

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4	Adrian Boot,)	
)	
	Plaintiff,)	Case No:
)	
5	v.)	COMPLAINT
)	
6	Rhapsody International, Inc.,)	DEMAND FOR JURY TRIAL
)	
7	Defendant.)	
)	

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10 Plaintiff Adrian Boot (“*Plaintiff*”), by and through its undersigned counsel, for its
11 Complaint against Defendant Rhapsody International, Inc. (“*Defendant*”) states and alleges as
12 follows:

13 **INTRODUCTION**

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15 1. This action seeks to recover damages for copyright infringement under the
16 Copyright Act, 17 U.S.C §101 *et seq.*

17 2. Plaintiff created a photograph of musician Lincoln Barrington “Sugar” Minott (the
18 “*Photograph*”) in which Plaintiff owns the rights and licenses for various uses including online
19 and print publications.

20 3. Defendant is a music streaming company which owns and operates a website at
21 URL: napster.com (the “*Website*”).

22 4. Defendant, without permission or authorization from Plaintiff, actively copied
23 and/or displayed the Photograph on the Website and engaged in this misconduct knowingly and in
24 violation of the United States copyright laws.

25 5. Plaintiff Adrian Boot is an individual who is a citizen of the United Kingdom and
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1 who resides in Dorset, England.

2 6. Upon information and belief, Defendant Rhapsody International Inc, is a Delaware
3 corporation with a principal place of business at 1411 4th Avenue, Seattle in King County,
4 Washington.

5 **JURISDICTION AND VENUE**

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7 7. This Court has subject matter jurisdiction over the federal copyright infringement
8 claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

9 8. This Court has personal jurisdiction over Defendant because it maintains its
10 principal place of business in Washington.

11 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Defendant does business in
12 this Judicial District and/or because a substantial part of the events or omissions giving rise to the
13 claim occurred in this Judicial District.

14 **FACTS COMMON TO ALL CLAIMS**

15 **A. Plaintiff's Copyright Ownership**

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17 10. Plaintiff is a professional photographer by trade who is the legal and rightful owner
18 of certain photographs which Plaintiff commercially licenses.

19 11. Plaintiff has invested significant time and money in building Plaintiff's photograph
20 portfolio.

21 12. Plaintiff has obtained active and valid copyright registrations from the United States
22 Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others
23 are the subject of pending copyright applications.

24 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
25 protectable copyright interests.
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1 14. On January 9, 1990, Plaintiff authored the Photograph. A copy of the Photograph
2 is attached hereto as Exhibit 1.

3 15. In creating the Photograph, Plaintiff personally selected the subject matter, timing,
4 lighting, angle, perspective, depth, lens and camera equipment used to capture the image.

5 16. On June 20, 2018, the Photograph was registered by USCO under Registration No.
6 VA 2-107-388.

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8 **B. Defendant's Infringing Activity**

9 17. Defendant is the registered owner of the Website and is responsible for its content.

10 18. The Website is a key component of Defendant's popular and lucrative commercial
11 enterprise.

12 19. The Website is monetized in that it provides music streaming services and, upon
13 information and belief, Defendant profits from these activities.

14 20. On or about August 28, 2020, Defendant displayed the Photograph on the Website
15 at URL: <https://us.napster.com/artist/sugar-minott>. A copy of a screengrab of the Website
16 including the Photograph is attached hereto as Exhibit 2.

17 21. The Photograph was stored at URL:
18 <https://direct.rhapsody.com/imageserver/images/Art.4060/356x237.jpg>.

19 22. Without permission or authorization from Plaintiff, Defendant volitionally copied
20 and/or displayed Plaintiff's copyright protected Photograph on the Website.

21 23. Plaintiff first observed and actually discovered the Infringement on March 15,
22 2022.

23 24. Upon information and belief, the Photograph was copied and displayed by
24 Defendant without license or permission, thereby infringing on Plaintiff's copyrights in and to the
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1 Photograph (hereinafter all of the unauthorized uses set forth above are referred to as the
2 “*Infringement*”).

3 25. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
4 tangible medium of expression that was sufficiently permanent or stable to permit it to be
5 communicated for a period of more than a transitory duration and therefore constitutes a specific
6 infringement. *17 U.S.C. §106(5)*.

7
8 26. The Infringement is an exact copy of the vast majority of Plaintiff’s original image
9 that was directly copied and displayed by Defendant on the Website.

10 27. Upon information and belief, Defendant takes an active and pervasive role in the
11 content posted on its Website, including, but not limited to copying, posting, selecting,
12 commenting on and/or displaying images including but not limited to Plaintiff’s Photograph.

13 28. Upon information and belief, the Photograph was willfully and volitionally posted
14 to the Website by Defendant.

15 29. Upon information and belief, the Infringement was not posted at the direction of a
16 “user”, as that term is defined in 17 U.S.C. §512(c).

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18 30. Upon information and belief, Defendant was aware of facts or circumstances from
19 which the determination regarding the Infringement was apparent. Defendant cannot claim that it
20 was not aware of the infringing activities, including the specific Infringement which form the basis
21 of this complaint, since such a claim would amount to only willful blindness to the Infringement
22 on the part of Defendant.

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24 31. Upon information and belief, Defendant engaged in the Infringement knowingly
25 and in violation of applicable United States copyright laws.

26 32. Upon information and belief, Defendant had complete control over and actively
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1 reviewed and monitored the content posted on the Website.

2 33. Upon information and belief, Defendant has the legal right and ability to control
3 and limit the infringing activities on its Website and exercised and/or had the right and ability to
4 exercise such right.

5 34. Upon information and belief, Defendant monitors the content on its Website.

6 35. Upon information and belief, Defendant has received a financial benefit directly
7 attributable to the Infringement.

8 36. Upon information and belief, the Infringement increased traffic to the Website and,
9 in turn, caused Defendant to realize an increase in the revenues generated via its music streaming
10 services.

11 37. Upon information and belief, a large number of people have viewed the unlawful
12 copies of the Photograph on the Website.

13 38. Upon information and belief, Defendant at all times had the ability to stop the
14 reproduction and display of Plaintiff's copyrighted material.

15 39. Plaintiff created the Photograph with the intention of it being used commercially
16 and for the purpose of display and/or public distribution.

17 40. Defendant's use of the Photograph harmed the actual market for the Photograph.

18 41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential
19 market for the Photograph.

20 42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

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24 **FIRST COUNT**
25 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

26 43. Plaintiff repeats and incorporates by reference the allegations contained in the
27 preceding paragraphs, as though set forth in full herein.

1 44. The Photograph is an original, creative work in which Plaintiff owns a valid
2 copyright.

3 45. The Photograph is properly registered with the USCO and Plaintiff has complied
4 with all statutory formalities under the Copyright Act and under regulations published by the
5 USCO.
6

7 46. Plaintiff has not granted Defendant a license or the right to use the Photograph in
8 any manner, nor has Plaintiff assigned any of its exclusive rights in the copyright to Defendant.

9 47. Without permission or authorization from Plaintiff and in willful violation of
10 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced,
11 distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating
12 one of Plaintiff's exclusive rights in its copyrights.

13 48. Defendant's reproduction of the Photograph and display of the Photograph
14 constitutes willful copyright infringement.

15 49. Upon information and belief, Defendant willfully infringed upon Plaintiff's
16 copyrighted Photograph in violation of Title 17 of the U.S. Code, in that Defendant used,
17 published, communicated, posted, publicized, and otherwise held out to the public for commercial
18 benefit, Plaintiff's original and unique Photograph without Plaintiff's consent or authority, by using
19 it on the Website.
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21 50. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
22 to an award of actual damages and disgorgement of all of Defendant's profits attributable to the
23 infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at
24 Plaintiff's election, an award for statutory damages against Defendant for each infringement
25 pursuant to 17 U.S.C. § 504(c).
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1 51. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in
2 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
3 pursuant to 17 U.S.C. § 505 from Defendant.

4 52. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled
5 to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.
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7 **JURY DEMAND**

8 53. Plaintiff hereby demands a trial of this action by jury.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

11 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights
12 to the Photograph in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary
13 relief as follows:
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- 15 a. finding that Defendant infringed Plaintiff's copyright interest in and to the
16 Photograph by copying and displaying it without a license or consent;
- 17 b. for an award of actual damages and disgorgement of all of Defendant's
18 profits attributable to the infringements as provided by 17 U.S.C. § 504(b)
19 in an amount to be proven or, in the alternative, at Plaintiff's election, an
20 award for statutory damages against Defendant for each infringement
21 pursuant to 17 U.S.C. § 504(c), whichever is larger;
- 22 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any
23 infringing use of any of Plaintiff's works;
- 24 d. for costs of litigation and reasonable attorney's fees against Defendant
25 pursuant to 17 U.S.C. § 505;
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- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: March 28, 2023

SANDERS LAW GROUP

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