

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Our File No. 18893DZSIN

PAWEL LIBERA,

1:23-cv-2988

Plaintiff,

- against -

ANSWER

NEW YORK PREPARATORY SCHOOL, INC. d/b/a
THE DWIGHT SCHOOL,

Defendant.

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Defendant, NEW YORK PREPARATORY SCHOOL, INC. d/b/a THE DWIGHT SCHOOL, by and through its attorneys, BAXTER & SMITH, P.C., answering the plaintiff's complaint upon information and belief, states as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegation of the complaint as contained in the paragraphs thereof numbered "1", "4", "10" and "24", leaving all conclusions of law and fact to the court.

2. Denies knowledge and information sufficient to form a belief as to the truth of the allegation of the complaint as contained in the paragraphs thereof numbered "2", "6", "7", "8", "9", "11", "12", "13", "14", "17" and "21".

3. Admits paragraph "3" of plaintiff's complaint.

4. Denies each and every allegation of the complaint as contained in the paragraphs thereof numbered "5", "18" and "22".

5. Denies each and every allegation of the complaint as contained in the paragraphs thereof numbered "15", "16", "19", "20" and "23", leaving all conclusions of law and fact to the court.

COPYRIGHT INFRINGEMENT

6. The answering defendant repeats, reiterates and realleges each and every answer to the allegations contained in the paragraphs of the Complaint thereof numbered "1" through "24", with the same force and effect as though set forth more fully herein at length.

7. Denies knowledge and information sufficient to form a belief as to the truth of the allegation of the complaint as contained in the paragraphs thereof numbered "26" and "27".

8. Denies each and every allegation of the complaint as contained in the paragraphs thereof numbered "28", "30", "31" and "32".

9. Denies each and every allegation of the complaint as contained in the paragraph thereof numbered "29", leaving all conclusions of law and fact to the court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. Any damages sustained by the plaintiff were caused by the culpable conduct of the plaintiff, including contributory negligence or assumption of risk, and not by the culpable conduct or negligence of the answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. The Complaint should be dismissed for failure to state a cause of action against the answering defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. Plaintiff was under an obligation to mitigate their damages and has failed to do so.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. That any verdict in the within action, for past, present, and future medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss should be reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part of or from any collateral source, in accordance with the provisions and limitations of §4545(c) of the CPLR.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. Upon information and belief, this Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

15. One or more third parties are liable for the conduct alleged and will be required to answer and indemnify.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

16. Defendant has one or more license(s).

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

17. Plaintiff has authorized and consented to usage.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

18. Plaintiff has unclean hands. They base their claims of infringement on information and belief, on a “secret informant” whom they have never met or vetted for credibility, and who is the perpetrator of any unlawful conduct.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

19. Plaintiff’s claims for relief are barred by the “Fair Use Doctrine” pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

20. This action is barred by the doctrine of laches.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

21. Plaintiff's action is barred by the doctrine of equitable estoppel.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

22. Defendant's conduct was innocent, non-infringing and not a willful infringement of copyright.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

23. Plaintiff has failed to register the copyrights in one or more of the products set forth in their Complaint and thus are not permitted to file this suit or maintain this action.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff has engaged in one or more acts that have misused their copyrights including but not limited to having wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act. Defendant reserves the right to assert one or more antitrust related claims.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims are barred due to their deceptive and misleading advertising in connection with the distribution of all alleged copyright works.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

26. Plaintiff has waived its rights to claim copyright infringement.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

27. Plaintiff has abandoned or forfeited their copyrights.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

28. Plaintiff has acquiesced in any alleged copyright infringement.

AS AND FOR A TWENTITH AFFIRMATIVE DEFENSE

29. This action may be barred by the “first sale doctrine” because if lawfully obtained and possessed one or more of Plaintiff’s copyrighted works. 17 U.S.C. §109(a).

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

30. Plaintiff’s claims are barred since critical part or portions of their alleged protected copyrights are invalid due to consisting of un-protectable idea(s) or processes.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

31. Plaintiff is barred by 17 U.S.C. §412 from claiming statutory damages or attorney’s fees under the Copyright Act in that any alleged acts of infringement occurred before first registration of the plaintiff’s alleged work.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

32. Defendant has failed to join indispensable parties.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

33. Defendant is not the owner of one or more Copyrights at issue.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

34. One or more of defendant’s copyrights have elements taken from the public domain upon which a copyright infringement action cannot be maintained.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

35. Defendant claims, including their assertion of copyright protection are barred by the doctrine of Merger.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE


36. This action is barred by the “scenes-a-faire” doctrine.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

37. This action is barred by section 117 limitations on exclusive rights.

WHEREFORE, the answering defendants demand judgment dismissing the complaint, together with costs and disbursements of this action, including attorneys' fees.

Dated: Hicksville, New York
May 9, 2023

By: 
ARTHUR J. SMITH, ESQ.
Attorney Reg. No. 2312254
BAXTER & SMITH, P.C
Attorneys for Defendant
99 North Broadway
Hicksville, New York 11801
(516) 997-7330

TO: SPIRLAW, P.A.
Attorneys for Plaintiff
175 Pearl Street, Third Floor
Brooklyn, New York 11201
(332) 600-5599

AFFIDAVIT OF SERVICE


STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

MEGHAN ADAMO, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at East Meadow, New York.

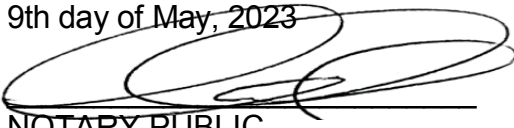
On May 9, 2023, deponent served the within ANSWER upon the following via electronic filing with the United States District Court, Southern District of New York:

SPIRLAW, P.A.
Attorneys for Plaintiff
175 Pearl Street, Third Floor
Brooklyn, New York 11201



MEGHAN ADAMO

Sworn to before me this
9th day of May, 2023



NOTARY PUBLIC
HAROLD A. CAMPBELL
No. 02CA6046319
Qualified in Nassau County
Commission Expires August 14, 2026