

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TC REINER,

Plaintiff,

vs.

Case No. 1:16-cv-11728

Hon. Paul D. Borman

SAGINAW VALLEY STATE UNIVERSITY,
a Michigan non-profit corporation; THE BOARD
OF CONTROL OF SAGINAW VALLEY STATE
UNIVERSITY; HANNAH FRANK; and JANE DOE,

Defendants.

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State University and The Board of Control
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FIRST AMENDED COMPLAINT

Plaintiff, TC Reiner, ("Reiner"), by and through his attorneys, Hooper Hathaway, P.C., for his First Amended Complaint, alleges the following against Defendants, Saginaw Valley State University ("SVSU"), the SVSU Board of Control ("Board"), Hannah Frank and Jane Doe (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. Hannah Frank is a student who used the photograph at issue in a class assignment and later as part of her résumé which she provided to numerous employers.

6. Jane Doe is a faculty member employed by Defendant SVSU and, upon information and belief, copied and supplied the protected materials to her students.

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

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

FACTS

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

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

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

12. 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**.

13. 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.

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

15. 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.

16. More specifically, upon information and belief, at least one SVSU student, Defendant 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**.

17. 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.

18. Upon information and belief, Frank provided her work, containing V Au0065 1781, Reiner’s signature image, to prospective employers and others outside of SVSU to secure employment and for other reasons.

19. 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.

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

21. 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).

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

23. 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.

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

25. 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.

26. Defendants failed to direct or assist their students in obtaining permission to license or use The Work.

27. 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.

28. 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)

29. Reiner incorporates by this reference each and every averment contained in paragraphs 1 through 28, inclusive.

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

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

32. 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.

33. 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.

34. 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.

35. 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.

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

37. 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, their officers, directors, agents, employees, representatives and all persons acting in concert with them from engaging in further acts of copyright infringement.

38. 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.

39. 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)**

40. Reiner incorporates by this reference each and every averment contained in paragraphs 1 through 39, inclusive.

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

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

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

44. 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, their 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: October 25, 2016

BY: /s/Francyne B. Stacey
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INDEX OF EXHIBITS

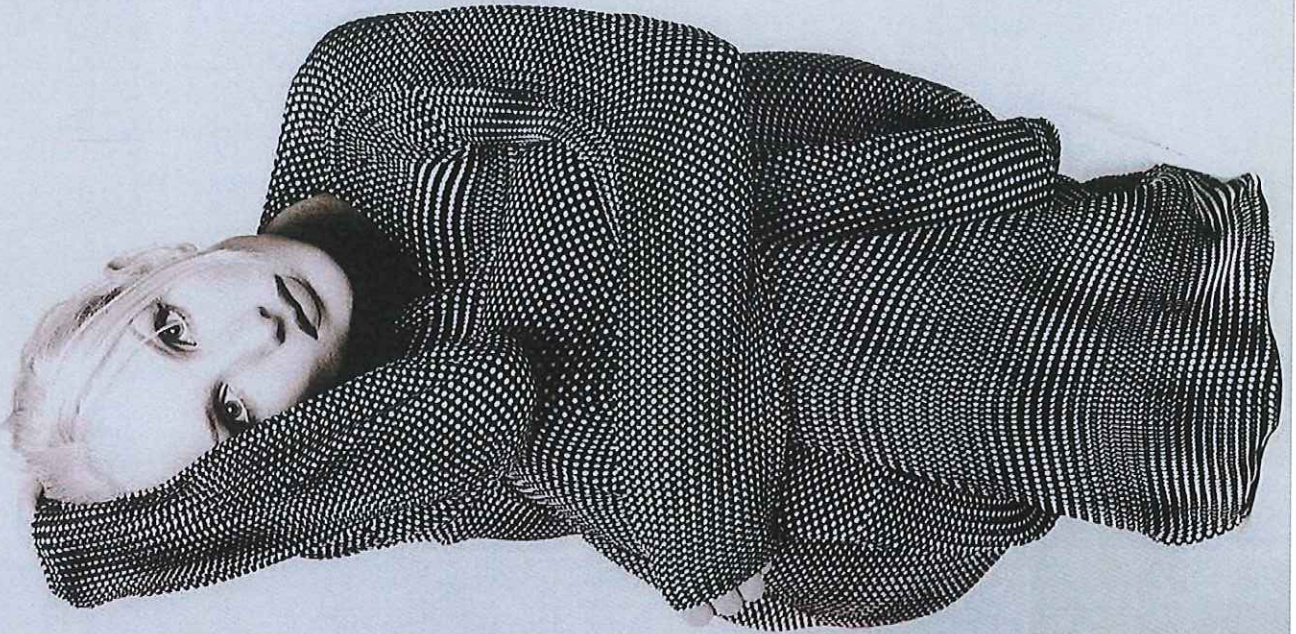
EXHIBIT 1: Photograph entitled “*Nikki*”

EXHIBIT 2: United States Copyright Office registration number V Au00065 1781

EXHIBIT 3: SVSU Advertisement

EXHIBIT 4: SVSU Copyrighted Material Policy

EXHIBIT 1



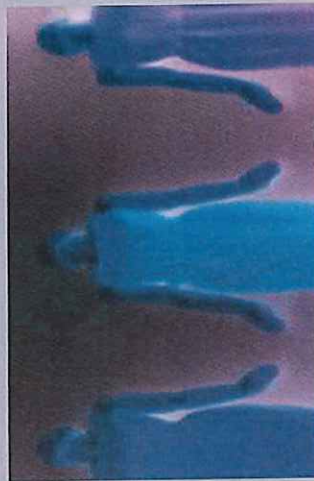
044-135 TO FINDER



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1106-107 Brenda Halsey



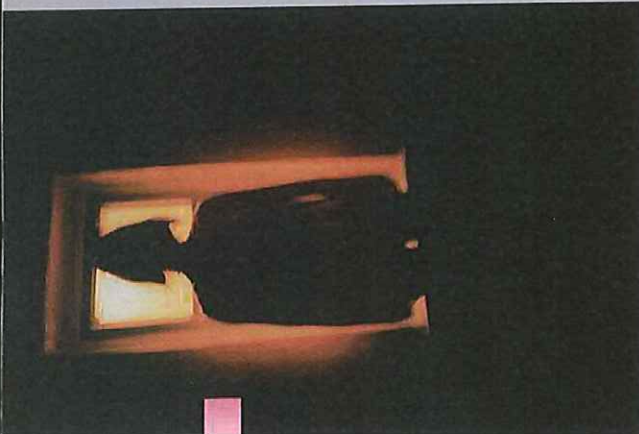
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1106-5688 Roger Alyn Lee



1219-105 Tina Rose



1175-107 Erik Linn



1109-108 Jorrie Mier



887-530 Neil & Molly Jenson

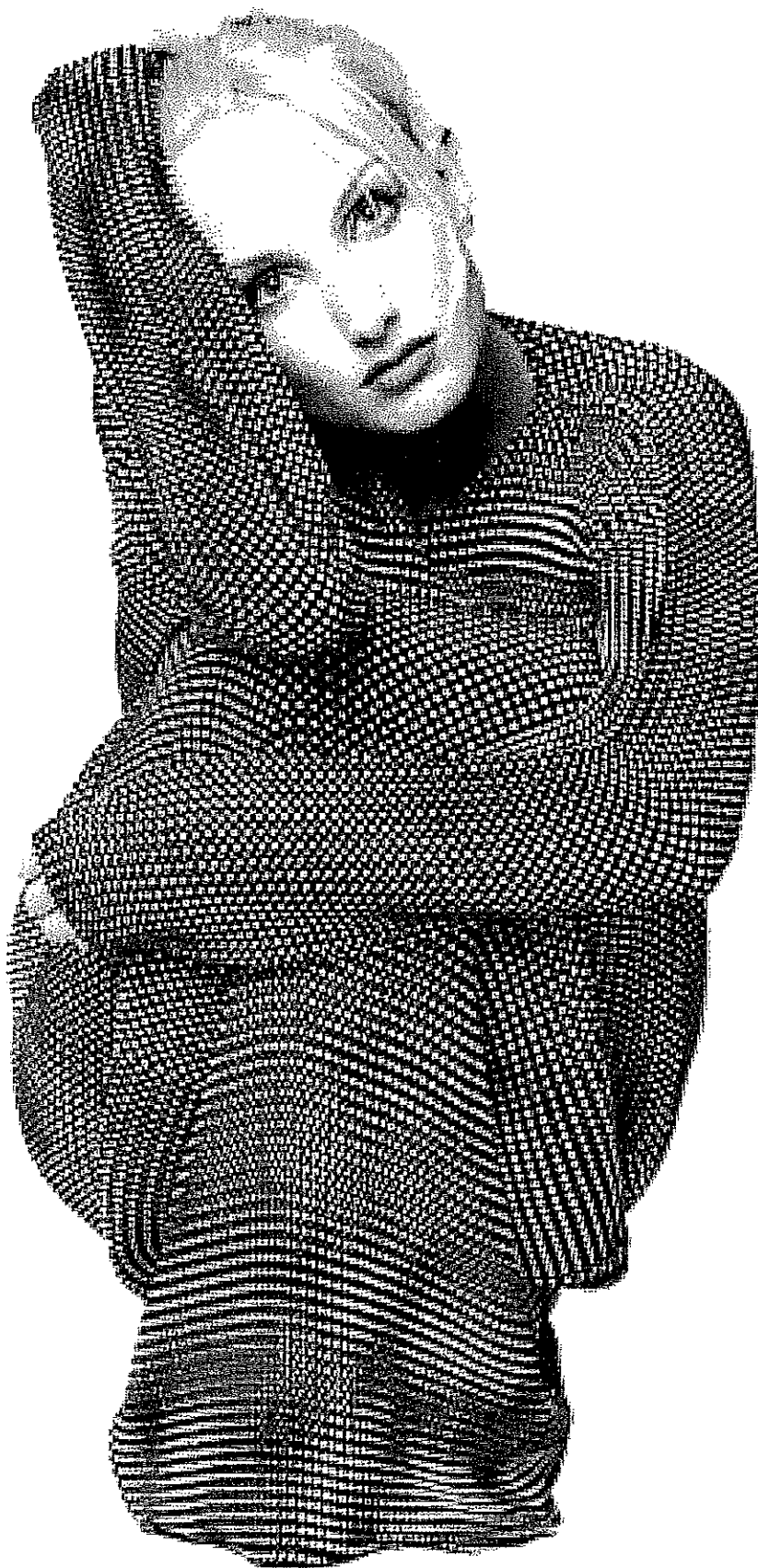


EXHIBIT 2

Copyright

United States Copyright Office

The Copyright Office Online Public Catalog will NOT be available from 5:00pm on Friday, August 28 until 6:00am on Monday, August 31 due to a planned power outage for essential maintenance. See [News and Announcements](#) for more information.

[Help](#)[Search](#)[History](#)[Titles](#)[Start Over](#)

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = VAu000651781

Search Results: Displaying 1 of 1 entries

[◀ previous](#) [next ▶](#)[Labeled View](#)*2004 music & fashion.***Type of Work:** Visual Material**Registration Number / Date:** VAu000651781 / 2004-12-06**Title:** 2004 music & fashion.**Description:** Photos.**Copyright Claimant:** T. C. Reiner, 1963-**Date of Creation:** 2004**Copyright Note:** Cataloged from appl. only.**Names:** Reiner, T. C., 1963-[◀ previous](#) [next ▶](#)**Save, Print and Email (Help Page)**

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EXHIBIT 3

Ask We'll Help...

Violence against women is an
endemic problem. Violence is the only
crime that women are most likely to
experience. And, unfortunately, the most
common and persistent type of violence
and fear. This is because violence against
women is often hidden in plain sight.

It's not just
a crime against women, it's a crime
against society.



For more information, visit
www.nvawa.org



EXHIBIT 4

1.0-6 COPYRIGHT POLICY

New media create new questions. One of those questions concerns copyright, which becomes an issue for both the faculty and students who use electronic media. As Dr. Frederick Erbis, Director of the Office of Intellectual Property at Michigan State University, emphasized in his address to the faculty, we must pay attention to copyright issues for both legal and ethical reasons.

The Saginaw Valley State University Policy Regarding Copyright briefly outlines those parts of the U.S. Copyright Law which apply to educational institutions. These copyright guidelines apply to all materials used in our courses: texts, videotapes, music, Internet resources, and the like. The Resources for Copyright Questions can provide more detailed information if you have questions or wish to explore the issue further.

Please review these guidelines carefully. You may also wish to share relevant parts and resources with your students. When we practice academic integrity in our own use of sources and copyrighted materials, we model the kind of ethical behavior we expect from our students, and foster "the creation and maintenance of an environment wherein trust and intellectual freedom are the foundation for individual and institutional growth and success" (Bill of Rights and Responsibilities for Electronic Learners) .

The simplest way to avoid potential breach of copyright, of course, is to request permission to use an author's or publisher's materials. If you wish to request permission to use copyrighted materials in a course or on a course webpage, the Sample Copyright Permission Letter may be used as a guide. See also the Release of Student Work for Publication form for including student work on a webpage or in course materials.

You may also wish to contact the Copyright Clearance Center (see Resources for Copyright Questions). Through its collective licensing agreements, it can provide an efficient way to secure copyright permissions for its several million titles. The Copyright Clearance Center is also in the process of developing an Academic Electronic Reserves Service.

Contact the University Writing Program at (989) 964-6061 with any questions.

Adopted 8/12/99 VP-AA