

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL MARTINKA,

Plaintiff,

- against -

NEW TANG DYNASTY TELEVISION INC.

Defendant.

Docket No. 1:19-cv-5170

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Paul Martinka (“Martinka” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant New Tang Dynasty Television Inc. (“New Tang” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted photographs of a hawk in Brooklyn, owned and registered by Martinka, a New York based professional photographer. Accordingly, Martinka seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Martinka is a professional photographer in the business of licensing his photographs to print and online media for a fee having a usual place of business at 593 Vanderbilt Avenue, Suite 151, Brooklyn, New York 11238.

6. Upon information and belief, New Tang is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 229 W. 28th Street, 7th Floor, New York, New York 10001. Upon information and belief, Dynasty is registered with the New York Department of State Division of Corporation to do business in the State of New York. At all times material hereto, New Tang has owned and operated a website at the URL: www.NTD.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Martinka photographed a hawk in Brooklyn (the “Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Martinka is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Number VA 2-144-517.

B. Defendant’s Infringing Activities

10. On January 28, 2019, New Tang ran an article on the website entitled *NYPD Saves Injured Hawk Struck in the Middle of Brooklyn Traffic*. See: <https://www.ntd.com/nypd->

[saves-injured-hawk-struck-in-the-middle-of-brooklyn-traffic_282249.html](#). The article featured the Photographs. Screenshot of the Photographs on the Website are attached hereto as Exhibit B.

11. New Tang did not license the Photographs from Plaintiff for its article, nor did New Tang have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. New Tang infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. New Tang is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by New Tang have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant New Tang be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York

June 2, 2019

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