

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID WEXLER,

Plaintiff,

- against -

INTERNET BRANDS, INC.

Defendant.

Docket No. 1:17-cv-6898

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff David Wexler (“Wexler” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Internet Brands, Inc. (“Internet” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs of a coat check at JetBlue’s terminal, owned and registered by Wexler, a New York based photographer. Accordingly, Wexler seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim 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 because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wexler is a professional photographer in the business of licensing his photographs to online and print media for a fee, having a usual place of business at 15 Sugarwood Lane, Commack, New York 11725.

6. Upon information and belief, Internet is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 909 North Sepulveda Blvd. 11th Floor, El Segundo, California, 90245. Upon information and belief, Internet is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Internet has owned and operated a website at the URL: www.FlyerTalk.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. Wexler photographed a coat check at JetBlue's terminal (the "Photographs"). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Wexler is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Number VA 2-062-309.

B. Defendant's Infringing Activities

10. On February 2, 2015, Internet ran an article on the Website entitled *CoatChex Offers Convenient Solution to Coat-Carrying Conundrum Faced by Flyers Bound for Warmer Climates* See <http://www.flyertalk.com/articles/coatchex-offers-convenient-solution-for-coat->

carrying-flyers-bound-for-warmer-climates.html#. The article prominently featured the Photographs. A true and correct copy of the article with the Photographs is attached hereto as Exhibit B.

11. The article was written by a journalist for FlyerTalk.com

12. The Photographs appears on Internet's computer servers.

13. Internet did not license the Photographs from Plaintiff for its article, nor did Internet have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST INTERNET)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Internet infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Internet is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Internet have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Internet be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 12, 2017

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