



Joel B. Rothman

Board Certified in Intellectual Property Law

Direct: [REDACTED]

June 14, 2021

VIA EMAIL: [REDACTED]

Re: Affordable Aerial Photography, Inc. v. [REDACTED].
Our File: 00022-0130

Dear [REDACTED],

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your first priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write on behalf of our client Affordable Aerial Photography, Inc., a photograph licensing agent, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim and refer them to the enclosed demand pursuant to § 627.4137, Florida Statutes, for insurance information in this matter.

Affordable Aerial Photography, Inc. ("AAP")

Robert Stevens, owner of Affordable Aerial Photography, Inc., is a high-end real estate photographer who makes his living photographing million dollar homes for real estate agents. Stevens is an employee of his company, AAP, which provides photo shoots to a client's specifications. Stevens is self-taught, but his photographs rival those taken by photographers who charge thousands more. AAP licenses its photos to agents pursuant to a written license. The license is granted only to the agent for whom the photos were taken.

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AAP retains all copyrights to its photographs. AAP licenses its copyrighted Works, such as the one in this case, for commercial use.

AAP created the images, hereinafter referred to as the "Works."

The Works at issue are shown below. At the time the Works were created, AAP applied Copyright Management Information to the images.



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AAP registered the Works with the Register of Copyrights on January 27, 2014 and was assigned the registration number VA 1-896-890, a copy of which is enclosed.

Infringement by [REDACTED]

We have enclosed contemporaneous evidence of the infringement by [REDACTED]. In addition to the infringement, AAP's photograph was very obviously cropped as shown on the attached. You have employed our client's Work in at least the manner indicated in the evidence attached. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease

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and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

Damages

Copyright law provides several different elements of compensation to AAP when a work is infringed or altered. Section 504 permits AAP to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. AAP can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. AAP's photographs are of the highest quality. AAP's photographs are also scarce since it is one of the only sources of such quality photographs.

AAP's damages are not limited to what it would have agreed to license the Work for prior to the infringement. Rather, AAP's actual damages will be measured by the fair market value of the photograph considering [REDACTED] use to sell and promote its business. AAP's actual damages must be measured in light of [REDACTED] use of AAP's high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term "actual damages" to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, AAP can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits AAP to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages." Therefore, AAP will also be

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entitled to █████ profits from the infringement, based upon the revenue █████ earned in connection with the use of AAP's Work.

Alternatively, AAP could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that █████ infringement was willful. If █████ infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

There is also the issue of the removal of AAP's copyright management information. 17 USC 1203(c)(3)(B) permits AAP to recover statutory damages of not less than \$2,500 or more than \$25,000 per violation of the prohibition against alteration or removal of copyright management information contained in Section 1202. Based upon █████ removal of AAP's CMI, AAP will seek the maximum statutory damages of \$25,000 per photograph against RSS for this violation.

Demand

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by June 28, 2021, we will take further steps to protect our client's rights.

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We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/tsu
Enclosures

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