

**THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RON TOMA, an individual,	)	
	)	
	)	
Plaintiff,	)	
	)	Case No.: 1:12-cv-02796
vs.	)	
	)	
MOTLEY CRUE, INC., a California	)	
corporation; 11-7 RECORDING CORP, a	)	
California corporation; 10TH STREET	)	
ENTERTAINMENT ASSOCIATES, LLC, a	)	
California LLC; and LIVE NATION	)	
MERCHANDISE, INC., a Delaware	)	
corporation;	)	
	)	JURY DEMAND
Defendants.	)	
	)	

**COMPLAINT**

**NOW COMES** the Plaintiff, RON TOMA, by his attorney, LAWRENCE E. THOMPSON of THE THOMPSON LAW OFFICE, P.C., and respectfully states the following as his Complaint against the Defendants, MOTLEY CRUE, INC. (“MOTLEY CRUE”), 11-7 RECORDING CORP (“ELEVEN SEVEN”), 10TH STREET ENTERTAINMENT ASSOCIATES, LLC (“TENTH STREET”); and LIVE NATION MERCHANDISE, INC. (“LIVE NATION”):

**NATURE OF THE ACTION IN BRIEF**

1. This is an action by TOMA for injunctive relief and damages relating to the defendants’ copyright infringement of TOMA’s intellectual property and defendant MOTLEY CRUE’s breach of contract related to the same intellectual property. More specifically, Toma possesses copyrights in photographic images of the members of Motley Crue, a popular band, that were created by author Michael Pinter in 1981. The defendants, either directly or through intermediaries, have copied, distributed and/or imported those images. The defendants’ actions in this regard constitute copyright infringement.

2. TOMA and MOTLEY CRUE were parties to prior litigation, *Toma v. Motley Crue, et al.*, 08-cv-03479 (N.D. ILL Closed 05/22/09), that concerned the same intellectual property. The prior litigation was resolved pursuant to a settlement agreement (the “Settlement Agreement”). MOTLEY CRUE has breached the terms of the Settlement Agreement by failing to include a proper copyright notice on packaging for musical sound recordings and on merchandise.

3. Defendants MOTLEY CRUE, ELEVEN SEVEN and TENTH STREET have facilitated and/or authorized the importation of the sound recording packaging into the United States, and the display of the packaging in the United States, without the required proper copyright notice.

4. Defendants MOTLEY CRUE and LIVE NATION have facilitated and/or authorized the importation of merchandise, including merchandise into the United States, and the display of the packaging in the United States, without the required proper copyright notice.

#### **PARTIES AND JURISDICTION**

5. The plaintiff is a citizen of Illinois residing in DuPage County.

6. Defendant MOTLEY CRUE is a California corporation having its principal place of business in California. Defendant ELEVEN SEVEN is a California corporation having its principal place of business in California. Defendant TENTH STREET is a California limited liability corporation having its principal place of business in California. Defendant LIVE NATION is a Delaware corporation having its principal place of business in California.

7. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

8. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity); and 28 U.S.C. § 1338(a) (copyright).

9. Venue is proper pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

10. This action arises under federal statutes. Defendants’ conduct and activities were, and are, unauthorized and constitute copyright infringement under the United States Copyright

Act, 17 U.S.C. § 101, *et seq.*

**COUNT I - COPYRIGHT INFRINGEMENT**

11. Plaintiff incorporates and restates Paragraphs 1-10 as set forth above.

12. In 1981, Michael Pinter created original photograph images of the members of the band Motley Crue (the “Pinter Images”).

13. The Pinter Images, individually and collectively, are original works subject to copyright protection under United States law. The Pinter Images include the relevant photographic images attached as Exhibits A-1 and A-7 (referred to herein as the “Album Images”).

14. Plaintiff acquired the copyright to the Pinter Images through written assignments which have been provided to the Copyright Office.

15. Plaintiff has registered the Album Images with the Copyright Office as Reg. No. VA1642841, Reg. No. VA1642842, and Reg. No. VA1642242. See Exhibit B.

16. Defendants MOTLEY CRUE, ELEVEN SEVEN, and TENTH STREET have infringed the copyright by publishing and/or displaying one or more images and/or derivatives that were copied from plaintiff's Pinter Images, for example, on compact discs advertised, distributed, and imported from 2010 to the present, exerts from some of which are attached as Exhibits C1 – C5.

17. Upon information and belief, defendant continues to infringe and/or are planning to infringe the copyright by continuing to facilitate the importation and/or displaying the infringing images in violation of the copyright, thus causing irreparable damage.

## **COUNT II - COPYRIGHT INFRINGEMENT**

18. Plaintiff incorporates and restates Paragraphs 1-10 as set forth above.

19. In 1981, Michael Pinter created original photograph images of the members of the band Motley Crue (the “Pinter Images”).

20. The Pinter Images, individually and collectively, are original works subject to copyright protection under United States law. The Pinter Images include the relevant photographic images attached as Exhibits A-1 and A-2 (referred to herein as the “Belt Buckle Image”).

21. Plaintiff acquired the copyright to the Pinter Images through written assignments which have been provided to the Copyright Office.

22. Plaintiff has registered the Album Images with the Copyright Office as Reg. No. VA1642841 and Reg. No. VA1642842. See Exhibit B.

23. Defendants MOTLEY CRUE and LIVE NATION have infringed the copyright by publishing and/or displaying one or more images and/or derivatives that were copied from plaintiff's Belt Buckle Images, for example, on greeting cards, exerts from one of which is attached as Exhibit D.

24. Upon information and belief, defendant continues to infringe and/or are planning to infringe the copyright by continuing to facilitate the importation and/or displaying the infringing images in violation of the copyright, thus causing irreparable damage.

## **COUNT III – BREACH OF CONTRACT**

25. Plaintiff incorporates and restates Paragraphs 1-24 as set forth above.

26. Defendant MOTLEY CRUE's actions are a breach of the Settlement Agreement.

**PRAYER FOR RELIEF**

Therefore, TOMA demands:

- (a) for Defendants to be enjoined from engaging in any further unauthorized infringement of plaintiff's protected photographic images;
- (b) for Defendants to account for and pay as damages to the plaintiff all profits and advantages gained from infringing the plaintiff's copyright, and that the Court enter judgment in favor of plaintiff and against Defendants for damages sustained by plaintiff in an amount to be determined at trial;
- (c) for Defendants to pay the plaintiff interest, costs, statutory damages, and reasonable attorney's fees; and
- (d) for plaintiff to be awarded any other just relief.

**JURY DEMAND**

TOMA hereby demands a trial by jury on all issues and claims triable by jury.

Respectfully submitted,

Dated: April 16, 2012

RON TOMA

By:           s/Lawrence E. Thompson/            
Lawrence E. Thompson

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