

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RUDY LAWIDJAJA)
139a Chevy Chase Street)
Gaithersburg, MD 20878)

Plaintiff,)

vs.)

THE WASHINGTON BLADE)
1408 U Street, NW)
Washington, D.C. 20009)

WINDOW MEDIA LLC)
1408 U Street, NW)
Washington, D.C. 20009)

and)

UNITE MEDIA LLC)
333 Seventh Avenue)
New York, NY 10001)

Defendants.)

Case No.: 1:07CV00104

COMPLAINT AND JURY
DEMAND

COMPLAINT

Plaintiff, Rudy K. Lawidjaja (“Plaintiff,” or “Mr. Lawidjaja”), brings this complaint in the United States District Court for the District of Columbia against The Washington Blade, Window Media LLC and Unite Media LLC (collectively the “Defendants”), alleging as follows:

NATURE OF THE CASE

1. Mr. Lawidjaja is a prominent and experienced photographer based in the Washington, D.C. metropolitan area. From October, 2004 to November, 2005, he worked as an independent,

freelance photographer for the Washington Blade newspaper taking assignments and delivering photographs for that newspaper's print deadlines, in exchange for an assignment fee and photo use fee.

2. Washington Blade, a leading newspaper for the gay and lesbian community, is owned and operated by a corporate entity named The Washington Blade ("WB"). WB is owned by Window Media, LLC ("Window Media"), which also owns and operates two other newspapers, Southern Voice and Houston Voice. A related company of Window Media, Unite Media LLC ("Unite Media"), is the owner and operator of other newspapers, including Express Gay News and the New York Blade.

3. As the owner of the Washington Blade, WB and/or Window Media failed to provide Mr. Lawidjaja with proper accounting and full payment for assignments and photo uses. Further, Washington Blade routinely published Mr. Lawidjaja's photographs without proper credit, while Window Media and Unite Media exercised shared and unauthorized dominion over Plaintiff's photographic works, publishing them in print and online editions of their other newspapers without his permission. In addition, following a third party request to acquire rights to Mr. Lawidjaja's photographs, an executive of WB (who also was a director of Window Media) threatened legal action against Mr. Lawidjaja and any third party that tried to acquire such rights.

4. By this action, Mr. Lawidjaja seeks a full and complete accounting of all amounts due him under the agreement with the Washington Blade, as well as compensatory, statutory and punitive damages and injunctive relief for copyright infringement, breach of contract and unfair competition by the Defendants.

PARTIES

5. Mr. Lawidjaja is an individual residing in the State of Maryland, with a business address in U.S. Senate Press Photography Gallery in Washington, D.C.
6. On information and belief, WB is a District of Columbia corporation with a principal place of business at 1408 U Street, NW, Washington, D.C. 20009.
7. On information and belief, the Washington Blade is a print and an online newspaper featuring news and information for and about the gay and lesbian community of the Washington, D.C. region. It has a weekly readership in excess of approximately 100,000 persons.
8. On information and belief, Window Media is a Georgia corporation, with a business address at 1408 U Street, NW, Washington, DC. 20009.
9. On information and belief, Unite Media is a Delaware corporation, with a principal business address at 333 Seventh Avenue, New York, NY 10001.
10. On information and belief, Window Media and Unite Media are part of a media empire that is the nation's largest gay and lesbian newspaper publisher. On information and belief, Window Media owns and/or controls Washington Blade, Houston Voice and Southern Voice. On information and belief, Unite Media owns and/or controls the Express Gay News and New York Blade. These newspapers have a combined readership in excess of 200,000 persons weekly.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendants WB and Window Media because they have principal places of business in the District of Columbia. This Court has personal jurisdiction over Unite Media because it has continuous and ongoing business contacts with residents of the District of Columbia through, among other things, the ownership and/or control

of one or more interactive websites aimed at residents of Washington, D.C. and by its engaging in commercial practices with Defendants WB and Window Media in the District of Columbia.

12. This case arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Lanham Act, 15 U.S.C. §1125(a), as well as the laws of the District of Columbia governing contracts entered into within its jurisdiction and unfair competition occurring in the District of Columbia and under D.C. Code § 28-3904 (2006).

13. This court has subject matter jurisdiction to hear Plaintiff's copyright and unfair competition claims under 17 U.S.C. § 101 *et seq.*; 15 U.S. C. §1125(a); 28 U.S.C. §§ 1331, 1338 and 1378; and 28 U.S.C. §1332 as there exists diversity of citizenship among the parties hereto and the amount of controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

14. This court has jurisdiction to hear Plaintiff's breach of contract claim pursuant to 28 U.S.C. § 1367.

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

Factual Allegations Relation to All Claims

A. Agreement between Mr. Lawidjaja and WB

16. Mr. Lawidjaja is a talented, experienced photographer, professionally known as Rudy K. His photographs, particularly those of figures in the gay and lesbian community and of image commentaries about events of importance to the gay and lesbian community, have achieved wide renown. In addition to appearing in many print and online publications, his photos have been exhibited and sold at the Museum of Contemporary Art in Washington, D.C. and online at www.collages.net. Mr. Lawidjaja also operates the website, www.rudykphotography.com.

17. On or about October 9, 2004, Mr. Lawidjaja was contacted by WB and asked to go on a photographic assignment. After successfully completing that project, on or about October 11,

2004, WB asked Mr. Lawidjaja to take on other photographic assignments for its newspaper, and he agreed to do so.

18. Pursuant to the understanding of the parties, the following were the key terms and conditions of the freelance, photographic agreement (the “Agreement”) between Mr. Lawidjaja and WB:

- a. WB agreed to pay Plaintiff \$10.00 for each assignment and \$15.00 for each published photo. Mr. Lawidjaja was to be paid on a monthly basis and entitled to receive a report indicating which of his photos were published in the Washington Blade.
- b. All published photographs were to contain a first and last name credit for Mr. Lawidjaja.
- c. Mr. Lawidjaja retained all right, title and interest in and to the photographs, including all copyrights. WB acquired a non-exclusive license to publish a photograph from the assignment on a one-time basis in the print version of the Washington Blade. A separate and additional fee was to be paid for online use.
- d. If a photograph was republished in another edition of the Washington Blade, the photo reuse fee of \$15.00 was to be paid.
- e. WB did not acquire the right to store images perpetually or to grant third parties any right to publish any of the photograph.

19. Mr. Lawidjaja performed freelance photographic services for the WB for the period from October 2004 through November 2005.

20. After returning from an assignment, Mr. Lawidjaja placed the photographs he took on a designated portion of his website. He provided WB a password or link to an index page that enabled WB to access the digital photographic files and to download and use the images.

21. Mr. Lawidjaja terminated his freelance arrangement with Defendant on or about November 2, 2005.

22. Mr. Lawidjaja is the exclusive owner of numerous copyright registrations, many containing approximately 750 published photographs in each registration. He has registered copyright in more than 6,000 of his photographs.

C. Breach of Contract by WB and Window Media

23. On information and belief, on a regular basis, WB published Mr. Lawidjaja's photographs without proper credit. As a result, the public was led to believe that the photographs were owned and/or controlled by WB when they were not. Mr. Lawidjaja was not only denied public renown for his works, but also sustained an infringement of his right to have his name identified with his works, so that he might license the photographs for third party reuse and/or sell copies of his images to supplement his income.

24. On information and belief, the fees for Mr. Lawidjaja's services and published photographs were to be paid by Window Media. However, routinely, Window Media made payment on a lump sum basis, without any report identifying the assignments and photos that the payment covered. As a result, and despite numerous requests made by Mr. Lawidjaja for accurate reports and fair accountings, Mr. Lawidjaja has been unable to confirm that he received payment for all assignments undertaken and photographs published by WB.

25. On information and belief, Window Media intentionally or negligently failed to pay Mr. Lawidjaja for all assignments and all photos published in the Washington Blade as required by the Agreement. In addition, Window Media was routinely late in sending payment to Mr. Lawidjaja.

C. Copyright Infringements by Defendants

26. Subsequent to the termination of the Agreement, WB continued to publish and to republish Mr. Lawidjaja's photographs without his consent and in violation of Mr. Lawidjaja's registered copyrights.

27. WB published Plaintiff's photographs in the online edition of the Washington Blade at www.washblade.com without permission. On information and belief, the following is a partial list of copyrighted images infringed by WB:

- Wanda Alston on December 30, 2005 and June 12, 2006. See Exhibit 1
- Trey McIntyre (multiple images) on June 9, 2006 and June 20, 2006 (without credit). See Exhibit 2.
- Jim Graham on June 15, 2006. See Exhibit 3.
- Capital Pride Celebration on June 9, 2006. See Exhibit 4.
- Darlene Nipper on April 6, 2006 (without credit). See Exhibit 5.
- Stg. Brett Parson on February 18, 2006 (without credit). See Exhibit 6.
- Joe Solmonese on June 20, 2006 (without credit). See Exhibit 7.
- Rodeo on September 15, 2006 (without credit). See Exhibit 8.
- Phil Pannell on September 4, 2006. See Exhibit 9.
- Jim Kennedy on August 11, 2006 and January 12, 2007. See Exhibit 10.
- Carol Schwartz on October 6, 2006 (without credit). See Exhibit 11.
- AIDS Walk on October 6, 2006 (without credit). See Exhibit 12.

28. On information and belief, WB published the following photographs in the print edition of the Washington Blade after termination of the Agreement:

- Dana Jordan Dining for life on March 3, 2006 at page 35. See Exhibit 13
- Darlene Nipper on April 7, 2006 on cover. See Exhibit 14
- Carol Schwartz on April 7, 2006 at page 10. See Exhibit 15
- Capital Pride Celebration on June 9, 2006 on cover. See Exhibit 16
- High Heel Race on October 20, 2006 at page 42. See Exhibit 17
- Phil Pannell on September 1, 2006 at page 8. See Exhibit 18.
- David Catania on September 1, 2006 at page 8. See Exhibit 18.
- Jim Kennedy on August 11, 2006 at page 8. See Exhibit 19.
- Brent Minor, Djimon Hounsou and Mike Stebbins on August 4, 2006 at 34. See Exhibit 20.

29. On information and belief, Window Media published the Plaintiff's photographs on www.houstonvoice.com (the website for Houston Voice). On information and belief, the following is a partial list of copyrighted images infringed by Houston Voice:

- Joe Solmonese on June 9 and 12, 2006 (without credit). See Exhibit 21.

30. On information and belief, Window Media published the Plaintiff's photograph on www.sovo.com (the website for Southern Voice). On information and belief, the following is a partial list of copyrighted images infringed by Southern Voice:

- Joe Solmonese on June 9 and 12, 2006 (without credit). See Exhibit 22.

31. On information and belief, Unite Media published the Plaintiff's photographs on www.expressgaynews.com (the website for Express Gay News). On information and belief, the following is a partial list of copyrighted images infringed by Express Gay News:

- Joe Solmonese on June 12, 2006 and September 23, 2006 (without credit). See Exhibit 23.

32. On information and belief, Unite Media published the Plaintiff's photographs on www.newyorkblade.com (the website for New York Blade). On information and belief, the following is a partial list of copyrighted images infringed by New York Blade:

- Joe Solmonese on June 9 and 12, 2006 (without credit). See Exhibit 24.
- 49 pictures from New York Pride 2005 on June 24, 2005. On information and belief, each thumbnail photograph can be enlarged by clicking on it. See Exhibit 25.

33. The photographs referenced in Paragraphs 27-32 shall be identified herein collectively as the Infringed Photographs or individually Infringed Photograph.

34. Copyrights for the Infringed Photographs referenced in Paragraphs 27-32 are included in the copyright registrations owned by Mr. Lawidjaja. At all relevant times, Mr. Lawidjaja was and is the sole owner of all exclusive rights to the Infringed Photographs.

35. Defendants WB and/or Window Media had access to Mr. Lawidjaja's photographs pursuant to the Agreement.

36. Defendants WB and/or Window Media intentionally and/or negligently copied and publicly distributed and/or publicly displayed the Infringed Photographs appearing in the online and print editions of the Washington Blade.

37. Defendants WB and/or Window Media intentionally and/or negligently provided copies of the Infringed Photographs to newspapers owned by Window Media and/or Unite Media.

38. Defendant Window Media intentionally and/or negligently copied and publicly distributed and/or publicly displayed the Infringed Photographs identified in Paragraphs 29 and 30 online without prior permission of Mr. Lawidjaja.

39. Defendant Unite Media intentionally and/or negligently copied and publicly distributed and/or publicly displayed the Infringed Photographs identified in Paragraphs 31 and 32 online without prior permission of Mr. Lawidjaja.

D. Additional Wrongful Actions by Defendants

40. On information and belief, in the case of the Infringed Photographs in Exhibit 2, WB took multiple images, cropped them, and combined them into a single, merged photograph. The merged photograph constitutes a material alteration of the individual photographs and is harmful to Mr. Lawidjaja's honor and reputation.

41. Each of the Defendants published one or more of the Infringed Photographs without printing Mr. Lawidjaja's photo credit or otherwise associating his name with the photographs. As a result, Mr. Lawidjaja was denied his right to claim authorship of each of said works.

42. Moreover, it is common for third parties to notice Mr. Lawidjaja's name in connection with his photographic works and to contact him in connection with obtaining licensing rights to

the image or with acquiring a copy of the image. By failing to associate his name with certain of the Infringed Photographs, the Defendants wrongfully prevented Mr. Lawidjaja from receiving due credit and an opportunity to secure additional commerce in his works.

43. On information and belief, on at least one occasion, on or about November 18, 2005, after being told that another publication, Metroweekly, wanted to acquire certain photographs from Mr. Lawidjaja, Chris Crain, WB Executive Vice President for Editorial and Production (and a director of Window Media), advised senior staff that WB owned all of Plaintiff photographs taken on assignment and that if Mr. Lawidjaja tried to sell them, Mr. Lawidjaj and Metroweekly should expect legal action against them.

44. On numerous occasions Mr. Lawidjaja or his representative notified the Washington Blade of his objection to the unauthorized use of his photographs. For example, on October 5, 2006, counsel for Mr. Lawidjaja sent a letter to Kevin Naff, Editor of the Washington Blade, advising him of the issues noted herein. See Exhibit 26.

45. Despite such direct notification, the Defendants have failed to address the problems noted herein.

COUNT I

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

46. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-45, inclusive.

47. By their actions alleged in this Complaint, Defendants have infringed and unless enjoined by this Court will continue to infringe Mr. Lawidjaja's copyrights in and relating to his photographic works, and Mr. Lawidjaja's rights to attribution and integrity with respect to his photographic works.

48. Defendants have reproduced Plaintiff's works, 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.

49. Defendants have published Plaintiff's works without proper attribution and have unreasonably denied him the right to claim authorship of his works, in violation of 17 U.S.C. §106A.

50. Defendant WB directly facilitated the unauthorized reproduction, adaptation, distribution, and public display of Mr. Lawidjaja's work that occurred when Mr. Lawidjaja's photographs were exploited by Unite Media and in Window Media publications other than The Washington Blade; thus, WB is contributorily liable for Mr. Lawidjaja's damages resulting from same.

51. Defendant WB directly facilitated the violations, by Unite Media and in Window Media publications other than The Washington Blade, of Mr. Lawidjaja's rights of attribution under 17 U.S.C. §106(A); thus, WB is contributorily liable for Mr. Lawidjaja's damages resulting from same.

52. Defendant WB and/or Defendant Window Media had a financial interest in and a right and ability to control the unauthorized exploitation, in Window Media publications other than The Washington Blade; of copyright in Mr. Lawidjaja's work; thus, WB and Window Media are vicariously liable for Mr. Lawidjaja's damages resulting from same.

53. Defendant WB and/or Defendant Window Media had a financial interest in and a right and ability to control the violations, in Window Media publications other than The Washington Blade, of Plaintiff's rights of attribution and integrity under 17 U.S.C. §106(A); thus, WB and Window Media vicariously liable for Mr. Lawidjaja's damages resulting from same.

54. Plaintiff is entitled to receive all appropriate injunctive relief, including but not limited to the relief available under 17 U.S.C. §§502-503.

55. Plaintiff is further entitled to recover from the Defendants the damages, including attorneys' fees, he has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of Defendants' willful acts of infringement alleged in this Complaint, including but not limited to such damages and awards as are available under 17. U.S.C. §§504-505.

COUNT II
Breach of contract

56. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-55, inclusive.

57. During the term of the Agreement and thereafter, WB intentionally and/or negligently failed to provide Mr. Lawidjaja credit when his photographs were published in print and online. As a result, Mr. Lawidjaja was denied material consideration due to him in breach of the Agreement.

58. During the term of the Agreement, WB and/or Window Media intentionally and/or negligently failed to provide Mr. Lawidjaja a record of all instances when his photographs were published in print and online. As a result, Mr. Lawidjaja was not able to verify that the payments he received were correctly calculated pursuant to the Agreement.

59. On information and belief, WB and Window Media routinely failed to compensate Mr. Lawidjaja, under-compensated him and/or were late in paying him, for the photographic assignments he performed and for published photographs used by WB in amounts to be determined, all in breach of the Agreement.

Count III
Unfair Competition Under the Lanham Act

60. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-59, inclusive.

61. As described above, Defendants have engaged in false and misleading representations and omissions of material fact, and have engaged in deceptive conduct.

62. Defendants' conduct deceived or is likely to deceive and caused or is likely to cause confusion or mistake among prospective consumers of licenses or copies of Plaintiff's photographs.

63. Defendants' false and misleading representations and deceptive conduct are material in that the same have caused and are likely to cause prospective consumers of licenses or copies of Plaintiff's photographs to be deceived as to the availability of such works for reuse, and also as to the identity of the person to whom rights-acquisition inquiries should be posed.

64. As a direct result of said deceptive conduct, Plaintiff has sustained and is likely to continue to sustain damages.

65. Plaintiff has no adequate remedy at law.

66. Plaintiff is entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

Count IV
Unlawful Trade Practices Under D.C. Code § 28-3904

67. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-66, inclusive.

68. As described above, Defendants have engaged in unfair trade practices by representing to consumers that Plaintiff's photographs have a source that they do not have.

69. Defendants have engaged in false and misleading representations and omissions of material fact to consumers and have engaged in deceptive conduct.

70. Defendants have misrepresented material facts which have a tendency to mislead prospective consumers of licenses or copies of Plaintiff's photographs as to the availability of such works for reuse and also as the identity of the persons to whom rights-acquisition inquiries should be posed.

71. Defendants have disparaged the goods and services and business of Plaintiff through false and misleading representations of material facts.

72. By reasons of Defendants knowingly false and misleading representations of fact and conduct, Defendants have violated the District of Columbia's Consumer Protection Procedures Act § 28-3904.

73. As a direct result of said misleading and deceptive conduct, Plaintiff, as well as consumers, has sustained and is likely to continue to sustain damages.

74. Plaintiff has no adequate remedy at law.

75. Pursuant to the District of Columbia's Consumer Protection Procedures Act § 28-3905 (k)(1), Plaintiff is entitled to enjoin Defendants' unlawful conduct as well as obtain tremble damages, punitive damages, and attorney's fees.

Count V Common Law Unfair Competition

76. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-75, inclusive.

77. As described above, Defendants have engaged in false and misleading representations and omissions of material fact and have engaged in deceptive conduct.

78. Defendants' false and misleading representations and deceptive conduct are material in that the same were and are likely to affect prospective consumers of licenses or copies of Plaintiff's photographs.

79. Defendants have engaged in unfair competition under the common law of the District of Columbia.

80. As a direct result of said deceptive conduct, Plaintiff has sustained and is likely to continue to sustain damages.

81. Plaintiff has no adequate remedy at law.

82. Plaintiff is entitled to exemplary and punitive damages by reason of Defendants' willful, reckless, deliberate and intentional conduct.

Count VI
Unjust Enrichment

83. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-82, inclusive.

84. As a consequence of Defendants' actions, Plaintiff has been denied financial compensation and credit in connection with the publication of his photographs by Defendants. Defendants have been enriched by the manner and use of Mr. Lawidjaja's photographs in connection with their publications at Plaintiff's expense. The circumstances are such that equity and good conscience require the Defendants to make restitution in an amount to be proven at trial.

PRAYER FOR RELIEF

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

A. Preliminarily and permanently enjoining and restraining Defendants, their officers, directors, shareholders, agents, employees, and attorneys and all those acting in concert with them from:

1. Reproducing, publicly distributing, publicly displaying, preparing any derivative work of any of Plaintiff's works in any medium, including but not limited to print and online;

2. Failing to provide proper credit for any work the use of is authorized by Plaintiff;
3. Stating directly or by implication that Plaintiff's works are those of any other person or entity or that the depiction or use of Plaintiff's works has been authorized when it has not been authorized.

B. Requiring Defendants to take appropriate action to correct all erroneous impressions that have been created concerning the nature, characteristics, ownership or authorization regarding Plaintiff's photographs, including without limitation, the prominent placement of corrective notifications in print, online, and by mail.

C. Ordering that Defendants file with this Court and serve upon Plaintiff within 20 days after the service of such injunction, an affidavit, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied with such injunctions.

D. Ordering an accounting of all revenues received by each Defendant as a result of its unlawful conduct.

E. Awarding Plaintiff: 1) Defendants' profits realized as a result of the copyright infringement, mutilation of Plaintiff's photographic works, failure to provide claim of authorship to Plaintiff, false advertising, unfair competition, unjust enrichment, and/or each Defendant's deceptive practices, or in the Court's discretion, such sum as the Court finds to be just; 2) damages sustained by Plaintiff; and 3) the costs of this action.

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

G. Awarding Plaintiff treble damages or profits and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a-b).

H. Awarding Plaintiff punitive damages in an amount to be determined.

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

J. 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: January 16, 2007

LUTZKER & LUTZKER LLP

By /s/ Arnold P. Lutzker
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