

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNION SQUARE PARTNERSHIP, INC.,

Plaintiff,

-v-

GARAUFIS, J.

SAVITRI DURKEE,

AZRACK, J. Defendant.
-----X

08 3101

Docket No. _____

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL 30 2008 ★
BROOKLYN OFFICE

COMPLAINT

Plaintiff Union Square Partnership, Inc. ("USP"), by its undersigned counsel, Cowan, DeBaets, Abrahams, & Sheppard, LLP, as for its complaint herein, alleges as follows:

INTRODUCTION

1. This copyright infringement action arises out of defendant Savitri Durkee's knowing and intentional copying of protected elements of USP's website.

JURISDICTION AND VENUE

2. This case arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over defendant by reason of her commission of tortious acts in the State of New York and within this district pursuant to New York CPLR § 302.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that the defendant resides in this judicial district.

PARTIES

5. Plaintiff USP is a non-for-profit New York corporation that maintains its principal place of business at 4 Irving Place, Room 1148S, New York, New York 10003.

6. Upon information and belief, defendant Savitri Durkee is an individual residing at 317 Greenwood Avenue, # 2, Brooklyn, New York 11218.

FACTS

A. USP'S History

7. In 1976, New York City's Union Square neighborhood was in decline. In an effort to halt the deterioration and lay the groundwork for the area's economic revival, a coalition of local business, community and government interests was formed, leading to the establishment of a Local Development Corporation ("LDC"). The LDC successfully lobbied the City to create its first Business Improvement District ("BID") in 1984. Working together for over 20 years, the LDC and BID formally joined together in September 2003 under one name – Union Square Partnership.

8. USP has played a lead role in the area's development and provides the Union Square community with a variety of programs and services including, but not limited to, facilitating ongoing development by acting as a liaison among residents, business and government leaders; advocating for neighborhood enhancements; offering support to local business owners; spearheading long-term area improvements; and providing sanitation and public safety.

9. USP also operates an award-winning Education Program in Washington Irving High School, the neighborhood's largest public high school. USP works with a broad

spectrum of local businesses, non-profit organizations and academic institutions to develop programs and secure resources for the students.

10. USP's activities and programs have strengthened Union Square's identity. To further foster connections between Union Square residents and businesses and to encourage other city residents and tourists to visit Union Square, USP produces free community events, educational seminars and networking receptions and advertises such events to the public.

11. Among USP's most important marketing efforts is its website, hosted at <http://www.unionsquarenyc.org/> (the "USP Website"). The USP Website provides the public with up-to-date information regarding the activities sponsored by USP and other community events, as well as detailed directories of local businesses and maps of the area, resources for small businesses and residents, and information regarding other services provided by USP. A true and correct copy of the USP Website's main page is attached hereto as Exhibit A.

12. The USP Website is topped with the title "Union Square Partnership" and comprised of three columns of text and a blank fourth column. The leftmost column contains the USP logo in a magenta box, a purple box with buttons linking to other sections of the website, a dark bluish box entitled "Events Calendar", a black box entitled "Get Involved", and another dark bluish box containing contact information for the USP and a Copyright notice. The middle column (colored yellowish-green) contains information regarding the USP and additional information regarding recent events and press. The righthand column (colored orange) is titled "Community Highlights" and contains pictures and information regarding upcoming events and USP services. The last column contains no text and is merely colored purple.

13. USP owns all rights, title and interest, including copyrights, in the USP Website, with the exception of a couple of photographs to which USP has been licensed the right to use such photography.

14. On July 25, 2008, USP filed an application with the United States Copyright Office for the "Union Square Partnership Website" via the Copyright Office's Electronic Copyright Office. USP requested Special Handling of the application, requesting that the Copyright Office expedite its review because of the instant litigation. As of the filing of this Complaint, USP's application has been approved; however, the Copyright Office has not yet assigned a registration number to the application. A true and complete copy of a print-out of the claim status report, dated July 30, 2008, from the Electronic Copyright Office website is attached hereto as Exhibit B.

15. Given USP's reliable compilation of information regarding events taking place in Union Square and regarding services provided to the Union Square community, the USP Website is a trusted and reliable resource that has generated substantial goodwill to USP.

B. Defendant's Infringing Activities

16. Upon information and belief, defendant, with full knowledge of plaintiff USP, registered the domain names www.unionsquarepartnership.org and www.unionsquarepartnership.com on or about May 15, 2008.

17. On those domain names, defendant created a website to which both domain names resolve that copies the USP Website (the "Infringing Website"). A true and correct copy of the Infringing Website as it appeared on June 30, 2008 is attached hereto as Exhibit C.

18. Like the original USP Website, the Infringing Website is topped with the title “Union Square Partnership” in a similar size and font. The website further is comprised of three columns of text and a blank fourth column. The leftmost column mimics the leftmost column of the USP Website, specifically containing a copy of the USP logo in a magenta box, a purple box with buttons linking to other sections of the website, a dark bluish box entitled “Events Calendar”, a black box entitled “Get Involved”, and another dark bluish box containing the actual contact information for USP. The middle column similarly is colored yellowish-green and contains information critical regarding a project that the USP is sponsoring. The righthand column is also colored orange, similarly titled “Community Highlights”, and contains pictures and information (including a picture of fruit to which USP holds a non-exclusive license). Again, mimicking the USP Website, the last column contains no text and is merely colored purple.

19. Indeed, it is clear that defendant knew that USP claimed rights in the USP Website, as defendant went so far as to copy all of the contact information, but change the copyright notice from a symbol to the misspelled word “copywrite.” *See* Ex. C.

20. Moreover, to further confuse the viewing public, defendant further published on the Infringing Website a video purporting to be from USP’s Executive Director.

21. Thus, in copying the USP Website, it is clear that defendant has intentionally and willfully sought to confuse the public by pawning off on USP’s established goodwill and reputation to present and publicize her own agenda.

C. USP Sends a DMCA Notice and Takedown Letter to Defendant’s Internet Service Provider

22. Pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512, USP served defendant’s internet service provider, New Dream Network, LLC d/b/a DreamHost Web

Hosting ("DreamHost"), with a takedown letter on July 1, 2008, requesting that access to the Infringing Website be disabled. A true and correct copy of the July 1, 2008 letter to DreamHost is attached hereto as Exhibit D.

23. On July 5, 2008, DreamHost complied with the request and disabled access to the Infringing Website. A true and correct copy of the July 5, 2008 e-mail from DreamHost is attached hereto as Exhibit E.

24. On July 16, 2008, DreamHost forwarded to USP's counsel a Counter-Notification executed by defendant. DreamHost indicated that it would reinstate the removed content within 10-14 business days if a lawsuit was not filed. A true and correct copy of the July 16, 2008 e-mail from DreamHost is attached hereto as Exhibit F.

25. Therefore, defendant intends to continue publication of the Infringing Website.

FIRST CAUSE OF ACTION
(Copyright Infringement, 17 U.S.C. § 502, et seq.)

26. Plaintiff USP repeats each allegation contained in paragraphs 1 through 25 of this Complaint.

27. USP owns a valid copyright registration in and to the USP Website including, but not limited to, the compilation of visual expression contained therein. *See* Ex. A. These registrations were duly and lawfully issued by the Copyright Office and remain in full force and effect.

28. Upon information and belief, Defendant had access to the publically available USP Website.

29. Defendant, without license, authorization or permission from USP, copied and/or created derivative works from the copyrighted USP Website.

30. Defendant's Infringing Website looks substantially similar to, if not is an exact reproduction of, the official USP Website. *Compare* Ex. A with Ex. C. Moreover, the Infringing Website prominently features the Union Square Partnership name and logo in the same locations as they are on the official USP Website and the Infringing Website is posted on domain names registered by the defendant that wholly incorporate the Union Square Partnership name.

31. Defendant's conduct thus constitutes copyright infringement under the Copyright Act, 17 U.S.C § 501.

32. Plaintiff is entitled to recover damages, which include its actual losses and any and all profits Defendant has made as a result of her infringing conduct. 17 U.S.C. § 504. Alternatively, Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c).

33. Upon information and belief, Defendant's actions are willful, in that her actions were at least in reckless disregard of plaintiff's rights in and to the USP Website. Accordingly, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

34. Moreover, USP has been and continues to be irreparably damaged by defendant's activities and conduct. Unless defendant's conduct is enjoined, USP and its goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated solely by money damages. Accordingly, USP seeks preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

35. Furthermore, Plaintiff is entitled to recover its full costs, including reasonable attorneys' fees pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff prays that this Court:

- A. Enjoin Defendant, her agents, employees, successors, assigns and anyone acting in concert with her from copying, publishing, displaying, advertising or making any unauthorized use of the USP Website in any form, including but not limited to print or electronic publication;
- B. Award damages to USP in the amount of either: 1) all of defendant's profits, gains or advantages of any kind attributable to defendant's infringement and USP's actual losses; or alternatively, 2) statutory damages.
- C. Award to Plaintiff the costs of this action together with reasonable attorney's fees.
- D. Award to Plaintiff prejudgment interest on the amount of the award to Plaintiff, and;
- E. Award to Plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 30, 2008

Respectfully Submitted,

COWAN, DEBAETS, ABRAHAMS,
& SHEPPARD, LLP

By: 

Toby M.J. Butterfield
Matthew A. Kaplan

41 Madison Avenue
New York, New York 10010
(212) 974-7474

*Attorneys for Plaintiff Union Square
Partnership, Inc.*

UNION SQUARE PARTNERSHIP



About Us
 News & Events
 Neighborhoods
 Districts
 Community
 Website

EVENTS CALENDAR

The Union Square Partnership is a coalition of organizations and individuals who are committed to the development and improvement of the Union Square area. We are currently working on a comprehensive plan for the area, which will include a mix of residential, commercial, and public space. We are also working on a variety of other projects, including the development of a new park and the improvement of the area's infrastructure.

The Union Square Partnership is a coalition of organizations and individuals who are committed to the development and improvement of the Union Square area. We are currently working on a comprehensive plan for the area, which will include a mix of residential, commercial, and public space. We are also working on a variety of other projects, including the development of a new park and the improvement of the area's infrastructure.



NEIGHBORHOOD HIGHLIGHTS



DIAL
311

A



COWAN
DEBAETS
ABRAHAMS &
SHEPPARD LLP

41 MADISON AVENUE
NEW YORK, NY 10010
t: 212 974 7474
f: 212 974 8474
www.cdas.com

TOBY M.J. BUTTERFIELD
212-974-7474
TBUTTERFIELD@CDAS.COM

July 1, 2008

VIA FACSIMILE (714) 990-2600, E-MAIL TO abuse@dreamhost.com
AND FEDERAL EXPRESS

DreamHost
PMB #257
417 Associated Rd.
Brea, California 92821

Re: Notice of Copyright Infringement

Dear Administrator:

This firm represents the Union Square Partnership, Inc. and Union Square Partnership District Management Association, Inc. (collectively, "USP").

This letter is an official notification as required by Sections 512 of the Digital Millennium Copyright Act (17 U.S.C. § 512) for the purposes of removing two separate websites hosted by DreamHost that infringe upon USP's intellectual property rights.

USP is the exclusive owner of the copyrights in and to a website located at <http://www.unionsquarenyc.org/> and the text and artwork appearing therein (collectively, the "USP Website"). USP also holds trademark rights in the mark Union Square Partnership and the Union Square Partnership logo.

Two websites hosted by DreamHost infringe on the rights in the USP Website as they contain identical artwork, text and photography. The URLs for the infringing websites are:

<http://www.unionsquarepartnership.com/>
<http://www.unionsquarepartnership.org/>

Please immediately remove or disable all access to the infringing websites, and confirm by e-mail that DreamHost has complied with its obligations under the DMCA by removing the websites.

I have a good faith belief that use of the copyrighted website and materials described above is not authorized by the copyright owner, its agent, or the law. The information



COWAN
DeBAETS
ABRAHAMS &
SHEPPARD LLP

DREAMHOST
JULY 1, 2008
PAGE 2

provided in this Notice is accurate to the best of my knowledge and I swear, under penalty of perjury, that I am authorized to act on behalf of the Union Square Partnership.

Should you require any additional information regarding the foregoing, please contact me at the address and telephone number above, or via e-mail at tbutterfield@cdas.com

Very truly yours,

A handwritten signature in black ink, appearing to read "Toby Butterfield", with a stylized flourish at the end.

Toby M.J. Butterfield

cc: Matthew A. Kaplan, Esq.

Matthew Kaplan

From: DreamHost Abuse [abuse-replies@dreamhost.com]
Sent: Saturday, July 05, 2008 4:24 PM
To: mkaplan@cdas.com
Subject: Re: Notice of Copyright Infringement

Hello -

Matthew Kaplan <mkaplan@cdas.com> wrote:

> VIA E-MAIL TO abuse@dreamhost.com

>

>

>

> DreamHost

>

> PMB #257

>

> 417 Associated Rd.

>

> Brea, California 92821

>

>

>

> Re: Notice of Copyright Infringement

>

>

>

> Dear Administrator:

>

>

>

> This firm represents the Union Square Partnership, Inc. and Union Square

> Partnership District Management Association, Inc. (collectively, "USP").

> This is a copy of a letter dated July 1, 2008, which was sent to DreamHost

> via facsimile, e-mail and Federal Express.

>

>

>

> This letter is an official notification as required

> by Section 512 of the Digital Millennium Copyright Act (17 U.S.C. § 512) for

> the purposes of removing two separate websites hosted by DreamHost that

> infringe upon USP's intellectual property rights.

>

> USP is the exclusive owner of the copyrights in and

> to a website located at <http://www.unionsquarenyc.org/> and the text and

> artwork appearing therein (collectively, the "USP Website"). USP also holds

> trademark rights in the mark Union Square Partnership and the Union Square

> Partnership logo.

>

>

>

> Two websites hosted by DreamHost infringe on the

> rights in the USP Website as they contain identical artwork, text and

> photography. The URLs for the infringing websites are:

>

>

>

> <http://www.unionsquarepartnership.com/>

>

> <http://www.unionsquarepartnership.org/>

>

Thanks for writing.

Per your DMCA notification the content in question has been taken offline and our customer has been instructed not to replace it. Should you find the content back online, please let us know immediately.

--

- Karl F., Abuse Coordinator

- DreamHost Web Hosting - <http://www.dreamhost.com/>

Matthew Kaplan

From: DreamHost Abuse [abuse-replies@dreamhost.com]
Sent: Wednesday, July 16, 2008 4:53 PM
To: mkaplan@cdas.com
Subject: DMCA Counter Notification

Hello -

I'm writing to notify you that we have received a formal DMCA counter-notification from the owner of:

> <http://www.unionsquarepartnership.com/>

>

> <http://www.unionsquarepartnership.org/>

Per the DMCA law, we will reinstate or stop blocking access to the content we previously removed per your DMCA notification within 10-14 business days unless we receive notice of pending legal action as required by the DMCA law. The counter-notice has been included below:

July 13, 2008

Dear Dream Host:

Counter Notification to the DMCA Notice of Toby M.J. Butterfield

I declare, under penalty of perjury, that I have a good faith belief
that the complaint against <http://www.unionsquarepartnership.org> and
<http://www.unionsquarepartnership.com> of copyright violation is based on

mistaken information, misidentification of the material in question, or
deliberate misreading of the law.

My contact information is as follows:

unionsquarepartnership.org

unionsquarepartnership.com

Savitri Durkee: partner

savitrid@earthlink.net

347-693-8857

PO BOX 1556

New York, NY 10013

Account number: X

The Domain Name(s) Affected:

<http://www.unionsquarepartnership.org>

<http://www.unionsquarepartnership.com>

In consideration of the above, demand is hereby made by
unionsquarepartnership.org, owner of
<http://www.unionsquarepartnership.org> and unionsquarepartnership.com,
owner of <http://www.unionsquarepartnership.com> that all material removed
or disabled from the Dream Host Network as a result of the above
referenced DMCA Notice, which was submitted by Toby M.J. Butterfield,
dated July 5, 2008, and executed by Dream Host on July 5, 2008 be
restored as provided by Title 17 USC 512(g)(2) and (3).

Among other reasons for this Counter Notification Letter is that:

1. The complainant has provided no copyright registration information or other tangible evidence that the material in question is in fact copyrighted, and I have a good faith belief that it is not. The allegation of copyright violation is therefore in dispute, and at present unsupported.

2. Use of the material is legally protected because it falls within the "fair use" provision of the copyright regulations, as defined in 17 USC 107 <http://www.loc.gov/copyright/title17/92chap1.html> - 107.

I anticipate that you will act accordingly in ensuring that all of the material, detailed below, will be restored within a minimum of ten business days and a maximum of fourteen business days as per Title 17 USC Â§512(f)(2) of the Digital Millennium Copyright Act from the time that you forward this Counter Notification to Toby M.J. Butterfield which you are now required to do promptly. Siding with the complainant in a manner that interferes with my lawful use of your facilities could constitute breach of contract on your part.

The material that has been disabled or removed and that I am now demanding permission to restore on the Dream Host Network is as follows:

the entire website of

<http://www.unionsquarepartnership.org>

<http://www.unionsquarepartnership.com>

I consent to the jurisdiction of the federal district court for the

judicial district in which my address is located or, if my address is outside the United States, for any judicial district in which the service provider may be found. I consent that I will accept service of process from the person who provided notification or an agent of such person.

Savitri Durkee

If you have any questions, please don't hesitate to contact me.

--

- Karl F., Abuse Coordinator

- DreamHost Web Hosting - <http://www.dreamhost.com/>