

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BOB RIHA, JR.)
3053 Marwick Ave.)
Long Beach, CA 90808)
)
Plaintiff,)
)
vs.)
)
RUBBERSIDEWALKS, INC.)
2622 West 157th Street)
Gardena, CA 90249)
)
Defendant.)

Case No.:

COMPLAINT AND JURY
DEMAND

COMPLAINT

Plaintiff, Bob Riha, Jr. (“Plaintiff,” or “Mr. Riha”), brings this complaint in the United States District Court for the District of Columbia against Rubbersidewalks, Inc.

(“Rubbersidewalks” or “Defendant”), alleging as follows:

NATURE OF THE CASE

1. Mr. Riha is a prominent and experienced freelance photographer whose work has been featured in many national and international publications, including USA TODAY. Pursuant to his freelance agreements, Mr. Riha takes photo assignments and delivers images for the newspaper’s print and online editions in exchange for an assignment fee and photo usage fee. With respect to USA TODAY, Mr. Riha retains copyright to his photographs and owns all rights in his photographic works, including the right to reproduce the works and to publicly display and distribute them.
2. Rubbersidewalks is a supplier of modular, non-concrete sidewalks, made out of heavy-duty recycled rubber. It distributes its products nationally and has a sales force in the

Washington, D.C. region. In September, 2006, USA TODAY featured an article online and in print about Rubbersidewalks, which included two of Mr. Riha's copyrighted photographs.

3. Without permission, in order to promote its company and sales of its rubber products, Rubbersidewalks copied, displayed and distributed two of Mr. Riha's photographs (the "Photographs") on its website at www.rubbersidewalks.com. See Exhibit 1.

4. Upon discovery of Rubbersidewalks' unauthorized use, Mr. Riha demanded that Defendant remove the copyrighted works and compensate him. In response, Rubbersidewalks created a direct link to the USA TODAY website and article in the "Press and Media" of its home page. At the same time, Rubbersidewalks refused to pay Mr. Riha's fee, requiring him to retain legal counsel.

5. Over the course of more than one year, Defendant has persisted in refusing to compensate Mr. Riha for the infringements of his copyrighted photographs. Moreover, despite creating the direct link to USA TODAY, Rubbersidewalks has maintained the photos on its server at http://www.rubbersidewalks.com/pdf/USA_Today.pdf.

6. By this action, Mr. Riha seeks compensatory, statutory and punitive damages for copyright infringement by the Defendant.

PARTIES

7. Mr. Riha is an individual residing in the State of California with an address at 3053 Marwick Ave., Long Beach, California, 90808.

8. Mr. Riha is a professional photographer with clients throughout the United States, including Washington, D.C.

9. On information and belief, Rubbersidewalks is a California corporation with a principal place of business at 2622 West 157th St., Gardena, California, 90249.

10. On information and belief, Rubbersidewalks is a supplier of non-concrete, modular rubber sidewalks to over 60 cities in the United States including the District of Columbia.

11. On information and belief, Washington D.C. is included in Rubbersidewalks' five sales territories in the United States and Rubbersidewalks maintains a sales representative in its Mid-Atlantic territory which includes Washington, D.C.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Defendant Rubbersidewalks by virtue of their transacting, doing, and soliciting business in the District of Columbia through, among other things, presence of a Rubbersidewalks Sales Representative in its Mid-Atlantic territory which serves Washington D.C., ownership and/or control of one or more interactive websites aimed at residents of Washington, D.C., and by engaging in commercial practices in the District of Columbia.

13. This case arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*

14. This court has subject matter jurisdiction to pursuant to 17 U.S.C. §§ 1331 and 1338.

15. Venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a).

Factual Allegations Related to All Claims

16. Mr. Riha is an experienced photojournalist. His photographs have achieved worldwide renown. Mr. Riha has worked as a freelance photographer for USA TODAY since 1983, having completed over 2,000 photo assignments. In addition, Mr. Riha routinely contributes photography to The Associate Press, Reuters, WireImage, U.S. News & World Report, Getty Images and others, and his photographs have appeared in many newspapers, including the Washington Post. Mr. Riha also operates the website, www.rihaphoto.com.

17. On or about September 1, 2006, Mr. Riha accepted a photographic assignment from USA TODAY and took photographs to accompany a print and online article about Rubbersidewalks. On or about September 19, 2006, USA TODAY published the article about Rubbersidewalks in print and online along with two of Mr. Riha's images (the "Photographs").
18. Upon publication of the USA TODAY article online and in print, Defendant had access to and intentionally copied Mr. Riha's photographs. Further, Defendant intentionally and/or negligently copied, and publicly distributed and/or publicly displayed the infringed Photographs by placing them on its server, enabling them to appear on its publicly accessible website www.rubbersidewalks.com and to be downloaded and copied by members of the public. All of Defendant's actions were taken without prior request or permission of Mr. Riha.
19. In early October 2006, Mr. Riha discovered that Defendant had published two of his images on its website at www.rubbersidewalks.com without his permission. On or about October 10, 2006, Mr. Riha sent Rubbersidewalks a letter demanding that Defendant remove the infringing content from its website and an invoice seeking compensation for the unauthorized copying and use of his copyrighted works.
20. On or about October 16, 2006, less than three months after publication of his Photographs, Mr. Riha registered copyright in the images at issue with the United States Copyright Office and was subsequently issued Registration Certificate No. VA0001380256. At all relevant times, Mr. Riha was and is the sole owner of all exclusive rights to the infringed Photographs.
21. Subsequent to his demand, Rubbersidewalks created a direct link to the USA TODAY website in the "Press and Media" of its home page. However, Rubbersidewalks maintained the photographs on its server, which can be directly accessed by an active link at

http://www.rubbersidewalks.com/pdf/USA_Today.pdf. Moreover, Defendant failed to remit any payment as demanded by Mr. Riha.

22. Thereafter, Mr. Riha retained counsel in order to secure compensation for the Defendant's infringement of his registered copyrighted works. Despite ongoing efforts of counsel to secure fair compensation for the copyright infringement, Rubbersidewalks refused to remit any payment.

23. On or about August 18, 2007, Defendant unilaterally sent Mr. Riha a dated, unsigned and thus worthless check in the amount of \$500. *See* Exhibit 2. Counsel for Plaintiff interpreted this worthless check as a counteroffer of settlement which was rejected.

24. Despite Plaintiff's good faith efforts over more than one year to resolve this dispute, Defendant has failed adequately to remove Mr. Riha's photographs from its server and to compensate Mr. Riha for its unauthorized exploitation and dissemination of his federally-registered, copyrighted photographs.

COUNT I

Direct Copyright Infringement and Related Claims Pursuant to 17 U.S.C. §101 et seq.

25. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-24, inclusive.

26. By its actions alleged in this Complaint, Defendant has directly infringed Mr. Riha's copyrights in and relating to the Photographs.

27. Defendant has reproduced the Photographs, created derivative works based on them, displayed them publicly, and distributed them to the public on an unlimited and unrestricted basis without permission, all in violation of 17 U.S.C. §106.

28. Plaintiff is further entitled to recover from the Defendant the damages he has sustained and will sustain, and any gains, profits and advantages obtained by the Defendant as a result of the Defendant's willful acts of infringement alleged in this Complaint, or in the alternative

statutory damages, as well as attorneys fees, and including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

29. Plaintiff has no adequate remedy at law.

COUNT II

Contributory Copyright Infringement and Related Claims Pursuant to 17 U.S.C. §101 et seq.

30. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-29, inclusive.

31. Defendant's conduct, as alleged in this Complaint, constitutes contributory infringement of Mr. Riha's copyrights in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

32. Defendant directly encouraged, facilitated, and/or induced the unauthorized reproduction, adaptation, distribution, and public display of Mr. Riha's works by others; thus, Defendant is contributorily liable for Mr. Riha's damages resulting from same.

33. Plaintiff is entitled to recover from the Defendant the damages he has sustained and will sustain, and any gains, profits and advantages obtained by Defendant as a result of the Defendant's contributory infringements alleged in this Complaint, or in the alternative statutory damages, as well as attorneys fees, and including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

34. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

A. Ordering an accounting of all revenue received by the Defendant as a result of its unlawful conduct.

B. Awarding Plaintiff: 1) Defendant's profits realized as a result of the copyright infringement, or in the Court's discretion, such sum as the Court finds to be just; 2) damages sustained by Plaintiff; 3) reasonable attorneys fees; and 4) the costs of this action.

C. Awarding Plaintiff statutory damages and attorney's fees pursuant to 17 U.S.C. §§ 504-505.

D. Awarding Plaintiff prejudgment and post-judgment interest on any monetary award in this action.

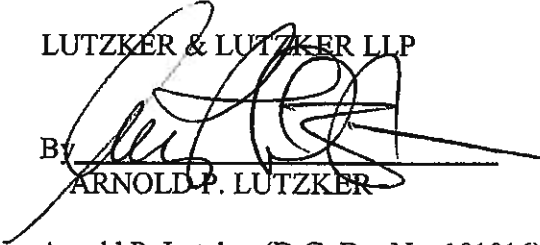
E. Granting such other and further relief as to this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: May 7, 2008

LUTZKER & LUTZKER LLP

By 
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EXHIBIT 1

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By Rick Hampton, USA TODAY



Enlarge By Bob Riha, Jr., USA TODAY

Richard Valeriano, senior sidewalks inspector for the city of Santa Monica, Calif., and father of the rubber sidewalk, has been using rubber sidewalks mostly near ficus trees throughout the city.

The streets of America were never paved with gold, but now some of its sidewalks are made of rubber.

Dozens of communities have installed rubber because it coexists with tree roots more easily than concrete. The latter buckles as roots grow under it; rubber merely bends. As a result, trees are spared from root damage, municipalities from trip-and-fall lawsuits.

"A rubber sidewalk? It sounds preposterous," admits Richard Valeriano, senior sidewalk inspector for the city of Santa Monica, Calif., and father of the rubber sidewalk.

The idea came to him in a dream after a day of staring down at yard after yard of pavement cracked by ficus tree roots.

That night, in his sleep, he saw concrete pavement rippling, flowing, undulating. But he didn't know what it meant until he noticed his health club installing a rubber indoor sports floor. "That," he says, "is when the penny dropped."

The city worked with the sports floor manufacturer on a rubber sidewalk prototype made from recycled tires. After the modular, pre-molded panels passed test exposure to hazards such as rollerblades, bike stands and high heels, the city began laying rubber in 2001.

Rubbersidewalks of Gardens, Calif., began commercial production in 2004. Lindsay Smith, the company's president, says more than 60 municipalities have ordered panels.

She says that unlike poured concrete, the rubber panels have spaces between them, so rainwater can trickle down more easily to the roots, making them less likely to press up in search of moisture. The panels are removable, so arborists can trim and redirect roots without tearing up the sidewalk. They also help recycle the nation's vast supply of old tires.

Rubber sidewalks are soft — not bouncy, really, but with more give than concrete. "You can drop a glass on it, and it won't break," Valeriano says. In sales demonstrations, Smith does just that.

The sidewalks on Sutton Manor Road in New Rochelle, N.Y., are so wracked by linden tree roots that pedestrians use the street, says Terry Gergen, a semi-retired maritime lawyer. "I look at the sidewalks on this



Enlarge By Bob Riha, Jr., USA TODAY

The two-foot by two and half-foot, 53 pound rubber panels are less expensive for routine repairs compared to concrete sidewalks.

street, and I see 20 potential lawsuits."

But not in front of his house, where the city installed a slate-colored rubber sidewalk. He says people notice the difference only when they step on it and feel a certain spring. "They come up and ring the bell. 'What's the story?'"

Earlier this year, Washington D.C., spent about \$60,000 to install 4,000 square feet of rubber sidewalks on several leafy blocks in the city's Northeast section.

On Sept. 13, the Boston City Council voted to study installing such sidewalks there.

Council member Rob Consalvo says some constituents in his largely suburban district were demanding the removal of trees whose volcanic roots effectively closed sidewalks to baby strollers, wheelchairs and the elderly.

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EXHIBIT 2

THIS DOCUMENT IS PRINTED ON TOWER ADHESION PAPER



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General Account
2622 West 157th Street
Gardena, CA 90249
(310) 515-5814

Comerica Bank
#1534 HAWTHORNE BLVD
TORRANCE, CA 90503
90-3782/1211

1071

08/18/2007

PAY TO THE ORDER OF Bob Riha \$ 500.00
Five hundred and 00/100 ***** DOLLARS

Bob Riha
c/o Lutker, Lutker & Settlemyer
1000 Vermont Avenue, NW Suite 450
Washington, DC 20005

NOT VALID AFTER 90 DAYS OF ISSUANCE

MEMO

AUTHORIZED SIGNATURE



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RUBBERSIDEWALKS, INC. GENERAL ACCOUNT
08/18/2007 Bob Riha

1071

Date	Type	Reference	Original Amount	Balance Due	Payment
10/10/2006	Bill	1/2 payments	500.00	500.00	500.00
		Check Amount			500.00

Cash: Comerica Bank

500.00