

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JACK MACKIE, an individual,

Plaintiff,

v.

MICHAEL J. HIPPLE, et al.,

Defendant and 3rd Party Plaintiff

v.

AGE PHOTOSTICK AMERICA, INC., a
Delaware Corporation.

3rd Party Defendant

Case No. 09-00164-RSL

ANSWER AND 3RD PARTY
COMPLAINT

JURY DEMAND

Defendant Michael J. Hipple (“Hipple”) answers Plaintiff’s Corrected Complaint as follows:

PARTIES

1. Hipple admits the allegations of Paragraph 1.

1 2. Hipple admits the allegations of Paragraph 2.

2 3. Hipple admits the allegations of Paragraph 3.

3 4. Hipple admits the allegations of Paragraph 4.

4 **JURISDICTION AND VENUE**

5 5. Hipple admits this is a civil action asserting a claim for relief, but denies he is liable on
6 the claim for relief.

7 6. Hipple admits the allegations of Paragraph 6.

8 7. Hipple admits that venue is appropriate in the Court, but denies the remaining
9 allegations in Paragraph 7.

10 **FACTS**

11 8. Hipple admits the allegations in Paragraph 8.

12 9. Hipple admits that the Work consists of bronze sole shoes and arrow diagrams installed
13 in public sidewalks adjacent to Broadway Avenue in Seattle, Washington, but denies the
14 remaining allegations in Paragraph 9 for lack of knowledge or information sufficient to form
15 a belief as to their truth.

16 10. Hipple admits that Mr. Mackie has not authorized him to use the image of the Work or
17 any of its sub-installations, but denies the remaining allegations of Paragraph 10 for lack of
18 knowledge or information sufficient to form a belief.

19 11. Hipple admits that copyright registration number VAu 441-310 corresponds to the
20 Work, but denies the remaining allegations of Paragraph 10 for lack of knowledge or
21 information sufficient to form a belief.

22 12. Hipple denies the allegations in Paragraph 12.

13. Hipple denies the allegations in Paragraph 13.

14. Hipple denies the allegations in for lack of knowledge or information sufficient to form a belief as to their truth.

CAUSE OF ACTION: COPYRIGHT INFRINGEMENT

15. Hipple denies the allegation of Paragraph 15.

PLAINTIFF'S REQUEST FOR RELIEF

1. Hipple denies that Plaintiff is entitled to the relief it seeks.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted.

2. Hipple is not responsible for the acts alleged by Plaintiff in the complaint.

3. Plaintiff's damages, if any, are caused by a party over whom Hipple has no control.

4. Plaintiff's claim is barred by the statute of limitations.

5. Plaintiff's claim is barred by the doctrines of waiver, implied consent, unclean hands, and/or laches.

6. Plaintiff has failed to join a person whose presence is essential to a just adjudication.

7. Plaintiff has already been made whole.

8. Hipple's use is not actionable because it is de minimis.

9. Hipple's use is not actionable because the photograph and the Work are not substantially similar.

10. Hipple's use is not actionable because it is fair use.

THIRD PARTY COMPLAINT

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3 1. Age Fotostock America, Inc. (“Age Fotostock”) is a Delaware corporation whose
4 registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400,
5 Wilmington, DE 19808 and with its principle place of business at 594 Broadway # 707, New
6 York, NY 10012. Age Fotostock is a global stock photographic agency.

7 2. Age Fotostock and Michael Hipple agreed by contract dated July 2000 that Hipple
8 would submit photographic images to Age Fotostock and Age Fotostock would market and
9 sell those images to its customers and pay a commission to Hipple on its sales.

10 3. Hipple submitted several photographic images to Age Fotostock, including the image
11 shown in plaintiff’s Exhibit 2 to his Corrected Complaint (“Image”).
12

13 4. Subsequent to his submission to Age Fototock, Hipple learned of plaintiff Mackie’s
14 claims against other photographers, and requested that Age Fotostock remove the Image from
15 its collection and from its website. Age Fotostock responded that keeping the Image on its
16 website violated no copyright ownership. Age Fotostock left the Image on its website.
17

18 5. Age Fotostock held itself out as having special expertise and experience in the stock
19 photography business. Hipple relied upon Age Fotostock’s experience and expertise in the
20 stock photography business.

21 6. Age Fotostock failed to act with reasonable skill and ordinary care when it overruled
22 Hipple’s request to pull the image.

23 7. Age Fotostock, by its acts and failures to act, is responsible for the acts alleged by
24 Plaintiff Mackie.
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1 8. Hipple has been damaged by Age Fotostock's failure to act with reasonable skill and
2 ordinary care.

3 9. Hipple is entitled to indemnification for his losses caused by Age Fotostock's
4 affirmative acts and failures to act and failure to act with reasonable skill and ordinary care.
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7 **JURY DEMAND**

8 1. Defendant Hipple demands a trial by jury.
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10 WHEREFORE, Hipple respectfully requests that this Court:

- 11 (1) Dismiss Plaintiff Mackie's Complaint in its entirety with prejudice;
12 (2) Deny any and all relief sought by Plaintiff Mackie;
13 (3) Award Hipple his costs, including a reasonable attorneys' fee, from Plaintiff
14 Mackie, 3rd Party Defendant AGE Fotostock, or both; and
15 (4) Award Hipple such other and further relief as this Court may deem just and proper.
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19 DATED this 23rd day of April, 2010.
20

21 /s/ John E. Grant

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