

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**BRIAN HARNESS d/b/a
BRIAN HARNESS PHOTOGRAPHY,**

Plaintiff

v.

**FOREVER 21 RETAIL, INC.,
FOREVER 21, INC., AMIR ASLAN
BIGLARBEGI-TAJBAKHSB d/b/a
AMIR TAJ DESIGN,**

Defendants.

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CA No. _____

JURY DEMANDED

PLAINTIFF’S ORIGINAL PETITION

1. Plaintiff, Brian Harness d/b/a Brian Harness Photography (“Harness” or “Plaintiff”), for his complaint against Defendants, Forever 21 Retail, Inc. (“F21R”), and Amir Aslan Biglarbegi-Tajbakhsh, d/b/a Amir Taj DESIGN (“AMIR”), and Forever 21, Inc. (F21”), and collectively called “Defendants,” alleges:

JURISDICTION/VENUE

2. Harness’ claims arise under the copyright laws of the United States, 17 U.S.C. 101 *et seq.*, (hereinafter the Copyright Act.), and 17 U.S.C. § 1202 *et seq.* of the Digital Millennium Copyright Act (“DMCA”).

3. Subject matter and personal jurisdiction is vested in this Court pursuant to 28 U.S.C. 1338. Additionally, this Court has subject matter jurisdiction under 28 U.S.C. 1331 inasmuch as this claim arises under the copyright laws of the United States. Venue in this judicial district is proper pursuant to 28 U.S.C. 1400(a) and 28 U.S.C. 1391(b) and (c).

THE PARTIES

4. Plaintiff, is an individual citizen of Texas engaged in the business of professional photography, and who resides and has a principal place of business in Dallas, Dallas County, Texas.

5. F21 is in the business of marketing and sales of clothing and accessories online, and in brick and mortar stores in dozens of states, including Texas. Its principal place of business is in California.

6. F21R is in the business of marketing and sales of clothing and accessories online, and in brick and mortar stores in dozens of states, including Texas. Its principal place of business is in California.

7. Amir is an individual believed to reside in California, and is in the architectural design business.

INTRODUCTORY FACTS

8. Harness is a professional photographer, and is the author (photographer) of, and at all times relevant to this claim, has been and is now the sole owner and proprietor of all right, title and interest in and to the copyrights in certain photographs known as "*Brian Harness Photography Collection 2006 Vol. II*" ("**Exhibit A,** Registration). Seven photographs deposited with this registration were originally created by Plaintiff for advertising use by F21 ("**Exhibit D,** Images; "**Exhibit B,**" signed Agreement and Terms and more legible, unsigned Agreement and Terms, "**Exhibit C**").

Harness has complied in all respects with Title 17 of the United States Code (Copyright Act of 1976) and all other United States laws governing copyrights, and has secured the exclusive rights and privileges in and to the copyrights to the above-described photographs.

9. Harness owns certain rights in and to Copyright Registration Number VAu 711-840 issued by the U. S. Registrar of Copyrights in Washington, D.C. for photographs deposited with and covered by said registration **(Exhibit A)**.

10. Harness's copyrights in the above-described works are presently valid and subsisting, and was valid and subsisting from the moment of their creation in the year 2006, and all conditions precedent to the filing of this suit have occurred.

CONTEXTUAL FACTS

11. In April of 2006, an employee of either F21R or F21, Si Takeda, contacted Harness about creating some images of said defendants' newest store in Dallas. Ms. Takeda explained that the images would be used for display use at the International Council of Shopping Centers (ICSC) conference. Thereafter, Harness transmitted the initial agreement to Ms. Takeda on or about April 13, 2006, and Harness received it back from Takeda on April 20, 2006; it had been signed by someone named "Chang Lee" **(Exhibits B and C)**.

12. After performing the photography work, Ms. Takeda selected the images F21R or F21 wished to license. Harness sent the 9 images selected along with his standard delivery memo and terms and conditions dated May 11, 2006 to Ms. Takeda **(Exhibit J)**.

13. F21R paid the invoice by check dated April 26, 2006 **(Exhibit K)**.

INFRINGEMENT FACTS

14. On April 8, 2013, Harness discovered two of his works **(Exhibit D)** were being used – without license or other authorization – on the website of a Chinese realty company, Elite Apac. **(Exhibit E and F, Screen Captures)**.

15. Then, on July 20, 2013, Harness discovered seven of his works from that shoot (**Exhibit D**) were being used – again without license or other authorization – on the website of an architectural design company owned by Amir. (**Exhibit G, Screen Capture**).

16. Harness then engaged Counsel who demanded that Elite, Amir and F21/F21R cease and desist their unauthorized uses of his works, and which put F21/F21R on notice of their violations of the license (**Exhibit H, Letter**). Elite and Amir quickly stopped using Harness' works; Amir removed them from his web site, and Elite took down the entire website where Harness' works had been displayed (**Exhibit I, Screen Captures**).

17. The only way Elite or Amir could have acquired possession of such high-resolution versions of Harness' works is from F21 or F21R; an attorney for Amir has confirmed in writing that, *“Forever 21 provided the photos to him (Amir).”*

CAUSES OF ACTION

18. Plaintiff re-alleges and incorporates, as if set forth herein, paragraphs 1 through 16 above.

19. F21R, F21, and Amir¹ have infringed Plaintiff's copyrights in and to the above-described images by scanning, copying, reproducing, distributing, publishing and/or otherwise using, unauthorized copies of said photographs within the United States in violation of the copy rights of Title 17.

¹Harness would have named Elite, too, but could not find a presence for the company or its principals within the United States of America. Gaining personal jurisdiction over a foreign national corporation and individuals is incredibly difficult, time-consuming, and the likelihood of collecting any judgement is slim.

20. Additionally, F21R and/or F21 breached the agreement, and thereby violated 17 U.S.C. §101, *et seq* in the following particulars:

1. It exceeded the 90 day license grant of ¶ C;
2. It removed CMI from images given to Elite and Amir in violation of ¶ G;
3. It altered the works by cropping and changing the color in violation of ¶ J;
4. It failed to provide copies to the Author of each use, violating ¶ M;
5. It assigned/transferred license to Amir and Elite in violation of ¶ N (“Miscellaneous”); *and*
6. In other ways to be discovered during litigation.

21. Additionally, one or more of the Defendants violated the DMCA by removing Harness’ copyright management information (“CMI”).

22. In creating the derivatives identified above, one or more of the Defendants intentionally removed and/or omitted Plaintiff’s CMI from copies of Plaintiff’s works.

23. One or more of the Defendants distributed copies or derivatives of such works knowing that such CMI had been removed or omitted without authorization.

24. At the time F21/F21R and/or Amir removed Plaintiff’s copyright management information from copies of his works, and at the time they distributed copies of the works from which the copyright management information had been removed or omitted, said Defendants knew or had reasonable grounds to know that such behavior would induce, enable, facilitate, and/or conceal the infringement of Plaintiffs' copyrights.

25. Plaintiff is entitled and seeks to recover statutory damages from Defendants not exceeding \$25,000 for *each act* committed in violation of his rights under 17 U.S.C. § 1202.

26. Pursuant to 17 U.S.C. § 1203(b)(5), Plaintiff is entitled and seeks to recover his reasonable attorneys fees.

CAUSATION/DAMAGES

27. As a direct and proximate result of Defendants’ above-described acts of copyright infringement and DMCA violations, Harness has sustained actual damages in an amount not yet

ascertained, but which is believed to be in excess of \$1,000,000. Such actual damages include, but are not limited to, lost profits and/or lost licensing revenue, disgorgement of defendants' profits attributable to their infringements, statutory damages, research time tracking down and documenting the infringements, attorney time spent placing joint infringers on notice of the infringements, and getting the images removed from servers and web sites. In addition to damages for copyright infringement, Plaintiff seeks recovery of DMCA penalties as set out in paragraph 24 above.

RELIEF REQUESTED

28. Harness demands an accounting by Defendants of their activities in connection with their infringements of his copyrights in and to the above-described and attached works, as well as their gross profits and income derived therefrom.

29. Harness is entitled and seeks to recover actual damages plus the profits of Defendants attributable to the infringements, as well as DMCA penalties not exceeding \$25,000 for each act committed of his rights under 17 U.S.C. § 1202.

30. Alternatively, because the image was registered prior to Defendants' infringements, Harness is entitled to and seeks to recover statutory damages up to but not exceeding \$150,000 (One Hundred Fifty Thousand Dollars) for each work infringed, plus reasonable and necessary attorneys fees.

HARNESS DEMANDS JUDGMENT AS FOLLOWS:

31. Defendants, their agents, employees and/or servants be enjoined *pendente lite* and permanently from infringing Harness' copyrights in any manner whatsoever, and from publishing through any visual media, and from selling, marketing or otherwise distributing any of his images;

32. That Defendants be required to deliver up, under oath, for impounding during the pendency of this action, and for destruction thereafter, all images which infringe Harness' copyrights, and all prints, film negatives, magnetic tapes, digitally scanned and/or stored images, and all other articles

by means of which such infringing copies may be reproduced, which are in the possession or under the direct or indirect control of Defendants;

33. That Defendants be required, jointly and severally, to pay over to Harness his actual damages sustained, in addition to all their profits attributable to the infringements, and which are not taken into account in computing Harness' actual damages incurred as a result of Defendants' copyright infringements described herein;

34. That Defendants provide an accounting of all gains, profits and advantages derived by them as a result of the willful and unlawful acts of copyright infringement above-described;

35. That Defendants jointly and severally be ordered to pay to Harness his costs and attorney's fees; and

36. That Harness have such other and further relief as this court shall deem just and proper.

Plaintiff, Brian Harness d/b/a Brian Harness Photography, demands a jury trial in this cause of action.

Respectfully submitted,



By: _____

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