

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEIL ZLOZOWER,

Plaintiff,

- against -

SPOTIFY USA, INC.,

Defendant.

Docket No. 18-cv-11451

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Neil Zlozower (“Zlozower” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Spotify USA, Inc. (“Spotify” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of rock band Motley Crue, owned and registered by Zlozower, a California based professional photographer. Accordingly, Zlozower seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Zlozower is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 660 N. Sweetzer Avenue, #303, Los Angeles, CA 90048.

6. Upon information and belief, Spotify is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a principle place of business in this judicial district at 45 West 18th Street, 7th Floor, New York, NY 10011. Upon information and belief Spotify is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Spotify has owned and operated a website at the URL: <https://open.spotify.com> (the “Website”).

7. Spotify is a for-profit commercial entity in the business of publishing and distributing copyrighted content. Upon information and belief Spotify has a sophisticated understanding of United States Copyright Law.

8. The Website offers online streaming music services, including paid subscriptions, to tens of millions of users, and features substantial third-party advertising.

9. The Website boasts over three million users and listeners on its Motley Crue band page.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

10. Zlozower photographed Motley Crue (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

11. Zlozower is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

12. The Photograph was registered with the United States Copyright Office and was given registration number VA 1-921-391 and titled “MOTLEY CRUE STUDIO 1985 NZ 07.jpg.” See Exhibit B.

B. Defendant’s Infringing Activities

13. Prior to November, 2018, Spotify was using the Photograph as the banner inner on the Motley Crue band page of their Website promoting Motley Crue’s music. See URL: <https://open.spotify.com/artist/0cc6vw3VN8YIIcvr1v7tBL>. A true and correct copy of the article is attached hereto as Exhibit C.

14. Spotify did not license the Photograph from Plaintiff for its Website, nor did Spotify have Plaintiff’s permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

15. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

16. Spotify infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Spotify is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

17. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

18. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff’s rights.

19. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

20. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

21. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Spotify be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 7, 2018

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