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ATTORNEYS FOR PLAINTIFF
DR. TAMARA EICHELBERGER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. TAMARA EICHELBERGER,

Plaintiff,

v.

DR. MARY HUDSON-MCKINNEY;
WESTERN UNIVERSITY OF
HEALTH SCIENCES; DOES 1 – 10,
Inclusive,
Defendants.

Case No.:

COMPLAINT FOR:
1) COPYRIGHT INFRINGEMENT
2) REVERSE PASSING OFF

JURY TRIAL DEMANDED

Plaintiff Tamara Dr. Eichelberger, PhD. (“Plaintiff” or “Dr. Eichelberger”),
by and through here attorneys, Karish & Bjorgum, PC, files its complaint against
Dr. Mary Hudson-McKinney (“Hudson-McKinney”) and Western University of
Health Sciences (“Western University”) (collectively, “Defendants”) for injunctive
relief and damages as follows:

Subject Matter Jurisdiction and Venue

1. This case is a civil action arising under the Copyright Laws of the United States, 17 U.S.C. §§ 101, *et seq.*, respectively and section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a). This Court has subject matter jurisdiction over the claims in this Complaint which relate to copyright infringement (17 U.S.C. § 501) and the Lanham Act (15 U.S.C. § 1125(a)), as well as 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b) and 1400(a). The claims alleged in this action arose in this Judicial District; and the Defendants reside and transact business in this Judicial District.

Parties and Personal Jurisdiction

3. Plaintiff Dr. Eichelberger is a California resident with her principal residence in Los Angeles County, California.

4. Defendant Hudson-McKinney, upon information and belief, is a resident of Orange County, California.

5. Defendant Western is a private university focusing on health care, with its principal place of business in Orange County, California.

6. This Court has personal jurisdiction over Defendants because Defendants solicit and transact business and have other related activities within this Judicial District. This court also has personal jurisdiction over Defendants because Defendants caused actual harm to Dr. Eichelberger. Defendants' actions were aimed at Dr. Eichelberger, and the brunt of the harm Defendant knew would be suffered by Dr. Eichelberger within this Judicial District.

7. Defendants Does 1 through 10 are unknown entities or individuals involved in the act alleged herein. Plaintiff is informed and believes, and on that basis

1 alleges, that Does 1 through 10 either (a) directly performed the acts alleged
2 herein, (b) were acting as the agents, principals, alter egos, employees, or
3 representatives of the owners and operators of the Defendants, and/or
4 (c) otherwise participated in the acts alleged herein with the named Defendants.
5 owners and operators of the GoodPorn Website. Accordingly, Does 1 through 10
6 each are liable for all the acts alleged herein because they were the cause in fact
7 and proximate cause of all injuries suffered by as alleged herein. Dr. Eichelberger
8 will amend the complaint to state the true names of Does 1 through 10 when their
9 identities are discovered.
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12 **Plaintiff Tamara Eichelberger, Ph.D.**

13 8. Dr. Eichelberger is a college instructor and health care professional with a
14 doctorate in Physical Rehabilitation Science, with an emphasis in human
15 neuromuscular physiology from The University of Iowa. Dr. Eichelberger has a
16 particular interest and expertise in neurology and neurological disorders in humans
17 that affect movement and the nervous system .

18 9. For over a decade, Dr. Eichelberger has taught classes in neurology, the
19 physiology of the human brain and the interaction between brain function and the
20 human body. Most recently, she has been teaching at schools in Southern
21 California and is presently on the faculty of Azusa Pacific University where she
22 teaches Clinical Neuroscience. In the last ten years, she has additionally taught
23 courses in research methodology and statistics, capstones, and introductory
24 physical therapy courses.

25 10. The present matter involves unique teaching materials for her Clinical
26 Neuroscience course, which Dr. Eichelberger developed over years of working
27 with one of the top texts in the area of neurology “Neuroanatomy through Clinical
28

1 Cases” by Hal Blumenfeld, MD, PhD. Dr. Eichelberger had permission to create
2 these materials.

3 11. In particular, Dr. Eichelberger took the text of the book and distilled it down
4 to a unique arrangement of video slides, outlines and graphics (“the Work”). The
5 Work is registered with the United States Copyright Office and bears U.S. Reg.
6 No. TXu 2-255-963 (“the Registration”). A copy of the Registration is attached
7 hereto as Exhibit A.

8 12. Dr. Eichelberger created the Work after years of teaching us the textbook.
9 She still uses the Work in teaching her classes.

10 13. In 2017, Defendant Hudson-McKinney (who teaches similar classes)
11 contacted Dr. Eichelberger inquire about teaching a class on clinical neuroscience
12 for physical therapy students at Defendant Western University Health (“Western”).

13 14. Hudson-McKinney asked Dr. Eichelberger to teach the course and offered
14 her for assistance in coordinating the class. Unbeknownst to Dr. Eichelberger in
15 the following years (2017 and 2018), Hudson-McKinney copied verbatim all of the
16 materials in the Work and put her own name on them. Hudson-McKinney
17 displayed the Work to her class without permission. On information and belief,
18 she made copies of the Work for her personal use and distributed or made copies
19 available to her class.
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21 15. On information and belief, Defendant Western paid Hudson-McKinney
22 \$8,500 to teach the class, and Western made considerable profit on the class
23 beyond that.

24 16. A year later Dr. Eichelberger was teaching at AU, as was Hudson-
25 McKinney. In 2019, A student commented that he was able to study with his
26 friend in the fall of 2018 from Western because they had the same class notes from
27 the professor for Clinical Neuroscience. Soon thereafter Dr. Eichelberger learned
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1 that her materials had been used (and possibly still were being used) at Western
2 without her permission.

3 17. Dr. Eichelberger contacted Western and Hudson-McKinney. Hudson-
4 McKinney denied any wrongdoing. Western confirmed the materials had been
5 used in 2017 and 2018, She also contacted AU, who performed an investigation.
6 Hudson-McKinney no longer works at AU.

7
8 **Count One – Copyright Infringement**
9 **Under 17 U.S.C. §501, et seq.**

10 18. Dr. Eichelberger realleges and incorporates by reference each of the
11 allegations contained in Paragraphs 1 through 17 of this Complaint as though fully
12 set forth here.

13 19. Defendants' acts constitute infringement of Dr. Eichelberger's copyrights in
14 the Work, in violation of the Copyright Act, 17 U.S.C. § 101, *et seq.*

15 20. Defendant Western is also liable for vicarious and contributory copyright
16 infringement. Defendant Western had the ability to control Hudson-McKinney and
17 a financial interest in the infringement. Defendant Western also provided the forum
18 for the infringement and had reason to know of the infringement.

19 21. Dr. Eichelberger is informed and believes that Defendants' acts of
20 infringement were deliberate, willful, malicious, oppressive, and without regard to
21 Dr. Eichelberger's proprietary rights.

22 22. Defendants' copyright infringement has caused, and will continue to cause
23 Dr. Eichelberger to suffer substantial injuries, loss, and damage to its proprietary
24 and exclusive rights to the copyright in the Work. Defendants have damaged Dr.
25 Eichelberger's business reputation and goodwill, diverted its trade, and caused loss
26 of profits, all in an amount not yet determined. In addition, Dr. Eichelberger is
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entitled to receive the profits made by Defendant from its wrongful acts pursuant to 17 U.S.C. § 504.

Count Two – Reverse Passing Off
Under Section 43(a) of the Lanham Act

23. Dr. Eichelberger realleges and incorporates by reference each of the allegations contained in Paragraphs 1 through 17 of this Complaint as though fully set forth here.

24. Defendants' actions herein constitute reverse passing off under section 43 (a) of the Lanham Act, codified at 15 U.S.C. Section 1125(a).

25. Specifically, Defendants have circulated course materials that are usually circulated by Dr. Eichelberger. Those course materials have created a likelihood of confusion as to source because they imply that they originate from Defendant McKinney in connection with a class taught at Western.

26. The course materials state, for instance:

PT 6008 Neuroscience

**Chapter 2: Neuroanatomical Overview and Basic
Definitions**

Mary Hudson-McKinney, PT, MS, DPT, NCS

27. Dr. Eichelberger is aware of instances where students believed that these materials originated with Defendants.

28. Defendants' reverse passing has caused, and will continue to cause, confusion as to source unless it is remedied and clarification offered to the academic community and potential customers of college classes.

29. Defendants have damaged Dr. Eichelberger's business reputation and goodwill, diverted trade, and caused loss of profits, all in an amount not yet

determined. In addition, Dr. Eichelberger is entitled to receive the profits made by Defendant from its wrongful acts.

PRAYER FOR RELIEF

Wherefore, Dr. Eichelberger respectfully requests judgment as follows:

(i) That the Court enter a judgment against Defendants that Defendants have infringed Dr. Eichelberger's copyrights in the Work in violation of the Copyright Act, 17 U.S.C. § 101, *et seq.*;

(ii) That the infringement is willful;

(iii) That the Court issue a Permanent Injunction enjoining and restraining Defendants and their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from engaging in any activity that infringes Dr. Eichelberger's copyrights in the Work;

(iv) That Dr. Eichelberger be awarded actual damages for Defendant's copyright infringement, together with Defendant's profits derived from its unlawful infringement of Dr. Eichelberger's copyrights and attorneys' fees and costs as applicable;

(v) That the Court enter a judgment against Defendants that Defendants have violated section 43(a) of the Lanham Act;

(vi) That the Court issue a Permanent Injunction enjoining and restraining Defendants and their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from engaging in any activity that infringes Dr. Eichelberger's copyrights in the Work;

1 (iv) That Dr. Eichelberger be awarded actual damages for Defendant's
2 copyright infringement, together with Defendant's profits derived from its unlawful
3 infringement of Dr. Eichelberger's copyrights and attorneys' fees and costs as
4 applicable; and

5 (v) That Dr. Eichelberger be awarded such other relief as may be
6 appropriate.
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8 DATED: January 31, 2022

Respectfully submitted,

10 KARISH & BJORGUM, PC
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14 By _____
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16 A. Eric Bjorgum
17 Attorneys for Plaintiff,
18 Dr. Tamara Eichelberger
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DEMAND FOR TRIAL BY JURY

Plaintiff Dr. Eichelberger hereby demands a trial by jury to decide all issues so triable in this case.

DATED: January 31, 2022

Respectfully submitted,
KARISH & BJORGUM, PC

By /s/ Eric Bjorgum
Eric Bjorgum
Attorneys for Plaintiff,
Dr. Tamara Eichelberger

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Shirley Perlmutter

United States Register of Copyrights and Director

Registration Number

TXu 2-255-963

Effective Date of Registration:

April 21, 2021

Registration Decision Date:

May 19, 2021

Title

Title of Work: 2016 A Instructions

Completion/Publication

Year of Completion: 2016

Author

• Author: Tamara Eichelberger
Author Created: text
Work made for hire: No
Citizen of: United States
Domiciled in: United States
Year Born: 1974

Copyright Claimant

Copyright Claimant: Tamara Eichelberger
[REDACTED], Pasadena, CA, 91101, United States

Limitation of copyright claim

Material excluded from this claim: artwork

New material included in claim: text

Rights and Permissions

Name: Tamara Eichelberger
Email: [REDACTED]@hotmail.com

Certification

Name: A. Eric Bjorgum

Date: April 21, 2021

Correspondence: Yes
Copyright Office notes: Regarding title information: Registration only extends to title listed in the certificate.