

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,**

**Plaintiff,**

**-against-**

**MATHEW K. HIGBEE, Esq.,  
NICK YOUNGSON,  
RM MEDIA, LTD.,  
and HIGBEE & ASSOCIATES,**

**Defendants.**

**Docket No.: 18-cv-3353 (ADS) (ARC)**

**DECLARATION IN  
SUPPORT OF MOTION  
FOR DEFAULT JUDGMENT**

KEVIN SCHLOSSER declares the following pursuant to 28 U.S.C. § 1746:

1. I am a member of the plaintiff in this action, Meyer, Suozzi, English & Klein, P.C. (“Plaintiff”).
2. This action was commenced pursuant to 22 U.S.C. §§ 2201 and 2202 (declaratory judgment) and New York General Business Law § 349 (deceptive business practices).
3. The time for Defendants Nick Youngson and RM Media, Ltd. (together, the “RM Defendants”) to answer or otherwise move with respect to the Complaint herein has expired. A copy of the Complaint is annexed hereto as “Exhibit 1” and incorporated herein by reference.
4. The RM Defendants have not answered or otherwise moved with respect to the Complaint, and the time for the RM Defendants to answer or otherwise move has not been extended.
5. The RM Defendants’ default has been noted by the Clerk of Court. A copy of the Certificate of Default is annexed hereto as “Exhibit 2.”
6. The basis of liability against the RM Defendants is the following:
  - a. The photo that is the subject of the RM Defendants’ claim of copyright infringement (the “Image”) was freely made available to users under a “license,” which

precludes the RM Defendants' claim of copyright infringement and simply renders the use subject to a mere alleged claim of breach of the "license," for which no "statutory damages" are available and for which no actual damages can be proven. Plaintiff is therefore entitled to a declaration that (a) Plaintiff's use of the Image under license does not constitute copyright infringement as a matter of law, and (b) the RM Defendants are entitled to no damages.

b. The RM Defendants engaged in deceptive business practices when they made the Image and other photos freely available to the public for no charge, where the pictures were offered under "license," as a way to trick unwitting users, such as Plaintiff, into using the pictures without attribution and then falsely accuse them of copyright infringement and extort, or attempt to extort, completely unjustified sums of money (statutory damages that are not applicable) from them by way of harassment and scare tactics. The RM Defendants are therefore jointly and severally liable to Plaintiff under New York General Business Law § 349.

7. A proposed form of default judgment is annexed hereto as "Exhibit 3."

WHEREFORE, Plaintiff respectfully requests that a default judgment be entered in favor of Plaintiff and against the RM Defendants.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

Dated: Garden City, New York  
March 4, 2019

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*s/ Kevin Schlosser*  
KEVIN SCHLOSSER