

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-01037-CMA-NRN

ERIC PICKERSGILL,
Plaintiff,

v.

THE EGOTIST, LLC,
Defendant.

ANSWER TO AMENDED COMPLAINT

Defendant The Egoist, LLC, through undersigned counsel, submits its answer to the amended complaint as follows.

SUMMARY OF THE ACTION

1. The allegation in this paragraph is a legal conclusion which requires no response.
2. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.
3. Defendant admits the website at <https://www.thedenveregotist.com> features information about the Denver creative market, and there is a network of websites in U.S. cities, such as Denver, Atlanta, New York, Saint Louis and others that use the Egotist platform, but denies the remaining allegations of this paragraph.
4. Defendant admits the works at issue were obtained from the website at <https://www.removed.social/series> and were used in a post on the website at

<https://www.thedenveregotist.com>, but denies the remaining allegations of the paragraph.

JURISDICTION AND VENUE

5. The allegation in this paragraph is a legal conclusion which requires no response.

6. The allegation in this paragraph is a legal conclusion which requires no response.

7. The allegation in this paragraph is a legal conclusion which requires no response.

8. The allegation in this paragraph is a legal conclusion which requires no response.

DEFENDANT

9. Defendant admits The Egotist, LLC is a Colorado entity, and The Spoja Law Firm, P.C., 600 Grant Street, Suite 201, Denver, CO 80203, is listed as the registered agent for the company, but denies the remaining allegations of the paragraph.

THE COPYRIGHTED WORKS AT ISSUE

10. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

11. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

12. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

INFRINGEMENT BY DEFENDANT

13. Defendant admits that Defendant has no express license to use the works at issue; but lacks knowledge or information sufficient to admit or deny any remaining allegations of the paragraph.

14. Denied.

15. Defendant admits the works at issue were used in an article specifically about Pickersgill and the “Removal” series of photographs, but lacks knowledge or information sufficient to admit or deny any remaining allegations of the paragraph.

16. Defendant admits that Defendant has no express license to use the works at issue; but lacks knowledge or information sufficient to admit or deny any remaining allegations of the paragraph.

17. Denied.

18. Denied.

19. Defendant admits the works at issue were displayed as part of a post with the title “How Our Devices Divide Us” and a two-sentence article on the website at <https://www.thedenveregotist.com>, but denies the remaining allegations of the paragraph.

20. Denied.

21. Defendant admits the website at <https://www.thedenveregotist.com> contains third-party commercial advertisements, but denies the remaining allegations of the paragraph.

22. Defendant admits a two-sentence article appeared on the website at <https://www.thedenveregotist.com>, with six of the images identified as created by Pickersgill, but denies the remaining allegations of the paragraph.

23. Defendant admits the six images identified as created by Pickersgill were on the website at <https://www.thedenveregotist.com>, where the image file had the same resolution as was publicly available at <https://www.removed.social/series>, but denies the remaining allegations of the paragraph.

24. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

25. Denied. To the extent the allegation in this paragraph is a legal conclusion, it requires no response.

26. Denied.

27. Defendant admits that Defendant did not have express permission or authority to copy, distribute or display the works at issue; but lacks knowledge or information sufficient to admit or deny any remaining allegations of the paragraph.

28. Defendant admits that allegations of copyright infringement were set forth in a letter dated September 13, 2021, that was addressed to The Egotist, LLC, and this matter has not been resolved, but denies the remaining allegations of the paragraph.

COUNT I COPYRIGHT INFRINGEMENT

29. Defendant incorporates by reference all of the above paragraphs as though fully stated herein.

30. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

31. Defendant is without sufficient knowledge and information to admit or deny the allegations of the paragraph.

32. Denied.

33. Denied.

34. Denied.

35. Denied. To the extent the allegation in this paragraph is a legal conclusion, it requires no response.

36. Denied. To the extent the allegation in this paragraph is a legal conclusion, it requires no response.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses to claims of the amended complaint.

1. The use of the works at issue in an online posting about the works at issue was fair use.
2. Providing high resolution images of the works at issue available on websites controlled by Plaintiff without reservation of rights or prohibition against downloading, and having widely allowed the works at issue to be used in articles and postings online about those works themselves since at least as early as 2017, Plaintiff is barred from recovery by doctrine of laches, waiver, acquiescence, or estoppel.
3. Having widely allowed the works at issue to be used in articles and postings online about the works themselves, while providing high resolution images of those works

available on websites controlled by Plaintiff without reservation of rights or prohibition against downloading, there is an implied license for such use.

4. Widely publicizing and allowing the works at issue to be used by others in online posts about the works themselves, while providing high resolution images of those publicized works available on websites controlled by Plaintiff without reservation of rights or prohibition against downloading, Plaintiff is barred from recovery by copyright misuse and the doctrine of unclean hands.
5. Failure to state a claim upon which relief can be granted.

Defendant reserves the right to supplement or amend this answer, including the addition of further affirmative defenses, based upon the course of discovery in this action.

Defendant demands a trial by jury as to all claims so triable.

Date: November 17, 2022

s/ James Juo
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