

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JIM OLIVE, ET AL.,

Plaintiff,

vs.

SOUTHWESTERN UNIVERSITY

Defendant.

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Civ. Action No. 4:19-cv-04401

JURY TRIAL DEMANDED

DEFENDANT’S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, Southwestern University (“Defendant”), files its Original Answer to Plaintiffs’ Original Complaint (the “Complaint”) [Doc. 1] as follows:

PARTIES

1. Defendant is without knowledge as to the allegations in Paragraph 1 of Plaintiffs’ Complaint, and on that basis denies same.
2. Defendant admits the allegations contained in Paragraph 2 of Plaintiffs’ Complaint.

JURISDICTION AND VENUE

3. Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations contained in Paragraph 3 of Plaintiffs’ Complaint.
4. Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations set forth in Paragraph 4 of Plaintiffs’ Complaint.

5. Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations set forth in Paragraph 5 of Plaintiffs' Complaint.

6. Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations set forth in Paragraph 6 of Plaintiffs' Complaint.

FACTUAL ALLEGATIONS

7. Defendant is without knowledge as to the allegations in Paragraph 7 of Plaintiffs' Complaint, and on that basis denies same.

8. Defendant is without knowledge as to the allegations in Paragraph 8 of Plaintiffs' Complaint, and on that basis denies same.

9. Defendant is without knowledge as to the allegations in Paragraph 9 of Plaintiffs' Complaint, and on that basis denies same.

10. Defendant is without knowledge as to the allegations in Paragraph 10 of Plaintiffs' Complaint, and on that basis denies same.

11. Defendant admits an image of Houston, Texas, was displayed on Defendant's website on March 23, 2019, and Defendant's website stated, "Local chapters offer alumni a wide variety of opportunities to continue the *Southwestern Experience*..." Defendant further admits that an image of Houston, Texas, was displayed on the Facebook page for the Houston Chapter of the Southwestern University Alumni Association on May 9, 2018, August 13, 2018, April 22, 2019, May 21, 2019, and May 29, 2019, and on Defendant's website on other occasions. Defendant denies the remainder of the allegations contained in Paragraph 11 of Plaintiffs' Complaint.

12. Defendant denies the allegations contained in Paragraph 12 of Plaintiffs' Complaint.

13. Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations set forth in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant admits Plaintiff wrote to Defendant, demanding that Defendant cease using the photograph and compensate Plaintiffs. Defendant denies the remainder of the allegations contained in Paragraph 14 of Plaintiffs' Complaint.

CAUSES OF ACTION

COUNT I – COPYRIGHT INFRINGEMENT

15. Defendant incorporates and restates herein its above responses to Paragraphs 1-14 of Plaintiffs' Complaint.

16. Defendant denies the allegations set forth in Paragraph 16 of Plaintiffs' Complaint.

17. Defendant denies the allegations set forth in Paragraph 17 of Plaintiffs' Complaint.

18. Defendant denies the allegations set forth in Paragraph 18 of Plaintiffs' Complaint.

19. Defendant denies the allegations set forth in Paragraph 19 of Plaintiffs' Complaint.

COUNT II – DIGITAL MILLENNIUM COPYRIGHT ACT

20. Defendant incorporates and restates herein its above responses to Paragraphs 1-19 of Plaintiffs' Complaint.

21. Defendant denies the allegations set forth in Paragraph 21 of Plaintiffs' Complaint.

22. Defendant denies the allegations set forth in Paragraph 22 of Plaintiffs' Complaint.

23. Defendant denies the allegations set forth in Paragraph 23 of Plaintiffs' Complaint.

24. Defendant denies the allegations set forth in Paragraph 24 of Plaintiffs' Complaint.

JURY DEMAND

25. Defendant admits that Plaintiff has demanded a jury trial on all issues.

PRAYER FOR RELIEF

Defendant contends that this is a legal conclusion and does not require an admission or denial. Based thereon, Defendant denies the allegations set forth in the unnumbered paragraph under heading Prayer for Relief in Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES BY DEFENDANT

Defendant may rely upon the following affirmative defenses, subject to amendment based upon discovery.

1. Defendant has not committed any act of copyright infringement under the Copyright Act or otherwise.
2. Defendant has not committed any act of copyright infringement under the Digital Millennium Copyright Act or otherwise.
3. Plaintiffs' claims against Defendant are barred in whole or in part by the doctrines of unclean hands, waiver, laches, estoppel, and acquiescence.
4. At all times to Plaintiffs' claims, Defendant's conduct was innocent, in good faith, and lacked any wrongful intent.
5. Defendant reserves all affirmative defenses under Rule 8 (c) of the Federal Rules of Civil Procedure, and any other defenses at law or in equity that may now exist or in the future exist based on discovery and further factual investigation of this case.

CONCLUSION AND PRAYER

Defendant prays that Plaintiffs take nothing by way of the Complaint, and that this Court grant Defendant its fees, costs and expenses, as allowed by law, and such other and further relief, whether at law or equity, to which Defendant may be justly entitled.

Respectfully submitted,

/s/ Philip Robert Brinson

Philip Robert Brinson

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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF SERVICE

I hereby certify that on Monday, January 13, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing counsel(s) of record.

/s/ Philip Robert Brinson

Philip Robert Brinson