

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEN ARONSON,

Plaintiff,

vs.

DOG EAT DOG FILMS, INC., and
GOLDFLAT PRODUCTIONS, LLC.,

Defendants.

NO. 3:10 CV-5293-KLS

AMENDED COMPLAINT

[JURY DEMANDED]

"I'm not a big supporter of copyright laws in this country."

-- Michael Moore, 2007

"You are the one that provided some much needed comic relief in the middle of our little picture."

-- Anne Moore, *Sicko* Producer, 2007, to Eric Turnbow regarding Ken Aronson's home video

I. INTRODUCTION AND REQUEST FOR RELIEF

1.1 This is an action by Ken Aronson, an individual, ("Plaintiff), by and through his attorneys Thomas B. Vertetis and Pfau Cochran Vertetis Kosnoff, LLC, and, to recover

AMENDED COMPLAINT 1 of 8

PFau COCHRAN VERTETIS KOSNOFF, PLLC
911 PACIFIC AVENUE, SUITE 200
TACOMA, WA 98402
PHONE: 253-777-0799; FAX: 253-627-0654

1 damages arising from infringement of his copyrights by Dog Eat Dog Production, Inc. and
2 Goldflat Productions, Inc. (Defendants). Specifically, Defendants distributed and continues to
3 distribute, portions of Plaintiff's home video which is protected by common law copyright
4 and is subject to a pending Federal Copyright application. In addition, Defendants
5 distributed, and continues to distribute, a copyrighted song "Oh England," co-authored by
6 Plaintiff. Both infringements are willful and warrant monetary damages pursuant to 17
7 U.S.C. §504.
8

9 II. THE PARTIES

10 2.1 Ken Aronson is a private individual with a residence in Hoquiam, Washington.

11 2.2 Upon information and belief, Dog Eat Dog Productions, Inc., (Defendant) is a
12 Delaware corporation with its principle place of business at New York, New York. Upon
13 information and belief, Defendant is engaged in the business of producing, advertising,
14 marketing, and distributing documentary films created by Michael Moore. Upon information
15 and belief, Defendant regularly transacts substantial business in this district, including
16 distributing Michael Moore documentaries to movie theaters and as DVD rentals.
17

18 2.3 Upon information and belief, Goldflat Productions, Inc., (Defendant) is a limited
19 liability company with its principal place of business at New York, New York. Upon
20 information and belief, Defendant is engaged in the business of producing, advertising,
21 marketing, and distributing documentary films created by Michael Moore, including *Sicko*.
22 Upon information and belief, Defendant regularly transacts substantial business in this
23 district, including distributing Michael Moore documentaries to movie theaters and as DVD
24 rentals.
25

1
2
3
4
5
6
7
8
9

III. JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 17 U.S.C. §501 and 28 U.S.C. §§1331 and 1338(a).

3.2 Venue in this district is proper under 28 USC §§1391 and 1400 because a substantial part of the events giving rise to the claims asserted herein arise in this district, and Defendants, upon information and belief, are and at all times were doing business in this district.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. FACTS

4.1 Plaintiff Ken Aronson, and an individual named Eric Turnbow, traveled together to London, England approximately ten years ago. Plaintiff brought with him a video camera and recorded portions of his trip.

4.2 Plaintiff recorded a video of a live performance of the copyrighted song, "Oh England," part of a compilation called "I'm Alive," which is copyrighted under the name Eric Turnbow. This compilation has been mass produced as a CD which lists Aronson as a co-author of "Oh England." The video recording includes Plaintiff's likeness.

4.3 Plaintiff also recorded a scene in which Eric Turnbow attempted to walk across Abby Road on his hands, fell, injured his shoulder, received medical treatment at a local English hospital, and was discharged. The video includes audio commentary by Plaintiff.

4.4 Upon returning to the United States, Turnbow offered to make a VHS copy of the video footage for Plaintiff. The camera created a "Beta" tape, and Turnbow had the appropriate conversion equipment. Turnbow kept a VHS copy for himself, unbeknownst to Plaintiff.

1 4.5 Turnbow states that the video itself was Aronson's, as was the video camera used to
2 create the tape. Plaintiff is the sole videographer of this recording.

3 4.6 Around February of 2006, Michael Moore sent out to his fans, Turnbow included, a
4 request for health care stories in preparation for his documentary film, *Sicko*. Turnbow
5 reported having had a medical problem years before in the United States where he found his
6 health care treatment inadequate. He contrasted that with the care he received in England ten
7 years earlier. Turnbow heard back from Moore's assistant Christine Fall and was told that
8 though they received 25,000 submissions, Turnbow's intrigued them.

9 4.7 Turnbow submitted to defendants the VHS tape Aronson had recorded, along with the
10 CD "I'm Alive" which included a jacket noting Ken Aronson as co-author of the song "Oh
11 England." Turnbow reports he was sent, and signed, a release permitting Moore to use his
12 materials. Turnbow further reports that he mentioned Ken Aronson, by name, as the
13 individual in the video who accompanied him to England.

14 4.8 Plaintiff was not contacted by any agent of Michael Moore, nor did he give his
15 permission to anyone to use his video tape, or the song "Oh England." Defendants were or
16 should have been aware that Ken Aronson was co-author of "Oh England." Defendant had in
17 its possession a CD jacket identifying Plaintiff as co-author. Defendant was or should have
18 been aware that Ken Aronson was the sole videographer of the footage used in the *Sicko* film.
19 Turnbow identified Aronson to defendants' agents, and the footage clearly demonstrates that
20 Turnbow was not the videographer. His friend, identified to Defendants as Aronson, clearly
21 was. Despite reasonable notice of Aronson's copyrights, consent was not obtained before
22 distribution.
23
24
25

1 4.9 Defendants Dog Eat Dog Films, Inc. and Goldflat Productions, LLC released the
2 documentary movie *Sicko* on or about June 22, 2007, in the United States and generated
3 substantial profits as a result of this film, and profits are on-going. The movie was nominated
4 in 2008 for an Academy Award in the “Best Documentary” category. To date, the movie has
5 grossed revenue in excess of \$50 million dollars.
6

7 **V. CAUSES OF ACTION**

8 **COUNT I**

9 **Copyright Infringement**

10 5.1 Plaintiff is, and at relevant times has been, a copyright owner under United States
11 copyright law of the video production described above. (Exhibit “A” attached – Certificate of
12 Registration).

13 5.2 Defendants’ distribution of its infringing film, *Sicko*, without authorization by Plaintiff
14 infringes Plaintiff’s exclusive copyright in his video pursuant to 17 U.S.C. §501.

15 5.3 Plaintiff is entitled to recover from Defendants the amount of his actual damages
16 incurred as a result of the infringement, in such amount as is shown by appropriate evidence
17 upon the trial of this case. 17 U.S.C. §504.
18

19 **COUNT II**

20 **Copyright Infringement**

21 5.4 Plaintiff is, and at relevant times has been, a joint copyright owner under United States
22 copyright law of the “Oh England” song described above.

23 5.5 Defendants’ distribution of its infringing film, *Sicko*, without authorization by
24 Plaintiff infringes Plaintiff’s exclusive copyright in his song pursuant to 17 U.S.C. §501.
25

1 5.6 Plaintiff is entitled to recover from Defendants the amount of his actual damages
2 incurred as a result of the infringement, in such amount as is shown by appropriate evidence
3 upon the trial of this case. 17 U.S.C. §504.
4

5 5.7 Plaintiff is also entitled to recover his attorneys' fees and costs of suit. 17 U.S.C. §505.

6 **COUNT III**

7 **Invasion of Privacy**

8 5.8 Defendants' unauthorized distribution of Plaintiff's home video gave publicity to a
9 matter concerning Plaintiff's private life in violation of Plaintiff's right to privacy.

10 5.9 As a result of the publication, Mr. Aronson suffered negative public comment from
11 community members and suffered negative impact to his business expectancy.

12 5.10 Plaintiff is entitled to damages in an amount to be specified at trial.

13 **COUNT IV**

14 **Misappropriation of Likeness**

15 5.11 Defendants' unauthorized distribution of Plaintiff's home video to the public exposed
16 Plaintiff's likeness without his consent and for pecuniary gain.

17 5.12 As a result of Defendants' misappropriation of Plaintiff's likeness, Plaintiff is entitled
18 to the commercial value to Defendants of Plaintiff's likeness, which equates to the revenues
19 thus far earned, and to be earned in the future; with movie theater revenues, royalties, video
20 sales and other revenues.
21

22 **VI. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as
24 follows:
25

1 (1) That the Court order Defendants to pay Plaintiff's actual and consequential
2 damages incurred, in an amount to be determined at trial;

3 (2) That the Court order Defendants to disgorge to Plaintiff all profits derived by
4 Defendants from its unlawful acts;

5 (3) That the Court order Defendants to pay Plaintiff's litigation expenses, including
6 reasonable attorney's fees and costs of this action; and

7 (4) That the Court grants Plaintiff any such further relief as the Court may deem just
8 and proper.
9

10 **VII. JURY DEMAND**

11 Plaintiff demands a trial by jury and requests that this matter be heard by a jury of
12 twelve persons.

13 Dated this 25th day of October, 2010.

14 PFAU COCHRAN VERTETIS KOSNOFF, PLLC

15
16
17 By 

18 _____
19 Thomas B. Vertetis, WSBA No. 29805
20 tom@pcvklaw.com
21 Attorney for Plaintiff
22 911 Pacific Avenue, Suite 200
23 Tacoma, WA 98402
24 Phone: 253.777.0799
25 FAX: 253.627.0654
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I, Jeanne Lyon, hereby certify that on today's date, I caused to be filed electronically (1) Plaintiff's Amended Complaint with the court, using the CM/ECF system, which will send email notification of such filing to the below addresses, and I served a true and correct copy of the following documents by the method indicated below and addressed as follows:

 X CM/ECF Notification via email service to: Bruce E. H. Johnson, at brucejohnson@dwt.com and Noelle Kvasnosky, at noellekvasnosky@dwt.com.

I declare under penalty of perjury under the laws of the United States of America, 28 U.S.C. ¶ 1746, that the foregoing is true and correct.

Dated this 25th day of October 2010, in Tacoma, Washington.

By  _____
Jeanne Lyon, Legal Assistant