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EX. INSTANT

ROMANIA NATIONAL UNION OF BAR ASSOCIATIONS OF ROMANIA
S.C.C.P.A. HERTEG
Head Office: Cluj-Napoca, str. Traian Mosoiu, nr. 50, ap. 12, 2nd floor, Cluj County
tel: 0744531381, fax: 0264.430.430.140 e-mail: office\_av\_radu@yahoo.com

It will go forward together,
with the file to the court
competent court,
President

COURT OF CLUJ-NAPOCA
Madam/Mr President,

File No 1163/211/2024

The undersigned, MONDIAL AIR S.R.L., Romanian legal entity with registered office in Mun. Cluj-Napoca, str. Teodor Mihali nr. 62A, ap. 1, jud. Cluj, registered in the Commercial Register of the Cluj Court under no. J12/446/09.02.2004, with Unique Registration Code 16120704 as of 10.02.2004 and Unique European Unique Identifier (EUID) ROONRC. J12/446/2004, bank account no. RO67BTRL013010120294728XX opened at Banca Transilvania SA, legally represented by the administrator Mrs Claudia Herțeg, with domicile for service of documents at S.C.P.A. HERȚEG, with registered office in mun. Cluj-Napoca, str. Traian Moșoiu, nr. 50, et. II, ap. 12, jud. Cluj, through lawyer Radu Herțeg, authorised to receive correspondence, telephone: 0744531381, e-mail:office\_av\_radu@yahoo.com,

Against the plaintiff Sumfinidade Unipessoal LDA ZFM, having its registered office in Portugal, City of Lisbon 1350-100, Rua Rus Corrais Toles 28A, Rua Rus Corrais Toles, with identification number PT515874620, email: info@sumfinity.com, through its director Nico Trinkhaus,

Pursuant to the provisions of Articles 468, 470, 471 of the Code of Civil Procedure, we hereby

CALL

Against the civil judgement no. 12407/CC/2024 pronounced by the Cluj-Napoca District Court in the Council Chamber on 09.08.2024, and we ask you to submit it for competent settlement to the Cluj Court, before which we respectfully request that, after summoning the parties and the necessary evidence, it should dispose:

1/ To admit the appeal, to change in its totality the civil judgement no. 12407/CC/2024 as being unreasonable and consequently to exonerate the undersigned from the payment of the amount of 4845 Euro as compensation and from the payment of the legal interest;

2/ Order the defendant to pay the costs.

For the following

MOTIVE

In fact: The trial court based its decision on the fact that the plaintiff owns the rights to the photo licensed by Mr Trinkhaus, namely that the image was known to the defendant as being protected by copyright because the Sumfinity website had published the Malaysian photo and that the website stated that the image was protected and could not be distributed or modified,

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Reproduced in whole or in part without permission of the author.

BAROUL CLUJ

At the same time, the trial court held that the amount of the damages for which the undersigned was liable
payment relates to the cost of Mr Trinkhaus' licences and the fact that I would have used the image for a minimum of one year
from 30.10.2020, i.e. that I did not comply with the notifications sent by the legal representative of the
the applicant.

Criticising the judgement:

1). We consider that the trial court, in an entirely superficial manner, granted the presumption of veracity
the applicant's assertions concerning the ownership rights (licence, proof of copyright, etc.) in the
image entitled Water\_Chalets\_Langkawi\_Malaysia.jpg. and that the undersigned has taken the image from the website
applicant's website and thereby infringed the copyright and licence.

Whilst in our defence we questioned the complainant's assertions concerning the ownership of
copyright in the image, the trial court did NOT verify whether there is really a copyright
copyright in the photograph, i.e. whether the photograph is only on the plaintiff's website or is freely available on the
internet and You Tube.

On the basis of the applicant's allegations, accepted as such by the trial court, that the undersigned would have
accessed 0 image labelled "malaezia\_23870.jpg" available at www.mondial-
holiday.ro/malaezia.html and admin.mondial-holiday.ro/Files/Pictures/Pictures/Images/malaezia 23870.jpg taken from
from the applicant's website, we point out that the photograph has not been and is not currently secured, being
available
freely and with the link:
https://sumfinity.com/photos/malaysia/langkawi/chalets-on-water/
Water\_Chalets\_Langkawi\_Malaysia.
and labelled:

As such, the photograph is available, freely and currently, on a link containing in its name
the name of the complainant.

The photo is indexed on search engines with the following search tags: asia; asien;
bungalow: himmel; idyllic: insel; island; landscape: langkawi; malaysia: ozean: paradies; resort: sky:
tropical; tropisch; tropisch; urlaub; Photo size is: 1550 x 1033 pixels with Resolution: horizontal/vertical
240/240 dpi, Colour Depth: 24 bits, being photographed with a camera brand: Nikon D800
focal length 35 mm at an exposure time: 1/160 sec.

The photo is tagged with various keywords so it is indexed by search engines to
to be favourited by user searches, so it is a freely distributed image for
anyone who wants it.

The photo can be downloaded without any hindrance from the above link at a resolution of 240
dpi (dots per inch) which is a low resolution that cannot be used even for
normal printing, which requires an electronic image of at least 300 dpi. It is therefore obvious that
this photo itself is only a sample offered free of charge and unlimited at the link shown,
found free and unlimited by a large and undetermined number of sites as shown below.

Thus, I proceeded to search for the above photograph through the Google Lens utility, designed
specifically for identifying images, and found that the photograph for which the lower court considered
that the plaintiff holds a valid licence is still available on a multitude of websites in various

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