

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TC REINER,

Plaintiff,

vs.

Case No. 2:16-cv-11728

SAGINAW VALLEY STATE UNIVERSITY,
a Michigan non-profit corporation, and
THE BOARD OF CONTROL OF SAGINAW
VALLEY STATE UNIVERSITY,

Defendants.

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COMPLAINT

Plaintiff, TC Reiner, ("Reiner"), by and through his attorneys, Hooper Hathaway, P.C., for his complaint, alleges the following against Defendants, Saginaw Valley State University ("SVSU") and the SVSU Board of Control ("Board") (collectively "Defendants").

JURISDICTION, VENUE AND PARTIES

1. This is an action for copyright infringement arising under the copyright Act of 1976, 17 U.S.C. 101 *et seq.* This court has original, exclusive and subject matter jurisdiction under 28 U.S.C. 1331, 1338 and 133817 U.S.C. 411(a).

2. Reiner is an award-winning professional fashion and fine-art photographer with over 20 years of experience in the industry and commands significant fees for the creation and licensing of his photographs.

3. SVSU is a public, not-for-profit corporation with its main campus located in Saginaw, Michigan.

4. The SVSU Board of Control is the governing body of SVSU.

5. The amount in controversy exceeds \$75,000.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Reiner's claims arose in this District.

FACTS

7. Reiner is an award winning and well-known professional fashion and fine art photographer.

8. Reiner commands significant fees for the creation and licensing of his photography.

9. Reiner is the creator of the photograph titled *Nikki* which is attached to this Complaint as **Exhibit 1** (“The Work”).

10. Reiner owns a United States Copyright Office registration for The Work issued in 2004 and registered under number VAu00065 1 781. A true and correct copy of the registration is attached to this Complaint as **Exhibit 2**.

11. Reiner's VAu00065 1 78 1 registration of The Work is in full force and effect, and the Work has at all times been owned exclusively by Reiner.

12. VAu0065 1781 is one of Reiner’s “signature images”.

13. On or about April 28, 2014, Reiner learned that the image attached as Exhibit 1 was included in course and other materials made available to SVSU students.

14. More specifically, upon information and belief, at least one SVSU student, Hannah Frank (“Frank”) used Reiner’s image to create an advertisement for domestic violence shelter as part of a class assignment. The advertisement is attached as **Exhibit 3**.

15. Defendants encourage students to use works created in class or for class assignments to promote themselves to potential employers either while in school or after graduation.

16. Upon information and belief, Frank provided her work, containing VAu0065 1781, Reiner's signature image, to prospective employers and others outside of SVSU to secure employment and for other reasons.

17. The Work provided by Defendants to students did not contain copyright information nor were students advised to seek permission from the owner of the work before using it for any purpose.

18. Defendants, including the course instructor, did not have or obtain a license or permission to use The Work.

19. Upon information and belief, Defendants maintain policies regarding the use of copyrighted material. The policy does not require instructors to provide it or similar information to students, does not require for strict adherence and does not require instructors to educate their students on the copyright policy or relevant laws and regulations (**Exhibit 4** – Copyright Policy).

20. Neither Defendants nor the instructor obtained a license to use any of Reiner's work and specifically not The Work.

21. By letter dated August 18, 2015, Reiner, through his former counsel, notified SVSU that the use of The Work by SVSU was in violation of United States copyright law. The letter also demanded that SVSU cease and desist from further use of The Work.

22. Defendants denied that they violated any copyright laws and refused Plaintiff's offers to resolve this matter short of litigation.

23. Defendants' illegal acts include, but are not limited to, failing to obtain a broad license for the use of The Work or any other copyrighted work owned by Reiner; and inducing, causing or materially contributing to the infringement by one or more students in violation of the Copyright Act and Defendants' Copyright Policy.

24. Defendants failed to direct or assist its students in obtaining permission to license or use The Work.

25. By failing to obtain a license for use of The Work or other works by Reiner and allowing students access to and use of The Work and other works by Reiner, both in and outside of the school setting, Defendants have profited from the name, reputation and signature image of Reiner.

26. By reason of Defendants' infringement, Reiner has sustained and will continue to sustain substantial injury, loss and damage to his ownership rights in The Work.

COUNT I - COPYRIGHT INFRINGEMENT
(17 U.S.C. §§106 and 501)

27. Reiner incorporates by this reference each and every averment contained in paragraphs 1 through 26, inclusive.

28. Reiner is the creator, author, and sole owner of the copyright for The Work, VAu000651781.

29. The Work has been duly registered with the U.S. Copyright Office.

30. Defendants, (also including the course instructor, acting within the scope of his or her employment with SVSU), provided The Work to students for their use, both in and outside of the University setting, without first or ever obtaining a license, waiver, or permission from Reiner.

31. At least one student, Frank, used The Work to create a class assignment and later, incorporated The Work in her portfolio and used The Work to secure employment.

32. The Work was seen by students, instructors and numerous individuals and company representatives without there ever being a license or permission to use The Work granted by Reiner.

33. Through their conduct, Defendants have infringed on Reiner's copyright in violation of the U.S. Copyright Act, 17 U.S.C. §§106 and 501.

34. Defendants' acts of infringement are willful, intentional and purposeful, in disregard of and with indifference to Reiner's rights.

35. The harm to Reiner continues to accrue and Reiner is without an adequate remedy at law. Reiner is, therefore, entitled to preliminary and permanent

injunctive relief to restrain and enjoin Defendants, its officers, directors, agents, employees, representatives and all persons acting in concert with them from engaging in further acts of copyright infringement.

36. Additionally, Reiner is entitled to recover damages sustained by him as a result of Defendants' copyright infringement in an amount to be proven at trial.

37. Reiner is also entitled to his attorneys' fees and full costs pursuant to 17 U.S.C. §505 and otherwise according to law.

**COUNT II – VIOLATION OF COPYRIGHT INFRINGEMENT
(17 U.S.C. §§106 and 501)**

38. Reiner incorporates by this reference each and every averment contained in paragraphs 1 through 37, inclusive.

39. Upon information and belief, The Work provided by Defendants to students did not contain copyright information or Reiner's name.

40. The advertisement created by Frank which includes The Work lacks the copyright notice and Reiner's name.

41. The removal of the copyright notice and Reiner's name was intentional.

42. The wrongful removal of copyright information is a violation of sec. 1202(b) of the Digital Millennium Copyright Act, 17 U.S.C. 1202 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Reiner requests that the court enter judgment:

1. Declaring that Defendants have violated the U.S. Copyright Act.
2. Declaring that Defendants have violated the Digital Millennium Copyright Act.
3. Declaring that Reiner is the sole and exclusive owner of The Work.
4. Ordering that Defendants, its officers, directors, agents, servants, employees, attorneys, and any other person in active concert or participation with them, be permanently enjoined from:
 - a. Using any substantial part or whole of The Work;
 - b. Causing likelihood of confusion of the distinctiveness of The Work;
 - c. Otherwise infringing on The Work, such as using it in course materials, and making it available or accessible to students in any format and for any reason without, in advance, obtaining a license, waiver or written permission from Reiner.
5. In addition, ordering Defendants to deliver up and destroy all goods, devices literature, advertising and other material that incorporate The Work and to confirm its destruction, filing, within fifteen days after the service of an injunction, a reply, in writing under oath, setting forth in detail the manner and form in which it has complied with the injunction.

6. Awarding Reiner actual or statutory damages suffered as a result of Defendants' acts of copyright infringement.
7. Awarding Reiner his attorneys' fees and costs.
8. Granting Reiner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

HOOPER HATHAWAY, P.C.

Dated: May 16, 2016

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