

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IVY COACH, INC., :
Plaintiff, :
 :
v. :
 : Case No. 2:21-cv-11235-BAF
LEHREN EDUCATION, LLC., : Hon. Judge Bernard A. Friedman
Defendant :
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**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT**

Defendant, Lehren Education, LLC., (“Defendant” or “Lehren”), by and
through its attorneys, Heed Law Group, PLLC, for its Answer and Affirmative
Defenses to Plaintiff’s (“Plaintiff or “Ivy Coast”) Complaint, answers as follows:

PRELIMINARY STATEMENT

1. Defendant admits-in-part, denies-in-part, and neither-admits-nor-denies-in-part the allegations set forth in paragraph 1. Defendant admits that it copied a limited amount of text. Defendant denies that the text in dispute is significant. Defendant denies that it and the Plaintiff provide the same services. Defendant provides consulting services to Chinese nationals and the first- generation Chinese immigrants who are interested in their children attending colleges in the United States. On information and belief, Plaintiff does not market its services in China or in Chinese language community, and Plaintiff does not speak Mandarin or Cantonese. Defendant denies that it relies in large part on its digital presence for brand identity and to market its services to clients. All of Defendant's college application consulting business is based off of referrals. Defendant neither admits nor denies the remaining allegations set forth in paragraph 1 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.

JURISDICTION AND VENUE

2. Defendant admits the allegations set forth in paragraph 2.
3. Defendant denies the allegations set forth in paragraph 3 as being untrue.
4. Defendant denies the allegations set forth in paragraph 4 as being untrue.

PARTIES

5. Defendant neither admits nor denies the allegations set forth in paragraph 5 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
6. Defendant admits the allegations set forth in paragraph 6.

FACTS

7. Defendant neither admits nor denies the allegations set forth in paragraph 7 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
8. Defendant neither admits nor denies the allegations set forth in paragraph 8 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
9. Defendant neither admits nor denies the allegations set forth in paragraph 9 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
10. Defendant neither admits nor denies the allegations set forth in paragraph 10 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.

11. Defendant neither admits nor denies the allegations set forth in paragraph 11 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
12. Defendant neither admits nor denies the allegations set forth in paragraph 12 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
13. Defendant admits-in-part and denies-in-part the allegations set forth in paragraph 13. Defendant admits that Defendant provides consulting services to Chinese nationals interested in attending college in the United States, and the first-generation Chinese immigrants who desire their Children attend selective colleges in the United States. Defendant denies the remainder of the allegations contained in paragraph 13 as being untrue.
14. Defendant admits-in-part, denies-in-part, and neither-admits-nor-denies-in-part the allegations set forth in paragraph 14. Defendant admits that it copied the text within the box, which it would characterize as limited and immaterial. Defendant denies that it used large portions of copyrighted material. Defendant neither admits nor denies the remaining allegations set forth in paragraph 14 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.

15. Defendant admits-in-part and denies-in-part the allegations set forth in paragraph 15. Defendant admits that it copied the work contained in the boxes in paragraph 14. Defendant denies the remaining allegations set forth in paragraph 15 as being untrue.
16. Defendant admits the allegations contained in paragraph 16.
17. Defendant neither admits nor denies the allegations set forth in paragraph 17 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.
18. Defendant denies the allegation in paragraph 18, as being untrue.
19. Defendant denies the allegations contained in paragraph 19, as being untrue. On information and belief, Plaintiff failed to use a method that would constitute service of process when allegedly attempting to serve the cease and desist letter on the Defendant.
20. Defendant admits the allegations contained in paragraph 20. Plaintiff did not receive a response to its cease-and-desist letter because the Plaintiff failed to take the reasonable and customary steps to insure delivery.
21. Defendant admits-in-part and denies-in-part the allegations set forth in paragraph 21. Defendant admits that it has never paid Ivy Coach for its copyrighted work, because Ivy Coach has demanded an unconscionable amount that is inconsistent with case law and practice within this district.

Defendant denies the remaining allegations contained in paragraph 23 as being untrue, including the allegation that the Plaintiff has suffered damage.

22. Defendant denies the allegations contained in paragraph 22 as being untrue.

COUNT ONE
Copyright Infringement
(17 U.S.C. § 501)

23. Defendant reaffirms, realleges, and incorporates herein by reference the averments and denials of paragraphs 1 through 22 above as if fully set forth herein.

24. Defendant neither admits nor denies the allegations set forth in paragraph 24 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.

25. Defendant neither admits nor denies the allegations set forth in paragraph 25 for lack of personal knowledge or information sufficient to form a belief thereto and leaves Plaintiff to its strict proofs thereof.

26. Defendant denies the allegations contained in paragraph 26 as being untrue.

27. Defendant denies the allegations contained in paragraph 27 as being untrue.

28. Defendant denies the allegations contained in paragraph 28 as being untrue.

29. Defendant denies the allegations contained in paragraph 29 as being untrue.

30. Defendant denies the allegations contained in paragraph 30 as being untrue.

WHEREFORE, the Defendant respectfully prays that this Court enter a judgment in favor of the Defendant, finding no cause of action; and:

- A. Deny the Plaintiff's allegations that Defendant violated 17 U.S.C. § 501;
- B. Deny the Plaintiff any injunctive relief;
- C. Deny the Plaintiff any accounting;
- D. Deny the Plaintiff's request for Defendant to be required to destroy, or delete any materials.
- E. Deny Plaintiff any award;
 - i. Deny Plaintiff any actual damages;
 - ii. Deny Plaintiff any statutory damages;
 - iii. Deny Plaintiffs any attorney fees or costs;
- F. Deny Plaintiff of all pre- and post-judgment interest;
- G. Deny the Plaintiff any relief, whatsoever, for this litigation.

In addition, the Defendant respectfully requests that this Court afford it whatsoever other relief as the Court might deem just and equitable for the Defendant defending against this frivolous suit.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE **(CONSTITUTIONALLY EXCESSIVE STATUTORY DAMAGES)**

1. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained, and any award of such damages would violate the Due Process clause of the Fifth Amendment to the United States Constitution.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE **(COPYRIGHT MISUSE)**

2. Plaintiff has engaged in copyright misuse. On information and belief, Plaintiff is attempting to (A) use its copyright in order to squelch competition, in contravention of Sherman Anti-Trust Act by creating and engaging in a conspiracy to restrain trade; and/or (B) extend its monopoly beyond the scope of the Copyright Act or otherwise has violated the public policy underlying the Copyright Act. After a reasonable opportunity for further investigation or discovery there is likely to be further evidence that Plaintiff's has purchased on-line advertising specifically aimed at competitors with the intention of getting competitors to copy the Plaintiff's material. The purpose of this is to then sue the competitors and demand

settlement amounts that vastly exceed what is typically for copyright infringement, in the hopes of damaging Ivy Coach's competition.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
(UNCLEAN HANDS)

3. Plaintiffs' claims are barred due to Plaintiff's unclean hands. After a reasonable opportunity for further investigation or discovery there is likely to be further evidence that Plaintiff's has purchased on-line advertising specifically aimed at competitors with the intention of getting competitors to copy the Plaintiff's material. The purpose of this is to then sue the competitors and demand settlement amounts that vastly exceed what is typically for copyright infringement, in the hopes of damaging Ivy Coach's competition.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
(FAIR USE)

4. Defendant's copying falls within the Fair Use exception to infringement under 17 U.S.C. § 107.

Defendant reserves the right to add to its affirmative defenses as further investigation or discovery so dictates.

Dated: Ann Arbor, Michigan

June 13, 2021

Heed Law Group PLLC

/s/ Thomas P Heed

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2021, I electronically filed the foregoing Answer and Affirmative Defenses with the Clerk of the Court using the ECF system, which will be served by operation of the Court's electronic filing system upon the counsel of record for the Plaintiff, at their e-mail address included in the ECF system.

Heed Law Group PLLC

/s/ Thomas P Heed

Thomas P. Heed