

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 9:18-cv-81666

FALCO ERMERT,

Plaintiff,

v.

BOCA DENTAL SUPPLY LLC,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff FALCO ERMERT by and through undersigned counsel, brings this Complaint against Defendant BOCA DENTAL SUPPLY LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff FALCO ERMERT (“Ermert”), brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Ermert’s original copyrighted works of authorship.

2. Ermert is a German journalist and photographer. During his studies at the University of Cologne, he worked as a photographer in the field of reporting and events. Now, based in Cologne, Germany, Ermert continues to work for magazines, photographs personal projects, and conducts workshops. Ermert uses a professional DJI drone and Nikon D5500 +DF for his editorial, travel, and commercial assignments throughout Europe and beyond.

3. Defendant BOCA DENTAL SUPPLY LLC (“BDS”) is a dental supply company that specializes in importing and exporting between South-America, Central-America, and the United States.

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

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. Boca Dental Supply LLC is a Florida limited liability company with its principal place of business at 3401 North Federal Highway, Suite 212, Boca Raton, Florida, 33431, and can be served by serving its Registered Agent, Dr. Alvaro Betancur, 581 Phillips Drive, Boca Raton, Florida, 33432.

THE COPYRIGHTED WORK AT ISSUE

10. In 2015, Ermert created a photograph entitled “cancun-beach-aerial---luftbild_18632391933_o,” which is shown below and referred to herein as the “Work”.



11. Ermert registered the Work with the Register of Copyrights on December 5, 2016 and was assigned the registration number VA 2-024-778. The Certificate of Registration is attached hereto as Exhibit 1.

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

INFRINGEMENT BY DEFENDANT

13. BDS has never been licensed to use the Work at issue in this action for any purpose.

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

15. BDS copied Ermert’s copyrighted Work without his permission.

16. After BDS 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 dental supply company.

17. BDS copied and distributed Ermert's copyrighted Work in connection with BDS' business for purposes of advertising and promoting BDS' business, and in the course and scope of advertising and selling products and services.

18. Ermert's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

19. BDS committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

20. Ermert never gave BDS permission or authority to copy, distribute or display the Work at issue in this case.

21. Ermert notified BDS of the allegations set forth herein on March 30, 2018 and May 3, 2018. To date, BDS has failed to respond to Plaintiff's Notices. Copies of the Notices to BDS are attached hereto as Exhibit 3.

COUNT I
COPYRIGHT INFRINGEMENT

22. Plaintiff incorporates the allegations of paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Ermert owns a valid copyright in the Work at issue in this case.

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

25. BDS copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Ermert's authorization in violation of 17 U.S.C. § 501.

26. BDS performed the acts alleged in the course and scope of its business activities.

27. Ermert has been damaged.

28. The harm caused to Ermert has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant BDS 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 Defendant'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; and

d. 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: December 5, 2018

Respectfully submitted,

/s/ Joel B. Rothman

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