

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Joe Myeress		
	Plaintiff,	Docket No. 18-cv-2365
- against -		JURY TRIAL DEMANDED
Buzzfeed, Inc.		
	Defendant.	

**AMENDED COMPLAINT**

Plaintiff Joe Myeress (“Myeress” or “Plaintiff”) by and through his undersigned counsel, as and for his First Amended Complaint against Defendant BuzzFeed, Inc. (“Buzzfeed” 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 a copyrighted photograph of American Airlines Arena in Miami. The photograph is owned and registered by Myeress, a Florida-based professional photographer. Accordingly, Plaintiff 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. Myeress is a professional photographer having a usual place of business at 574 Knightsbridge Circle, Sarasota, Florida 34238.

6. Upon information and belief, BuzzFeed is a foreign corporation duly organized and existing under the laws of Delaware with a place of business at 111 E. 18th Street, 13th Floor, New York, NY 10003.

7. Upon information and belief, BuzzFeed is registered with the New York Department of State, Division of Corporations to do business in the State of New York.

8. Upon information and belief, at all times material hereto, Defendant has controlled and operated the Website at the website at the URL: [www.buzzfeed.com](http://www.buzzfeed.com). (the “Website”)

9. BuzzFeed is a for-profit entity.

10. BuzzFeed publishes web-based news and entertainment articles, with substantial advertising, on the Website.

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

11. Myeress photographed an aerial time-lapse photograph of American Airline Arena in Miami at night (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

12. Myeress is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

13. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 1-955-450, effective as of April 8, 2015 (the “Certificate”). A true and correct copy of the Certificate is attached hereto as Exhibit B.

**B. Defendant’s Infringing Activities**

14. BuzzFeed posted the Photograph on its Website on October 31, 2017 in an article entitled *Top 10 Things To Do in Miami*. See [https://www.buzzfeed.com/payal0411/top-10-things-to-do-in-miami-2x2az?utm\\_term=.hlM5lYGeR1#.opgPvOGAJm](https://www.buzzfeed.com/payal0411/top-10-things-to-do-in-miami-2x2az?utm_term=.hlM5lYGeR1#.opgPvOGAJm). (the “Article”). A true and correct of a screenshot of the Article as it appears on the Website is attached hereto as Exhibit C.

15. Upon information and belief, The Article was posted to the BuzzFeed community and promoted by the editors of BuzzFeed.

16. Upon information and belief editors of BuzzFeed reviewed the Article and its content and actively chose to promote the Article on the Website.

17. BuzzFeed’s policy on the Website, with respect to community content, states that “Our team of Community editors will review your post...[a]s long as the team of editors likes your post, it will still get promoted.” A true and correct print-out of BuzzFeed’s Policy with respect to publishing community content, as posted on the Website, is attached hereto as Exhibit D.

18. BuzzFeed is a sophisticated news entertainment and media publishing organization with full knowledge of the relevant copyright laws.

19. Upon information and belief, the editors of BuzzFeed are well-versed in copyright law, particularly with respect to the laws regarding the publishing of images on the Website.

20. The Photograph, as featured in the Article, contained clear sourcing information stating that the Photograph was sourced “via seatingchartview.com.”

21. Seatingchartviewchart.com is not an open source, stock photo, or any other form of file sharing or public domain source for images.

22. Upon information and belief, as a sophisticated media publisher in the business of publishing articles containing images, the editors of BuzzFeed fully understand that seatingchartviewchart.com is not an open source, stock photo, or any other form of file sharing or public domain source for images.

23. Upon information and belief, as a sophisticated media publisher in the business of publishing articles containing images, the Editors of BuzzFeed had full knowledge that publishing an image sourced from Seatingchartviewchart.com is an infringement of the rights of the owner of the image.

24. Defendant did not license the Photograph from Plaintiff for the Website or any other use.

25. Defendant did not have Plaintiff’s permission or consent to publish the Photograph on the Website.

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

26. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-25 above.

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

28. 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.

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

30. 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.

31. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

32. Plaintiff is further entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

33. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Buzzfeed be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Buzzfeed be ordered to remove the Photograph from its Website;
3. That, with regard to the First Claim for Relief, Plaintiff be awarded either: (a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or (b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. 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  
April 11, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Joseph A. Dunne

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*Attorneys for Plaintiff*

*Joe Myeress*

**CERTIFICATE OF SERVICE**

I, Joseph A. Dunne, declare under penalty of perjury that, on April 11, 2018, a copy of the attached AMENDED COMPLAINT was served, via the ECF System pursuant to the Local Rules and ECF Rules of this court, on the attorneys for Defendant:

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Dated: Valley Stream, New York  
April 11, 2018

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