

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TC Reiner,

Plaintiff,

v.

**Ryon Nishimori and the Trustees of
Watkins Institute d/b/a Watkins
College of Art, Design & Film,**

Defendants.

Case No. _____

JURY DEMAND

COMPLAINT

In support of the relief sought herein, the Plaintiff, TC Reiner, hereby alleges as follows:

PARTIES

1. The Plaintiff, TC Reiner, is a professional photographer. He resides in Santa Barbara, California.
2. On information and belief, Defendant Ryon Nishimori resides at 1048 First Avenue, North, Nashville, Tennessee 37201.
3. Defendant Trustees of Watkins Institute d/b/a Watkins College of Art, Design & Film (“Watkins”) is a Tennessee nonprofit corporation with its principle place of business at 2298 Rosa L. Parks Blvd., Nashville, Tennessee, 37228. It may be served through its registered agent for the service of process, Brownlee O. Currey, Jr., 28 White Bridge Road, Suite 400, Nashville, Tennessee, 37205.

JURISDICTION

4. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* This Court has original and exclusive jurisdiction under 27 U.S.C. §§ 1331, 1338(a) and 1338(b).

5. The Defendants are both citizens of Tennessee and are, therefore, subject to the general personal jurisdiction of Tennessee. Further, because the Defendants committed the acts of copyright infringement described herein in Tennessee, they are subject to the specific personal jurisdiction of Tennessee.

6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(a).

BACKGROUND FACTS

7. TC Reiner is an award-winning professional fashion and fine-art photographer with over 20 years' experience in the industry. He commands significant fees for the creation and use of his photographs.

8. Mr. Reiner created the photograph he titled *Casablanca*. A true and correct copy of *Casablanca* is attached hereto as Exhibit A.

9. To produce *Casablanca*, Mr. Reiner leased a historical yacht, hired two professional agency models, hired a team of hair, makeup, and wardrobe artists, and incurred the added expenses of production personnel, catering, and location scouts. The images were created over two shooting days with significant expenditures. Although the photograph feels carefree, every detail was meticulously attended to by Mr. Reiner and members of Mr. Reiner's team at his direction.

10. *Casablanca* was registered with the U.S. Copyright Office in 2004 as part of a collection entitled, *2004 Music and Fashion*. The effective date of registration was

December 6, 2004 and a certificate of registration bearing registration no. VAU651-781 was issued (the “Registration”). A true and correct copy of the Registration is attached hereto as Exhibit B.

11. Watkins is a private college that focuses on fine and practical art. It offers Bachelors of Arts and Bachelors of Fine Arts degrees in film, fine art, graphic design, interior design, photography and art, as well as certificates in film and interior design.

12. As a regular part of Watkins’ curriculum, students produce works of their own. Watkins makes no claim to the ownership of the intellectual property in such works, and it encourages its students to use such works in promoting themselves after graduation.

13. Defendant Ryon Nishimori was a student at Watkins, and while a student there, he enrolled in a certain graphic design course (the “Course”). The Instructor of the Course (the “Instructor”) instructed the students, including Mr. Nishimori, to make a mock advertisement from a photograph that she would provide. The photograph she provided to Mr. Nishimori for this assignment was *Casablanca*.

14. Mr. Nishimori carried out this assignment, turning *Casablanca* into a mock advertisement for Dr. Scholl’s. A true and correct copy of this mock advertisement is attached hereto as Exhibit C (the “Mock Advertisement”).

15. At the time, the Instructor was an employee of Watkins, and, in making this assignment to Mr. Nishimori, she was acting within the scope of her employment.

16. On information and belief, other students in the Course also made mock advertisements from *Casablanca* in accordance with the Instructor’s assignment, and

the Instructor provided digital and/or hard copies of *Casablanca* to those students in accordance with the assignment.

17. On information and belief, the Instructor gave the same or substantially similar assignment in other courses she taught for Watkins, using *Casablanca* in the same or similar way, and provided digital copies of *Casablanca* to Watkins students in accordance with the assignments.

18. On information and belief, the Instructor told Mr. Nishimori that using *Casablanca* in this way did not violate any laws.

19. On information and belief, the Instructor placed and maintained one or more copies of *Casablanca* in digital format on a computer and/or computer system owned, operated and/or controlled by Watkins.

20. The Instructor did not obtain, and never has obtained, a license of any type with respect to *Casablanca*.

21. Watkins had a Department of Photography and several students who were taking courses in photography. Watkins could easily have created its own photographs for the Instructor's assignment.

22. On information and belief, the Instructor chose to use *Casablanca* because of its aesthetic qualities—qualities that would not have been present in photographs created in-house by Watkins faculty or students.

23. The Instructor obtained a digital copy of *Casablanca* by downloading it from an unauthorized website. In downloading a digital file over the internet, a reproduction of the file is necessarily made.

24. To make the digital copy of *Casablanca* that she provided to Mr. Nishimori, the Instructor made a reproduction of the copy maintained on the Watkins computer system.

25. Watkins provides no regular instruction to its students relating to intellectual property rights.

26. Mr. Nishimori placed a copy of the Mock Advertisement on his personal website, www.imfromthefutura.com (the “Website”), as part of his “online portfolio.” The purpose of the online portfolio was and remains to promote Mr. Nishimori and display his talents.

27. On information and belief, Mr. Nishimori placed the Mock Advertisement on his Website in part because the Instructor had told him that the creation of the Mock Advertisement violated no laws.

28. In 2014, TC Reiner encountered the Mock Advertisement on the Website. He has attempted to reach a settlement with the Defendants, but neither Defendant evinced any willingness to settle Mr. Reiner’s claims for anything more than a *de minimis* amount.

COUNT I
Copyright Infringement
Against Watkins

29. The Plaintiff incorporates paragraphs 1 through 28 by reference as though fully set forth herein.

30. TC Reiner is the author of *Casablanca* and the sole owner of the copyright in *Casablanca*.

31. *Casablanca* has been duly and timely registered with the U.S. Copyright Office.

32. The Instructor, acting within the scope of her employment with Watkins, without authorization, obtained a digital copy of *Casablanca*. In doing so, she made an unauthorized reproduction of *Casablanca*.

33. The Instructor, acting within the scope of her employment with Watkins, stored the digital copy of *Casablanca* on a computer and/or computer system owned, operated and/or controlled by Watkins.

34. The Instructor, acting within the scope of her employment with Watkins, made at least one further digital copy of *Casablanca* from the copy stored on the Watkins computer or computer system to provide to Mr. Nishimori. In doing so, she made another unauthorized reproduction and an unauthorized distribution of *Casablanca*.

35. On information and belief, the Instructor, acting within the scope of her employment with Watkins, made further digital copies of *Casablanca* and provided those copies to other Watkins students. In doing so, she made numerous unauthorized reproductions and distributions of *Casablanca*.

36. On information and belief, although the Instructor was an employee of Watkins, Watkins provided her with no guidance or other information concerning the use of materials protected by intellectual property.

37. On information and belief, Watkins has no college-wide policy concerning the use others' intellectual property, although it has policies concerning the ownership of intellectual property developed by Watkins students and faculty.

38. Watkins has willfully infringed the copyright in *Casablanca*.

39. Watkins has benefited financially from the infringement of *Casablanca*.

40. By its infringing actions, Watkins has denied Mr. Reiner the substantial fees he would normally receive from licensing *Casablanca*.

41. Unless enjoined, Watkins will continue to infringe willfully the copyright in *Casablanca*.

COUNT II
Copyright Infringement
Against Ryon Nishimori

42. The Plaintiff incorporates paragraphs 1 through 41 by reference as though fully set forth herein.

43. Mr. Nishimori, while taking a course at Watkins, was given a digital copy of *Casablanca* as part of a class project. Pursuant to the Instructor's instructions, he made the Mock Advertisement. In doing so, he created an unauthorized derivative work of *Casablanca* and, incidental to that, made one or more unauthorized reproductions of *Casablanca*.

44. Mr. Nishimori then uploaded the Mock Advertisement to a remote server that also hosted the Website, such that members of the public could view the Mock Advertisement. In doing so, he made further unauthorized reproductions of *Casablanca*. He further publicly displayed *Casablanca* without authorization.

45. Mr. Nishimori placed the Mock Advertisement on his public Website in order to display his talent and promote his graphic-design services. Mr. Nishimori thus benefited financially from this use of the Mock Advertisement.

46. In placing the Mock Advertisement on his public Website, Mr. Nishimori denied Mr. Reiner his customary fee for licensing his photographs.

47. Mr. Nishimori's use of the Mock Advertisement constitutes willful infringement of Mr. Reiner's copyright in *Casablanca*.

48. Although Mr. Nishimori appears to have removed the Mock Advertisement from the Website, he has not promised to refrain from using the Mock Advertisement. Unless enjoined, he may replace the Mock Advertisement to the Website.

COUNT III
Contributory Copyright Infringement
Against Watkins

49. The Plaintiff incorporates paragraphs 1 through 48 by reference as though fully set forth herein.

50. The Instructor provided Mr. Nishimori with a digital copy of *Casablanca*. Mr. Nishimori created the Mock Advertisement at the instruction of the Instructor, who was acting within the scope of her employment by Watkins.

51. On information and belief, Mr. Nishimori was assured by the Instructor that the creation of the Mock Advertisement would not violate copyright.

52. On information and belief, Mr. Nishimori was assured by Watkins that he could use works that he created as a student at Watkins to promote himself; and Mr. Nishimori naturally understood that this assurance included the Mock Advertisement, since he had been assured that the Mock Advertisement did not violate copyright law.

53. On information and belief, Watkins knew that Mr. Nishimori would create a derivative work of *Casablanca* and, in fact, encouraged him to do so.

54. On information and belief, Watkins knew that Mr. Nishimori was likely to publicly display the Mock Advertisement to promote himself.

COUNT IV
Violation of § 1202 of Digital Millennium Copyright Act

55. The Plaintiff incorporates paragraphs 1 through 54 by reference as though fully set forth herein.

56. On information and belief, when the Instructor obtained the unauthorized digital copy of *Casablanca*, the photograph bore a copyright notice and Mr. Reiner's name.

57. The Mock Advertisement lacks the copyright notice and Mr. Reiner's name. Therefore, either the Instructor or Mr. Nishimori removed that information. On information and belief, such removal was performed intentionally.

58. The removal of Mr. Reiner's name from *Casablanca* constitutes the wrongful removal of copyright management information, in violation of § 1202 of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against both Defendants as follows:

A. The Defendants, and each of their respective agents, servants, representatives and those in active concert with them, be enjoined during this pendency of this action and permanently from infringing Plaintiff's copyright in *Casablanca*, including from making digital reproductions of *Casablanca*, distributing copies of *Casablanca* to students and publicly displaying the Mock Advertisement;

B. Each of the Defendants be required to account for all gains, profits and advantages derived by each of them from their infringement of Plaintiff's copyright in *Casablanca*;

C. Plaintiff be awarded actual damages suffered as a result of Defendants' acts of copyright infringement;

D. Plaintiff be awarded statutory damages of \$150,000, in lieu of actual damages and an award of Defendants' profits, at Plaintiff's option, pursuant to 17 U.S.C. § 504;

E. Plaintiff be awarded actual damages resulting from Defendants' violation of 17 U.S.C. § 1202, or, in lieu of such damages, statutory damages of \$25,000, in accordance with 17 U.S.C. § 1203(c);

F. The Defendants be made to pay Plaintiff the costs of this action, including reasonable attorney's fees;

G. Plaintiff be awarded prejudgment interest, post-judgment interest, if and to the extent allowed by applicable law;

H. Plaintiff have such other and further relief as is just and proper.

Respectfully submitted this 16th day of March, 2015.



Richard G. Sanders (Tenn. BPR No. 23875)
Aaron & Sanders, PLLC
11 Lea Ave., Suite 606
Nashville, TN 37210
(615) 734-1188
Fax (615) 250-9807
rick@aaronsanderslaw.com

Counsel for Plaintiff