

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

ERIC BOWERS,

Plaintiff,

v.

**JOHNSON COUNTY COMMUNITY
COLLEGE,**

Serve at:

President Dr. Andrew W. Bowne
12345 College Blvd.,
Overland Park, KS 66210

Defendant.

Case No. 4:22-cv-00655

JURY TRIAL DEMANDED

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

COMES NOW Plaintiff Eric Bowers (“Bowers”), by and through his undersigned counsel, and hereby states for his Complaint against Defendant Johnson County Community College Foundation, Inc. d/b/a Johnson County Community College (“Defendant”) as follows:

SUMMARY OF THE ACTION AND PARTIES

1. Plaintiff brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Plaintiff’s original copyrighted works of authorship.
2. Plaintiff is a full-time, self-employed professional photographer who resides in Kansas City, Kansas.
3. Plaintiff’s Work (as defined herein) at issue is part of his portfolio that depicts architectural subjects of significance in the Kansas City metro area. Plaintiff’s portfolio was years in the making.
4. In particular, the Work depicts the Kansas City, Missouri skyline featuring the “One Light” building.

5. To create the Work, Plaintiff used professional-grade photography and editing equipment that he purchased for thousands of dollars.

6. To create the Work, Plaintiff invested many hours of his professional time.

7. Plaintiff is well-paid for the Work. The minimum fee for the time and a use-limited license of the Work that Defendants used without permission in this case is more than \$1,000 per individual image for a licensee who wishes to use the image nationally.

8. Defendant is a Kansas corporation licensed to do business in the State of Kansas located at 12345 College Blvd., Overland Park, Kansas 66210.

9. Defendant took Plaintiff's copyrighted Work without a proper license in order to nationally advertise, market and promote its business activities across the Kansas City, Missouri area.

10. Specifically, Defendant used the Work to promote the sale of certain academic programs to prospective students.

11. Defendants committed the violations alleged in connection with Defendants' business for purposes of advertising and promoting its business to the public in the course and scope of Defendants' business.

JURISDICTION AND VENUE

12. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

13. This is also an action for removal or alteration of copyright management information under the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202.

14. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

15. Defendants are subject to personal jurisdiction in Missouri because Defendants conduct systematic and continuous business in Missouri; Plaintiff suffered the harm from the infringement in Missouri in that his market for the photo is in Missouri and Defendants took and used Plaintiff's Work depicting the Kansas City, Missouri skyline to reach out to customers specifically in Missouri in order to promote Defendants' business in Missouri.

16. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in the Kansas City area, Missouri in this District.

THE COPYRIGHTED WORK AT ISSUE

17. In about 2015, Plaintiff created a photograph entitled "kansas_city_one_light_tower_highrise-1," which is shown below and referred to throughout as the "Work."



18. Plaintiff thereafter sought the help of a professional copyright agent, ImageRights International ("ImageRights"), to help him timely and correctly register the Work.

19. ImageRights helped Plaintiff to register the Work with the Register of Copyrights on September 11, 2015 and Plaintiff's Work was assigned the registration number "VA 1-980-468." The Certificate of Registration for the Work is attached hereto as **Exhibit 1** and incorporated herein by reference.

20. The Work is an artistic rendering of Kansas City's One Light Building. To create the Work, Plaintiff took a series of photographs of the city skyline and digitally edited and retouched lighting and "special effects" in the photo to create the final copyrighted image.

21. Plaintiff employed special artistic skill to capture the One Light Building's reflective windows in an adequately soft light.

22. The photograph was the result of hundreds of photographs that Mr. Bowers sorted through and edited over several days to get the handful of images that were truly perfect- these were the images that Mr. Bowers selected for copyright protection.

23. At all relevant times, Plaintiff was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANTS

24. Defendant has never been licensed to use the Work at issue in this action for any purpose.

25. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendant copied the Work.

26. Defendant copied Plaintiff's copyrighted Work without Plaintiff's permission.

27. After Defendant copied the Work, they made further copies and distributed the Work on the internet to promote the sale of goods and services as part of their business.

28. Specifically, Defendant placed the Work on “www.designspeak.jcccgraphicdesign.com” (the “Website”), a website that Defendant owned, controlled, and operated to promote its school of graphic design.

29. Defendant used the Work to promote their business interest in the graphic design program.

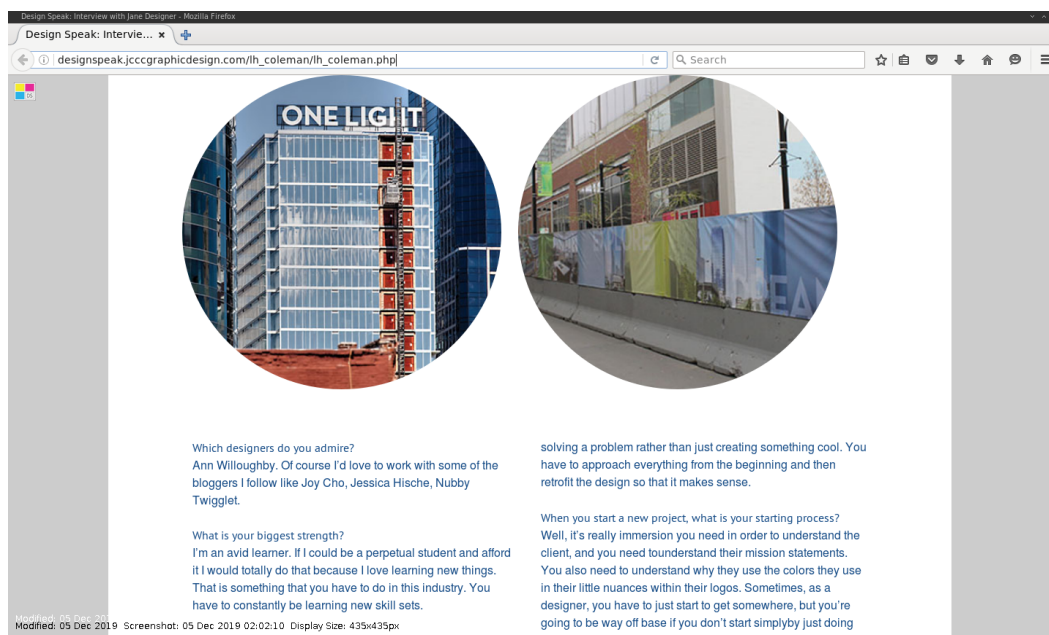
30. Defendant’s display of the Work was repeated and continuous.

31. Defendant displayed the Work on their website and stored it on their website for future use. See **Exhibit 2** from Defendant’s Website.

32. Defendant displayed the Work on an unknown date that occurred after Plaintiff registered the Work.

33. In 2019, Plaintiff first discovered that Defendant was using Work on their website.

34. Defendant’s display of the Work is captured on its website in the following screenshot:



35. Plaintiff carefully reviewed the screenshot and determined that this was his Work and that Defendant did not have any license or permission to use the Work, as it had not paid him for the use of his Work.

36. Defendant copied and distributed Plaintiff's copyrighted Work in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling Defendant's goods and services.

37. Plaintiff's Work is protected by copyright, but is not otherwise confidential, proprietary, nor is it a trade secret.

38. Defendant committed copyright infringement of the Work as evidenced by the screenshot exhibits attached hereto.

39. Plaintiff never gave Defendant permission or authority to copy, distribute, or display the Work at issue in this case.

40. Plaintiff has attempted to settle this matter amicably and for a minimum of expense with Defendant while seeking to avoid incurring any attorneys' fees or litigation expenses.

41. Plaintiff never gave Defendant permission or authority to copy, distribute, or display the Work at issue in this case.

PLAINTIFF'S EFFORTS TO RESOLVE PRE-SUIT AND DEFENDANTS' RESPONSE

42. Plaintiff notified Defendant in writing of the allegations set forth herein on at least seven occasions, each time stressing the urgency of the situation, in December of 2019 and in January of 2020.

43. After all of these communications, Defendant removed the image from its website but has refused to make a meaningful settlement offer for their use of the Work.

44. Plaintiff has attempted to settle this matter amicably and for a minimum of expense with Defendant while seeking to avoid incurring any attorneys' fees or litigation expenses.

45. Defendant has refused to make any meaningful attempt to settle this matter with Plaintiff.

46. Plaintiff had no option but to engage the undersigned attorney and has agreed to pay him a reasonable fee.

COUNT I
COPYRIGHT INFRINGEMENT

47. Plaintiff incorporates by reference all prior paragraphs of this Complaint as if such were fully set forth herein.

48. Plaintiff owns a valid copyright in the Work at issue in this case.

49. Plaintiff registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

50. Defendant copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Plaintiff's authorization in violation of 17 U.S.C. § 501.

51. Defendant performed the acts alleged in the course and scope of its business activities.

52. Plaintiff has been damaged.

53. The harm caused to Plaintiff has been irreparable.

COUNT II
REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION

54. Plaintiff incorporates by reference all prior paragraphs of this Complaint as if such were fully set forth herein.

55. Plaintiff's Work contains copyright management information as defined in 17 U.S.C. § 1202(c), including but not limited to Plaintiff's name affixed to the image as the author of the Work and the title of the Work. All of this information is available on the source for the image, which is Plaintiff's website, ericbowersphoto.com.

56. In violation of 17 U.S.C. § 1202(b), Defendant, without the authority of the copyright owner or the law, intentionally removed or altered copyright management information for Plaintiff's Work, knowing or having reasonable grounds to know that doing so would induce, enable, facilitate or conceal an infringement of right under Title 12 of the United States Code.

57. Defendant, in violation of 17 U.S.C. § 1202(a), provided false information about the copyright of the Work in that Defendant claimed that all of the content on their website was copyright-protected in favor of Defendant Johnson County Community College. This was false.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eric Bowers prays for judgment against Defendant such that:

a. Defendant and its agents, servants, employees, affiliated entities, and all of those in active concert with it, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff his actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon; and

d. Under 17 U.S.C. § 1203(b)(3) Defendant be required to pay Plaintiff his actual damages and additional profits of Defendant in accordance with 17 U.S.C. § 1203(c)(2) or, if

Plaintiff so elects before judgment is entered, statutory damages in accordance with 17 U.S.C. § 1203(c)(3);

- e. Under 17 U.S.C. § 1203(b)(4), Plaintiff be awarded costs;
- f. Under 17 U.S.C. § 1203(b)(5), Plaintiff be awarded reasonable attorneys' fees and costs;
- g. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

VOYTAS LAW, LLC

By: /s/ Richard A. Voytas, Jr.
Richard A. Voytas, Jr. #52046
7321 S. Lindbergh Blvd., Ste. 101
Saint Louis, MO 63125
Phone: (314) 380-3166
Email: rick@voytaslaw.com

Attorney for Plaintiff