditional ways of
15 weaving Navajo rugs, and this sets them apart from other weaving traditions.’” The
16 Publication does not identify the image as a Mexican rug; instead it conveys the false
17 impression that Marilou’s work is represented by a Mexican rug instead of a traditional
18 Navajo rug.

19 54. Page 13 of the Publication make the following untrue statement: “[i]t was at
20 that time that the Navajo began to buy wool from a mill in Pennsylvania. This wool was
21 bright and colorful, so the Navajo weavers began to make blankets that had brilliant reds,
22 blues, and yellow in them.” Again, such information creates a false impression created by
23 the Publication that harms Plaintiff Schultz’s reputation as an educator committed to
24 providing accurate information about Navajo culture.

25 55. Because Ms. Schultz is the only weaver named in the publication, all the
26 inaccurate information and inauthentic depictions are attributable to her alone. The
27 publication makes no distinction between Plaintiff’s biography, her alleged interview,
28 and the false information preceding and following it that generally and wrongly refers to

1 Navajo weaving.

2 56. The Publication's presentation of Plaintiff Schultz's content and
3 biographical information, combined with the substantial inaccuracies regarding Navajo
4 history, culture, and weaving techniques, conveys the false impression that Plaintiff
5 Schultz participated in the preparation of the Publication or endorsed it.

6 57. This false impression created by the Publication harms Plaintiff Schultz's
7 reputation in the community as a weaver who sets herself apart from other weavers by
8 using traditional Navajo weaving techniques. Plaintiff's customers and other Navajo
9 weavers have to be confident in Plaintiff's skills and knowledge of her craft for Ms.
10 Schultz to maintain her reputation as a master weaver and for Ms. Schultz to charge a
11 high premium for the rugs she weaves.

12 58. This false impression created by the Publication harms Plaintiff Schultz's
13 reputation as an educator committed to providing accurate information about Navajo
14 culture to counteract inaccurate stereotypes that permeate mainstream society.

15 59. The false impression created by the Publication has caused emotional and
16 mental harm to Plaintiff Schultz as it threatens her artistic integrity, her reputation as a
17 traditional Navajo weaver, and her ability to make a living as a weaver.

18 60. By placing her name and biography with the inaccurate and offensive
19 information in the publication, Defendants place Plaintiff in a false light in the
20 publication at issue. Defendants therefore damage her reputation as a master weaver and
21 damages her ability to profit from her reputation as a master weaver.

22
23 **COUNT THREE (UNAUTHORIZED USE OF PUBLICITY)**

24 61. Plaintiff Schultz realleges paragraphs 1-61.

25 62. Defendants used Plaintiff's identity when the Publication clearly stated Ms.
26 Schultz's name and made her identifiable by inserting facts specific to her personal
27 biography in the Publication.

28 63. The appropriation of Ms. Schultz's name was to Defendants' advantage

1 because they made money by selling the book to schools and they manufactured
2 credibility by creating the impression that their inaccurate and offensive depiction of a
3 Navajo Weaver was endorsed by an actual Navajo Weaver.

4 64. There was no consent given by Plaintiff. Further, neither Defendants nor
5 any agent of Defendants made contact with Plaintiff or anyone she is connected to from
6 which Defendants could have obtained consent.

7 65. Plaintiff was injured because the publication depicts her inaccurately and
8 uses offensive descriptions of her work by associating it with pictures of non-Navajo rugs
9 and poorly made rugs as well as associating her work with insect infestations and
10 inauthentic weaving methods.

11 66. Additionally, Plaintiff's reputation was damaged because her association
12 with misrepresentations of Navajo culture damages her reputation as an advanced weaver
13 who is well respected and well known in her trade.

14 67. Therefore, when Plaintiff's biography was used without her permission to
15 promote and sell the Publication, Plaintiff's right to privacy was infringed and she should
16 be compensated for the violation of her right.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff Schultz requests judgment against defendants as follows:

- 20 (1) Injunctive relief prohibiting Defendants from publishing, selling, or otherwise
21 distributing the Publication, any portion of the Publication that contains
22 Plaintiff Schultz's content, or any other material obtained from Plaintiff
23 Schultz without her permission;
- 24 (2) Compensatory damages in an amount to be proven and determined by trial;
- 25 (3) Reasonable attorney's fees as permitted by law;
- 26 (4) Costs of this action; and
- 27 (5) Such additional relief the Court deems just and equitable.
- 28

1 **JURY DEMAND**

2 Plaintiff Schultz, by and through the undersigned attorneys, hereby demands a trial
3 by jury of all issues triable of right by jury.
4

5
6 RESPECTFULLY SUBMITTED this ____ day of _____, 2011.
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8 INDIAN LEGAL CLINIC
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10 By:

11 _____
12 Patty Ferguson-Bohnee
13 Attorneys for Marilou Schultz
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