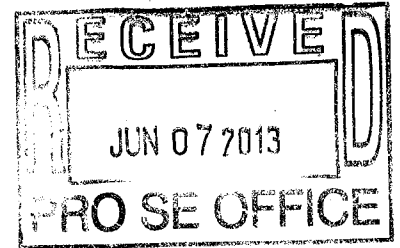


13 CV 3910

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Kai T Eiselein, Pro Se

Plaintiff

COMPLAINT

v

Plaintiff demands trial by jury

Buzzfeed, Inc

Defendant

Civil no:

-
1. At all times hereinafter mentioned, plaintiff was and still is a resident of Moscow, Latah County, Idaho.
 2. Defendant, Buzzfeed Inc., is a corporation incorporated under the laws of New York and having a main office at 54 West 21st Street, 11th Floor, New York, NY 10010.
 3. The jurisdiction of this court is invoked pursuant to 28 USC > Part IV > Chapter 85 > § 1338 (a)
 4. On October 12, 2009 the plaintiff posted a photograph titled "Contact" to his photostream at www.flickr.com. The specific web address for the photograph is: <http://www.flickr.com/photos/eiselein/4006046187/>
 5. A copyright notice appears on each page where the photograph appears, along with the phrase "All rights reserved". In addition, right clicking on the image brings up a copyright notice.
 6. The photograph was registered with the United States Copyright Office on June 25, 2011 as part of a collection of photographs taken by the plaintiff. The copyright registration number is VAu001069945.

7. The plaintiff asserts that the defendant knowingly and willfully infringed on the plaintiff's copyright by placing a copy of the photograph on the website www.buzzfeed.com, specifically <http://www.buzzfeed.com/mjs538/the-30-funniest-header-faces> without the plaintiff's knowledge or consent beginning on or about June 14, 2010. The photograph was one of thirty (30) photographs that Matt Stopera, an employee of Buzzfeed, Inc. gathered together into a collection. Willfulness is further borne out by the fact that seven of the other images in the collection bear watermarks.

8. The plaintiff sent Buzzfeed, Inc. a takedown notice in accordance with the Digital Millennium Copyright Act of 1998 on May 26, 2011 after finding the infringement. The photograph in question then disappeared from the collection.

9. Since Mr. Stopera is an employee of Buzzfeed, Inc. The "Safe Harbor" provision of Title II of the Digital Millennium Copyright Act of 1998 (DMCA) does not apply in this case.

10. Buzzfeed, Inc. is an online aggregator which gathers items from around the internet, posts them on their website and encourages their visitors/readers to share them. In fact, Buzzfeed touts that a survey found 75 percent of their readers visit the site looking for items to share. According to Buzzfeed, Inc. the site attracts 15 million visitors each month. Buzzfeed uses this fact to help convince potential advertisers to place ads on the Buzzfeed site in hopes that the ad will get a "viral lift" from the content being shared and reach a wider audience.

11. Buzzfeed, Inc. actively encourages its users to share content, regardless of whether or not that content is owned by, or licensed to, Buzzfeed. The plaintiff asserts that Buzzfeed, Inc. is responsible for 61 contributory infringements upon his photograph.

12. The plaintiff asserts that Buzzfeed, Inc. has failed to remove the infringing image from its server despite receiving a DMCA takedown over two years prior. Therefore Buzzfeed, Inc. has continued to infringe upon the image. The web address of the infringing image is:

<http://s-ak.buzzfed.com/static/enhanced/terminal01/2010/6/14/8/enhanced-buzz-20279-1276518405-1.jpg>

13. The plaintiff further asserts that by refusing to remove the infringing image, Buzzfeed, Inc. is bypassing the plaintiff's user-set copyright controls on www.flickr.com. These controls include copyright notices on each page where the image appears, a right click popup announcing copyright information and the disabling of right click downloading. Therefore Buzzfeed, Inc. is in violation of Section 1201 of the Copyright Act which prohibits bypassing copyright controls.

14. The plaintiff is an award winning professional photographer. Mr. Eiselein has licensed his images both by direct contact and through representation. The image in question has been requested by Getty Images for licensing through them; however the plaintiff feels the marketability of the image has been irretrievably damaged by the scope of the infringement and has not agreed to Getty's request.

15. Since the direct infringement by Buzzfeed, Inc. and 41 of the 64 contributory infringements began before the effective copyright registration date of the image, June 25, 2011, the list of contributory infringements will be broken into two parts: before and after the date of registration.

16. Infringements occurring before June 25, 2011:

- a) June 16, 2010: <http://www.friki.net/fotos/47520-caras-graciosas-en-el-futbol.html>
- b) June 16, 2010: <http://photos.funkruti.com/2010/06/funny-emotions-during-head-impacts-not.html>
- c) June 17, 2010: http://muz4in.net/news/lica_vo_vremja_udara_golovoj/2010-06-17-7835
- d) June 17, 2010: <http://zavalinka.in/index.php?newsid=15651>
- e) June 17, 2010: <http://amusing-pics.blogspot.com/2010/06/funny-header-faces.html>
- f) June 17, 2010: <http://curiousphotos.blogspot.com/2010/06/funny-emotions-during-head-impacts-not.html>
- g) June 17, 2010: <http://amazingworldofpics.blogspot.com/2010/06/funny-header-faces.html>
- h) June 17, 2010: <http://www.linklup.com/2010/06/17/pozisyona-giren-futbolcularin-komik-surat-ifadeleri/>
- i) June 17, 2010: <http://xaxor.com/index.php/funny-pics/10314.html>
- j) June 17, 2010: <http://trinixy.ru/45936-smeshnye-yemocii-vo-vremya-udarov-golovoj-30-foto.html>
- k) June 17, 2010: <http://acidcow.com/pics/10671-funny-header-faces-30-pics.html>

- l) June 17, 2010: <http://www.coolpicturegallery.us/2010/06/funny-emotions-during-head-impacts-not.html>
- m) June 17, 2010: <http://ns2.onlinemedia.com.ua/8999-smeshnye-momenty-vo-vremya-futbola-30-foto.html>
- n) June 18, 2010: <http://www.juokai.lt/galvos-sutrenkimas/1555/>
- o) June 18, 2010:
http://vasi.net/community/prikoly/2010/06/18/smehnye_jemocii_vo_vremja_udarov_gol_ovojj.html
- p) June 18, 2010:
http://izismile.com/2010/06/18/some_of_the_funniest_header_moments_41_pics.html
- q) June 18, 2010: <http://clubbing.kapanlagi.com/threads/99209-Funniest-Header-Moment-di-Sepak-Bola>
- r) June 18, 2010: <http://www.rulez-t.info/humor/12122-yemocii-pri-udare-golovoj-po-myachu.html>
- s) June 18, 2010: <http://yume.vn/news/cate/subcate/da-banh-de-om.35A61FD2.html>
- t) June 18, 2010: <http://www.vp10.net/komedi-bolumu/37044-kafa-vurusu-sirasinda-komik-yuz-ifadeleri.html>
- u) June 18, 2010: <http://yume.vn/tieugiaochi/article/da-banh-de-om.35CEC45A.html>
- v) June 18, 2010: <http://www.humorsharing.com/headache/311>
- w) June 20, 2010:
<http://www.xylker.com/blog/4192555e893644d9810c9d9b009f6cb3.html>
- x) June 20, 2010: <http://dynammeet.ru/blog/pictures/4809.html>
- y) June 21, 2010: <http://2krota2.ru/pictures/3476-udary-golovoj-v-futbole-30-foto.html>
- z) June 21, 2010: <http://article.yeeyan.org/view/156584/112337>
- aa) June 21, 2010: <http://ociodocotidiano.blogspot.com/>

- bb) June 22, 2010: <http://votrube.ru/15858-smeshnye-jemocii-20-foto.html>
- cc) June 24, 2010: <http://www.killmydaynow.com/2010/06/funny-header-faces-of-soccer-players-30-pics.html/>
- dd) July 4, 2010:
http://fullimg.crazys.info/1278177045/1278176953_1276925698_1276858626_funny_header_faces_14.jpg
- ee) July 17, 2010: <http://mudrila.ru/2010/07/17/sport-11/#more-2429>
- ff) August 3, 2010: http://www.htspor.com/dunya_futbolu/haber/538669-binbir-suratlar-galeri
- gg) September 1, 2010: <http://ex.by/9386-lica-vo-vremya-udara-golovoj-30-foto.html>
- hh) October 10, 2010: <http://sweetsourmilk.com/ever-heard-of-headball/>
- ii) November 13, 2010: <http://sport.oboz.ua/news/2010/6/18/75285.htm>
- jj) November 29, 2010: <http://www.oversodoinverso.com/as-cabeceadas-mais-engracadas-dos-ultimos-tempos/>
- kk) February 2, 2011: <http://www.dogguie.com/caras-graciosas-en-el-futbol/>
- ll) February 3, 2011: <http://spa.wtfeed.com/posts/Fotograf-de-Caras-Graciosas-en-F-l-218441.html>
- mm) March 23, 2011: <http://life-stor.livejournal.com/267125.html>
- nn) March 2011: <http://chiburyastik.ru/yumor/4234-jemocii-pri-udare-golovojj-po-mjachu.html>
- oo) April 10, 2011: <http://likeblogs.blogspot.com/2011/04/head-trick-konyol-bukan-dari-piala.html>
17. Infringements occurring after June 25, 2011:
- a) July 18, 2011: <http://mants.ru/just/2307-yemocii-pri-udare-myacha-golovoj-30-fotografij.html>

- b) July 18, 2011: http://vasi.net/community/prikoly/2011/07/18/jemocii_pri_udare_mjacha_golovojj_.html
- c) July 19, 2011: http://iloledhard.com/2011/07/19/funny_images_of_people_heading_a_soccer_ball_30_pics.html
- d) July 20, 2011: <http://www.dont-panic.co.uk/ever-heard-of-headball/>
- e) July 20, 2011: <http://www.smilorama.com/ever-heard-of-headball/>
- f) July 20, 2011: <http://www.webpark.ru/comment/78236>
- g) July 20, 2011: <http://bipbap.ru/fan/903-smeshnye-fotografii-futbolistov-otbivayuschih-myach-golovoy.html>
- i) July 20, 2011: <http://amazing.funwithnet.com/2011/07/ever-heard-of-headball.html?m=1>
- j) July 20, 2011: <http://24warez.ru/main/article/sport/print:page,1,1157420770-igra-golovoy-30-foto.html>
- k) July 20, 2011: <http://www.eblogx.com/Bilder/19576/Die-Gesichter-der-Kopfbaelle/>
- l) July 20, 2011: <http://amazing.funwithnet.com/2011/07/ever-heard-of-headball.html?m=1>
- m) July 21, 2011: <http://fun.tochka.net/pictures/18622-same-smeshnye-futbolnye-momenty/>
- n) July 21, 2011: <http://empirefun.com/photography/739-funny-images-of-people-heading-a-soccer-ball-30-pics.html>
- o) July 21, 2011: <http://www.cha.lt/category/galerijos/63617-smugiai-galva.html>
- p) July 21, 2011: <http://doseng.org/prikol/63853-zabavnye-lica-futbolistov.html>
- q) July 22, 2011: <http://www.timeidol.ru/lovi-myach/>

- r) July 25, 2011: <http://smiah.net/?page=main&date=2011-07-25>
- s) July 2011: <http://wachalol.com/caras-divertidas-en-el-futbol-15-fotos/>
- t) August 5, 2011: <http://humor.deport.ru/humor216153.html>
- u) August 6, 2011: http://www.gadaadmongol.com/2011/08/foto_9861.html
- v) October 14, 2011: <http://pozitiv11.ru/iz-zhizni/lyapyi-kommentatorov>
- w) December 19, 2012: <http://footbik.uol.ua/text/4417134/>
- x) May 1, 2013: http://www.crazypicdump.com/2013/05/blog-post_1568.html

18: The plaintiff notes that many of the infringements display the images, including the image owned by the plaintiff, in a different order than what was on the BuzzFeed, Inc. site. However, the photographs remain the same as the ones originally chosen by BuzzFeed, Inc. employee Matt Stopera. Additionally, some sites have chosen to either not show all 30 images or have added more images. These changes do not take away from the fact that BuzzFeed, Inc. was the first site to display the images in a set; they are merely derivatives of what BuzzFeed, Inc. displayed on its site. The overwhelming bulk of the evidence points directly at the original infringement by BuzzFeed, Inc. on June 14, 2010. There is no evidence that any site containing this set of images did so before June 14, 2010.

19: Since BuzzFeed, Inc. was the original poster of this set of images and provided them for distribution; the defendant is unequivocally responsible both directly and indirectly for all subsequent infringements.

19: In addition, another website: <http://www.luuux.com/sport-fitness/does-playing-soccer-cause-brain-damage> copied the image from empirefun.com, listed above, on November 30, 2011. This infringement proves further the damage BuzzFeed, Incorporated's infringement has done to the plaintiff's image. The plaintiff holds that BuzzFeed, Inc. is liable for this infringement, as well.

20. **WHEREFORE**, the plaintiff demands:

Actual damages of \$550 per infringement for the primary infringement and each of the 41 contributory infringements occurring before June 25, 2011 for total of \$23,100.

Statutory damages in the amount of \$150,000.00, or as the court deems appropriate under 17 USC > Chapter 5 > § 504 for each of the 23 contributory infringements occurring after June 25, 2011 for a total of \$3,450,000.

Statutory damages in the amount of \$150,000.00, or as the court deems appropriate under 17 USC > Chapter 5 > § 504 for the contributory infringement by luuux.com,

Damages under the DMCA for bypassing the plaintiff's exclusive right of control in the amount of \$25,000, or as the court deems appropriate.

Permanent injunction against the defendant from using the plaintiff's photograph.

Court costs and fees.

Any further relief the court deems appropriate.

Kai T Eiselein

 RLO se

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