

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AUGUST IMAGE, LLC,

Plaintiff,

v.

RUNWAYRIOT, LLC and JOHN DOES 1-5,

Defendants

**Case No.: 1:23-cv-04181-AKH**

**FIRST AMENDED COMPLAINT AND JURY DEMAND**

The plaintiff August Image, LLC (“Plaintiff”), by its undersigned attorney, R. Terry Parker, Esq., for its First Amended Complaint against the corporate defendant RunwayRiot, LLC (“Company Defendant”) and John Does 1-5 (“Member and Officer Defendants” and together with Company Defendant, collectively, “Defendants”), alleges as follows:

**SUBSTANCE OF THE ACTION**

1. This is a case of willful copyright infringement in violation of 17 U.S.C. §§ 106(1), 501. Plaintiff’s business is licensing photographic works of renowned portrait and fashion photographers who painstakingly create works of art with the goal of having Plaintiff license those works for the slick, glossy covers and pages of beautiful magazines like *Vogue*, *Elle*, *Glamour*, and others. Unfortunately, too many companies like Company Defendant take Plaintiff’s works without seeking licenses to use them as illustrations for shoddy, unpolished articles on websites where the images serve as click-bait to drive advertising revenue for low budget websites. When Plaintiff caught Company Defendant in the act of using Plaintiff’s intellectual property and sought a

licensing fee, Company Defendant ignored Plaintiff and continued its infringing use in reckless disregard of Plaintiff's copyrights because it would be too expensive for Plaintiff to pursue a remedy in this Court. It is a business model built on infringement, like infringement is no big deal. But it is big deal. Little infringements like this are to Plaintiff's business—and to its industry—death by a thousand cuts. Fortunately, Congress understood the serious threat of a thousand little infringements and provided in the Copyright Act statutory damages as a means for combatting that threat, providing statutory damages to deter the type of infringement at issue here and to encourage victims like Plaintiff to litigate their infringement claims, even in the face of the prohibitive costs of pursuing such claims in this Court.

### **PARTIES**

2. Plaintiff is a New York Corporation with a principal place of business at 793 Broadway, New York, New York 10003.

3. Upon information and belief, Company Defendant is a foreign corporation operating a principal place of business at 584 Broadway, Suite 510, New York City, New York, 10012.

4. Upon information and belief, Member and Officer Defendants own or operate Company Defendant and can be located at 584 Broadway, Suite 510, New York City, New York, 10012.

### **JURISDICTION AND VENUE**

5. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore this Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction), and

28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

6. Personal jurisdiction over Defendants is proper. Defendants are conducting business in this judicial district and committing torts in this state, including without limitation Defendants' copyright infringement, which causes harm in this state and judicial district.

7. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Court because a substantial part of the events giving rise to the claims herein occurred in this judicial district.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

#### **A. Plaintiff's Business**

8. Plaintiff is a boutique agency offering a uniquely creative caliber of photography from its full-service rights managed collection. Plaintiff is the exclusive representative for an elite group of creative and innovative contemporary photographers specializing in celebrity and fashion photography and video, including the celebrated photographers Camilla Akrans, Art Streiber, Mark Seliger, Alexi Lubomirski, Joe Pugliese, Kenneth Willardt, and Camilla Akrans, whose works are at issue in this litigation. On behalf of its award-winning photographers, Plaintiff licenses photographic works from its catalogue to various third parties for various purposes, including editorial, advertising, corporate, and non-profit purposes. In short, Plaintiff takes care of the business of monetizing the works of its photographers so that the photographers can take care of the business of creating award winning works.

9. Plaintiff is, as the exclusive licensee, the beneficial owner of the copyrights in and to the photographic works at issue in this litigation, copies of which are attached hereto as Exhibit A (the "Copyrighted Works").

10. The Copyrighted Works are original works of authorship.

11. Plaintiff is the exclusive licensee of the copyrights in and to the Copyrighted

Works.

12. Plaintiff licenses the Copyrighted Works for professional applications including editorial, advertising, corporate and non-profit use.

13. Plaintiff is the exclusive licensee of the Copyrighted Works.

14. Plaintiff has obtained registrations with the United States Copyrighted Office for the Copyrighted Works. Attached hereto as Exhibit B are copies of the certificates for registration obtained from the United States Copyright Office.

**B. Company Defendant's Unlawful Activities**

15. In or about August of 2022, Plaintiff discovered Company Defendant infringing Plaintiff's exclusive copyrights in the Copyrighted Works. Specifically, Plaintiff discovered the Copyrighted Works being reproduced, distributed, used in the creation of derivative works, and publicly displayed, without Plaintiff's authorization at Company Defendant's website, screenshots of which are attached hereto as Exhibit C.

16. Upon information and belief, Company Defendant had access to the Copyrighted Works prior to the creation of its infringing website. Company Defendant located the Copyrighted Works on the Internet and, without authorization from Plaintiff, downloaded the Copyrighted Works to computer systems owned or operated by Company Defendant, and then used the Copyrighted Works in the creation of webpages to attract users to visit and remain at Company Defendant's website for commercial purposes of generating revenue, thus unlawfully committing a number of infringing acts, namely, reproducing, distributing, creating unlawful derivative works, and publicly displaying the Copyrighted Works.

17. Company Defendant's infringement did not begin and end with the first publication of the Copyrighted Works of Plaintiff on Company Defendant's website because

Company Defendant stored the Copyrighted Works on computer servers and computer systems and machines owned by Company Defendant where, in the last three years, the Copyrighted Works were reproduced, distributed, and publicly displayed by Company Defendant each time computer users in New York, and elsewhere, viewed Company Defendant's infringing webpages. In order for computer users to view the Copyrighted Works on monitors and display screens located in New York, Company Defendant had to reproduce digital copies of the Copyrighted Works from its servers and then distribute the digital copies through the Internet to the computer monitors and display screens throughout New York where the Copyrighted Works were then publicly displayed without Plaintiff's authorization.

18. Company Defendant is thus directly responsible for the unlawful reproduction, distribution, derivation, and public display of the Copyrighted Works within the last three years.

19. Company Defendant's reproduction, distribution, derivation, and public display of the Copyrighted Works are without Plaintiff's authorization.

20. Company Defendant's unauthorized reproduction, distribution, derivation, and public display of Plaintiff's Copyrighted Works are knowing and willful and in reckless disregard of Plaintiff's copyrights in that Company Defendant, a sophisticated media company familiar with copyright law knows of the need to seek and obtain a license for the use of the Copyrighted Works before using them, knew it did not have permission to use Plaintiff's Copyrighted Works, and deliberately did so anyway.

21. Company Defendant's willful violation of the Copyright Act is further evidenced in the vast number of infringements in this case.

22. Hoping to avoid the cost of litigation, Plaintiff caused a number of infringement notices to be sent Company Defendant whereby Plaintiff sought licensing fees for Company

Defendant's use of Plaintiff's Copyrighted Works, copies of which are attached hereto as Exhibit

D. Because Company Defendant is one media company in a group of commonly owned and operated media companies Plaintiff also sent notices to the related company, Mediaite LLC.

23. In reckless disregard of Plaintiff's copyright, Company Defendant failed to respond to Plaintiff's requests for licensing fees and continued its infringing use.

24. Plaintiff was thus forced to seek remedy from this Court.

**C. Discovery of Company Defendant's Unlawful Activity**

25. Plaintiff discovered these infringements after diligently searching the Internet for uses of Plaintiff's Copyrighted Works. Plaintiff's diligent efforts to discover these infringements include Plaintiff engaging various third-party technology companies over the years to search the Internet for unlawful use of Plaintiff's copyrighted works. Plaintiff engages different image search services concurrently to routinely search the Internet for uses of Plaintiff's copyrighted works because none of these companies are able to locate every use of Plaintiff's copyrighted works on the Internet and each has offered different findings over the years. Plaintiff believes these companies are not able to find every use of Plaintiff's copyrighted works on the Internet because the current search technologies are not able to cover an enormous expanse of data points on the Internet. It has been reported that there are 3.2 billion to 5 billion photos uploaded to the Internet every day, which on the low end comes to 1.68 trillion per year. Upon information and belief, there are more photos uploaded to the Internet every day than a search company can process in a year. Accordingly, not every search by Plaintiff discloses every unlawful use of Plaintiff's copyrighted works. Plaintiff is thus not surprised that the diligently conducted searches more than three years prior to discovery of these infringements did not disclose Company Defendant's use of the Copyrighted Works but searches conducted more recently did disclose Company Defendant's infringements.

26. The failure to discover these infringements sooner occurred not due to a lack of reasonable effort by Plaintiff but due to the vast amount of data on the Internet to be search and the inability of the technology currently available on the market to locate in a few searches every infringing use of photographs in Plaintiff's catalogue. Plaintiff understands and believes that it is not, and should not, be considered at fault for not discovering these infringements sooner than it did.

**D. The Scope of Company Defendant's Infringement**

27. The purpose of Company Defendant reproducing, distributing, publicly displaying, and creating unauthorized derivative works from the Copyrighted Works was commercial.

28. Company Defendant used the Copyrighted Works for the purpose of drawing users to Company Defendant's website and thereby increase advertising revenues and the value of the website.

29. The Copyrighted Works were not used for the purposes of "news reporting."

30. The infringing use by Company Defendant does not constitute a *bona fide* contribution to new knowledge or creative expression but merely repackages and pirates Plaintiff's Copyrighted Works.

31. The purpose for reproducing, distributing, publicly displaying the Copyrighted Works, and creating an unauthorized derivative works from the Copyrighted Works, is not educational.

32. The reproduction, distribution, public display, and derivation of the Copyrighted Works are not for purposes of criticism.

33. The reproduction, distribution, public display, and derivation of the Copyrighted Works does not transform the Copyrighted Works by adding new expression or meaning. The

purpose, character, and nature of the use do not deviate from Plaintiff's: to provide artful, impactful, stimulating, and emotive visual imagery.

34. The infringing use by Company Defendant of the Copyrighted Works does not add to the Copyrighted Works by creating new information, new aesthetics, new insights, and understandings of the Copyrighted Works.

35. The nature of the Copyrighted Works is artistic and of enormous cultural and historic value.

36. The Company Defendant did not use a small portion of the Copyrighted Works but the entirety of the Copyrighted Works.

37. The Company Defendant is a sophisticated media company that understands copyright law and the need to obtain a license to publish the copyrighted works of others.

38. The infringing use by Company Defendant of the Copyrighted Works has harmed, and continues to harm, the potential market for or value of the Copyrighted Works by robbing Plaintiff of its exclusive right to license the Copyrighted Works and also by cheapening the value of works through association with Defendant Company and its reputation, or lack of reputation in the media industry.

**CLAIM FOR RELIEF**  
**DIRECT COPYRIGHT INFRINGEMENT**  
**(17 U.S.C. § 101 et seq.)**

39. Plaintiff realleges the above paragraphs and incorporates them by reference as if fully set forth herein.

40. The Copyrighted Works are original works of authorship, embodying copyrightable subject matter, subject to the full protection of the United States copyright laws.

41. As exclusive licensee, Plaintiff has sufficient rights, title and interest in and to the



copyrights in the Copyrighted Works to bring suit.

42. Upon information and belief, as a result of Plaintiff's reproduction, distribution and public display of the Copyrighted Works, Company Defendant had access to the Copyrighted Works prior to the creation of Company Defendant's infringing website.

43. By its actions, as alleged above, Company Defendant has infringed and violated Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. §501, by reproducing, distributing, using in the creation of an unlawful derivative work, and publicly displaying the Copyrighted Works at the infringing website.

44. Upon information and belief, Company Defendant's infringement of Plaintiff's copyrights is willful and deliberate and Company Defendant has profited at the expense of Plaintiff.

45. As a direct and proximate result of Company Defendant's infringement of Plaintiff's exclusive rights in the Copyrighted Works, Plaintiff is entitled to recover its actual damages resulting from Company Defendant's uses of the Copyrighted Works without paying license fees, in an amount to be proven at trial.

46. In addition, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff shall be entitled to recover damages based on a disgorgement of Company Defendant's profits from infringement of the Copyrighted Works, which amounts will be proven at trial.

47. Company Defendant's conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

**SECOND CLAIM FOR RELIEF**  
**(Contributory Copyright Infringement)**

48. Plaintiff realleges the above paragraphs and incorporates them by reference as if fully set forth herein.

49. The Member and Officer Defendants had either actual or constructive knowledge of the above-described infringements and either induced, caused or materially contributed to the infringing conduct described above.

50. By their actions, the Member and Officer Defendants' acts of contributory infringement violate Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. §501.

51. Upon information and belief, the foregoing acts of contributory infringement of Plaintiff's copyright are willful and deliberate and The Member and Officer Defendants profited at the expense of Plaintiff.

52. As a direct and proximate result of the Member and Officer Defendants contributory infringement of Plaintiff's exclusive copyrights in the Copyrighted Works, Plaintiff is entitled to recover actual damages resulting from the Member and Officer Defendants' uses of the Copyrighted Works without paying license fees, in an amount to be proven at trial.

53. In addition, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff shall be entitled to recover damages based on a disgorgement of the Member and Officer Defendants profits from infringement of the Copyrighted Works, which amounts will be proven at trial.

54. In the alternative, and at Plaintiff's election, Plaintiff is entitled to a maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to the infringing reproduction, distribution, derivation, and public display of the Copyrighted Works, or such other amounts as may be proper under 17 U.S.C. § 504(c) as a result of the Member and

Officer Defendants' contributory infringement.

55. Plaintiff is entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

56. The Member and Officer Defendants' contributory infringement has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

**THIRD CLAIM FOR RELIEF**  
**(Vicarious Copyright Infringement)**

57. Plaintiff realleges the above paragraphs and incorporates them by reference as if fully set forth herein.

58. To the extent any of the Member and Officer Defendants contend they did not directly infringe or contributorily infringe Plaintiff's copyrights, Member and Officer Defendants each had the right or ability to control the direct infringement described above.

59. As a result of each Member and Officer Defendants' right or ability to supervise the direct infringement described above, the Member and Officer Defendants could have prevented or stopped the direct infringement but did not take any action to do so.

60. The Member and Officer Defendants each had a direct financial interest in the reproduction, distribution and public display of the Copyrighted Works and each of the Member and Officer Defendants benefitted from that direct infringement.

61. As a direct and proximate result of the Member and Officer Defendants' vicarious infringement of Plaintiff's copyrights and exclusive rights in the Copyrighted Works, Plaintiff is entitled to recover their actual damages resulting from the Member and Officer Defendants' uses

of the Copyrighted Works without paying license fees, in an amount to be proven at trial.

62. In addition, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff shall be entitled to recover damages based on a disgorgement of the Member and Officer Defendants' profits from infringement of the Copyrighted Works, which amounts will be proven at trial.

63. In the alternative, and at Plaintiff's election, Plaintiff is entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to the vicarious infringement of the Copyrighted Works by the Member and Officer Defendants, or such other amounts as may be proper under 17 U.S.C. § 504(c).

64. Plaintiff is entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

65. Defendants' vicarious infringement has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

1. A declaration that Defendants have infringed Plaintiff's copyrights under the Copyright Act;
2. A declaration that such infringement is willful;
3. An accounting of all revenue earned by Defendants during the period in which it reproduced, distributed or displayed the Copyrighted Works, or any portion or derivation of the Copyrighted Works;

4. Awarding Plaintiff all gains, profits, property and advantages obtained or derived by Defendants from their acts of copyright infringement or, *in lieu* thereof, should Plaintiff so elect, such statutory damages as the Court shall deem proper, as provided in 17 U.S.C. §§ 504(c), including damages for willful infringement of up to \$150,000 for each instance of copyright infringement;

5. Awarding Plaintiff such exemplary and punitive damages as the Court finds appropriate to deter any future infringement pursuant to the Copyright Act;

6. Awarding Plaintiff its costs and disbursements incurred in this action, including its reasonable attorneys' fees, as provided in 17 U.S.C. § 505;

7. Awarding Plaintiff interest, including pre-judgment interest, on the foregoing sums;

8. Permanently enjoining Defendants, their employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Company Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to market, offer, sell, dispose of, license, lease, transfer, public display, advertise, reproduce, develop or manufacture any works derived or copied from the Plaintiff's or to participate or assist in any such activity; and

9. For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: July 2, 2023

Respectfully submitted,

/s/ R. Terry Parker

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