

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JON TANNEN,

Plaintiff,

- against -

CBS INTERACTIVE INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jon Tannen (“Tannen” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant CBS Interactive Inc. (“CBS” 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 all-star high school football player, Sofian Massoud, owned and registered by Tannen, a New York City based photojournalist. Accordingly, Tannen 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 are doing business in New York.

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

PARTIES

5. Tannen is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 343 East 74th Street, Apt. 5H, New York, New York 10021.

6. Upon information and belief, CBS is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 28 East 28th Street, #10, New York, New York 10016. Upon information and belief, CBS 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, CBS has owned and operated a website at the URL: www.247sports.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. On September 20, 2016, Tannen photographed Sofian Massoud playing football for his high school (the “Photograph”) and published it on his Facebook Page the same day. On December 7, 2016, Tannen photographed Sofian Massoud playing football for his high school and published it on his Facebook page the same day (the “Photograph”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Tannen 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 have a pending Copyright Registration Number of 1-4379751218. See Exhibit B.

10. The copyright fee has been paid and works have been deposited with the Copyright Office.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about January 23, 2017, CBS ran an article on the Website entitled *Massoud could be the next great one from New York City*. See <http://247sports.com/Bolt/Massoud-could-be-the-next-great-one-from-New-York-City-50747554>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

12. The article is written by a CBS staff digital content manager.

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

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

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. CBS infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. CBS 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 CBS 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.

19. 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).

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

21. 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.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST CBS
(17 U.S.C. § 1202)

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above.

23. Upon information and belief, in its CBS intentionally and knowingly altered and/or falsified copyright management information by adding a 247 watermark to the Photographs and adding a credit Photo: 247Sports on the gutter credit.

24. The conduct of CBS violates 17 U.S.C. § 1202(b).

25. Upon information and belief, CBS's falsification and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

26. Upon information and belief, the falsification, alteration of said copyright management information was made by CBS intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photographs. CBS also knew, or should have known, that such falsification and/or alteration of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photographs.

27. As a result of the wrongful conduct of CBS as alleged herein, Plaintiff is entitled to recover from CBS the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by CBS because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

28. Alternatively, Plaintiff may elect to recover from CBS statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CBS be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. 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 Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

4. That, with regard to the Second 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 falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
7. That Plaintiff be awarded pre-judgment interest; and
8. 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
February 15, 2017

LIEBOWITZ LAW FIRM, PLLC
By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com
Attorneys for Plaintiff Jon Tannen