

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK (SYRACUSE)

JAMES BASS,

Plaintiff,

- against -

SYRACUSE UNIVERSITY

Defendant.

Case No.: 5:19-CV-566-TJM-ATB

**PLAINTIFF’S STATEMENT PURSUANT TO LOCAL RULE 7.1(a)(3)**

Pursuant to Rule 7.1(a)(3) of the Local Civil Rules of the United States District Court for the Northern District of New York, Plaintiff James Bass (“Bass” or “Plaintiff”) respectfully submits this statement of material facts as to which Plaintiff contends there is no genuine issue to be tried in support of his motion for partial summary judgment of liability against Defendant Syracuse University (“Syracuse University” or “Defendant”) for copyright infringement.

**Plaintiff James Bass**

1. Bass is a professional photographer who is in the business of licensing his work for a fee [Declaration of James Bass, dated May 29, 2020 (“Bass Declr.”), ¶ 2]

**Defendant Syracuse University**

2. Syracuse is a private university with address at 900 South Crouse Avenue, Syracuse, New York 13244. [Compl. ¶ 6; Answer, ¶ 6]

**The Photographs of Syracuse Basketball Players – September 21, 2018**

3. Plaintiff photographed members of the 2018 Syracuse basketball team, specifically Oshae Brissett (Player #11) and Tyrus Battle (Player #25) (the “Photographs”).

[Bass Decl. ¶ 3, Ex. A]

4. Plaintiff 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. [Bass Decl. ¶ 4, Ex. A]

**The Narrow License Granted to Syracuse University**

5. Plaintiff licensed the Photographs to Defendant for certain uses. Specifically, Defendant was permitted to use the Photographs on its own social media accounts, but not on commercial billboards, third-party cross promotion purposes or any other commercial purpose.

[Bass Decl. ¶ 7]

6. Plaintiff never authorized Defendant to display the Photographs on billboards.

[Bass Decl. ¶ 7]

7. Plaintiff did not enter into any written contract with Defendant. [Bass Decl. ¶ 8]

8. Based on oral communications with a Syracuse University’s employee, Plaintiff understood that he was providing the Photographs for use on Defendant’s social media accounts in exchange for a flat fee. [Bass Decl. ¶ 8]

9. Plaintiff never agreed to permit the Photographs to be used for commercial purposes, such as on billboards, third-party cross promotion purposes or any other commercial purpose. [Bass Decl. ¶ 8]

**Defendant’s Unauthorized Publication of the Photographs – November 2018**

10. Defendant used the Photographs on a billboard, thereby exceeding the scope of the oral licensing agreement. [Bass Decl. ¶ 9, Ex. C]

11. Plaintiff first became aware of the Defendant’s infringing activities in November 2018 with respect to unauthorized use on a billboard and then later in March 2019 with respect to third-party cross-promotional materials. [Bass Decl. ¶ 9]

12. Defendant did not license the Photographs from Plaintiff for other uses besides social media, nor did Defendant have Plaintiff’s permission or consent to publish the Photographs in media other than social media. [Bass Decl. ¶ 10]

**Registration of the Photographs – March 21, 2019**

13. Plaintiff’s counsel in this action, Liebowitz Law Firm, PLLC (the “Firm”), follows a routine practice of registering photographs with the U.S. Copyright Office (the “USCO”) on behalf of the Firm’s clients. [Declaration of Donna Halperin, dated May 29, 2020 (“Halperin Declr.”), ¶ 4]

14. Plaintiff authorized the Firm to register the Photograph with the USCO on his behalf. [Halperin Declr., ¶ 6]

15. The photograph depicting Oshae Brissett (Player #11) was registered with the U.S. Copyright Office (“USCO”), was deposited with the USCO under content title “09.21.18\_cuse\_mbb\_082.jpg” and was given registration number no. VA 2-144-186 (the “186 Registration”). [Bass Decl. ¶ 5, Ex. B; Halperin Declr. ¶ 7]

16. The photograph depicting Tyrus Battle (Player #25) was registered with the USCO and was deposited with the USCO under content title “09.21.18\_cuse\_mbb\_195.jpg” as part of the 186 Registration. [Bass Decl. ¶ 5, Ex. B; Halperin Declr. ¶ 8]

17. Plaintiff obtained the 186 Registration on March 21, 2019, within five years after first publication of the Photographs, which took place on September 21, 2018. [Bass Declr. ¶¶ 5-6, Ex. B]

18. The Firm's registration of the Photograph on Bass' behalf was carried out in accordance with the Firm's routine practice of registering photographs with the USCO on behalf of its clients. [Halperin Declr. ¶ 9]

Dated: May 29, 2020  
Valley Stream, New York

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