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2 (pro hac vice to be sought)
3 PUBLIC CITIZEN LITIGATION GROUP
4 1600 20th Street NW
5 Washington, D.C. 20009
6 Telephone: (202) 588-7725
7 plevy@citizen.org

8 PHILLIP R. MALONE
9 California Bar No. 163969
10 JUELGAARD INTELLECTUAL PROPERTY
11 AND INNOVATION CLINIC
12 Mills Legal Clinic at Stanford Law School
13 Crown Quadrangle, 559 Nathan Abbott Way
14 Stanford, California 94305-8610
15 Telephone: (650) 724-1900
16 pmalone@stanford.edu

17 Attorneys for Plaintiff MLTSHP, Inc.

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MLTSHP, INC.,

21 Plaintiff,

22 v.

23 7410, INC., THE ESTATE OF
24 LEIGH WIENER,

25 Defendant.

26 Civil Action No. 2:20-cv-1258

27 **COMPLAINT FOR**
28 **DECLARATORY RELIEF**

NATURE OF THE ACTION

1. This action for declaratory relief is brought against defendant 7410, Inc., The Estate of Leigh Wiener (“7410”). Wiener was a professional photographer.

2. Plaintiff MLTSHP, Inc., (“MLTSHP”) operates mltshp.com, an image-sharing site in which members are able to post and view each other’s submissions. Founded in May 2017, the site currently includes more than 100,000 images, with more than a hundred new posts appearing daily.

3. In 2013, a member of a separate image-sharing community that predated MLTSHP posted a photograph to that community at mlkshk.com. After mlkshk.com closed in 2017, a member of the MLTSHP community uploaded the image to mltshp.com. Neither

1 MLTSHP nor its owner, Jessamyn West, was aware of this posting, or of the fact that it
2 included a copyrighted photograph without permission, until they received a complaint
3 about it. Upon receiving the complaint, MLTSHP promptly removed the photo.

4 4. In October 2019, counsel for defendant sent West a demand letter accusing
5 MLTSHP of copyright infringement, threatening to sue for such infringement, and
6 demanding that she pay \$3500 to avoid such a lawsuit.

7 5. When MLTSHP did not pay any money, but responded through counsel citing
8 cases and facts that demonstrated that West and MLTSHP were not liable, defendant's law
9 firm sent repeated demands threatening suit unless payment was made.

10 6. MLTSHP now asks the Court for a judgment declaring that it is not liable for
11 copyright infringement.

12 **PARTIES**

13 7. Plaintiff MLTSHP is a Delaware corporation headquartered in Vermont. It
14 operates the image sharing site mltshp.com

15 8. Defendant 7410, Inc., The Estate of Leigh Wiener, is a corporation headquartered
16 in North Hollywood, California.

17 **JURISDICTION AND VENUE**

18 9. A definite, substantial, and concrete controversy exists within this Court's
19 jurisdiction between the parties concerning plaintiff's and defendant's rights under the
20 United States Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* Defendant, through counsel,
21 has expressed an intention to commence litigation against plaintiff over plaintiff's alleged
22 infringement of copyright.

23 10. This action for a declaratory judgment arises under the Copyright Act and the
24 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has original jurisdiction
25 over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

26 11. This Court has personal jurisdiction over the defendant because it is located in
27 California; because it used a California lawyer as its agent to send the demand letters and
28 other communications to plaintiff, threatening to sue it for copyright infringement; and

1 because it demanded that plaintiff enter into a settlement agreement that contained both a
2 California forum-selection clause and a California choice-of-law provision.

3 12. Venue is proper in this Court under 28 U.S.C. § 1400 because both 7410 and its
4 agent are located in this district.

5 **FACTUAL BACKGROUND**

6 13. In 2011, Andre Torrez and Amber Costley created an image-sharing site called
7 MLKSHK. It attracted a lively community of users, but outside pressures caused them to
8 close it down. In 2017, Jessamyn West organized the company MLTSHP, Inc., to continue
9 that image-sharing community. Community members pay modest dues for the right to access
10 images posted on the web site, to comment on others' images, and post images of their own.
11 The dues are intended to cover expenses.

12 14. By the close of 2019, mltshp.com had nearly a thousand members who had
13 uploaded more than 120,000 images since 2017, at a rate of more than 120 per day. There
14 is no advertising on the forum. The posting of images in violation of copyright is forbidden
15 by the site's terms of use; members do not receive any benefits from posting infringing
16 images; and the site does not obtain any benefit, including more revenue, from the posting
17 of infringing images

18 15. In 2014, a MLKSHK user posted to the earlier site, mlkshk.com, a photograph of
19 a San Francisco club marquee advertising a show by Miles Davis ("the Miles Davis marquee
20 photo"); the posting indicated that photo had been found on a blog devoted to jazz-related
21 photos. [https://jazzinphoto.wordpress.com/2012/12/07/photo-leigh-wiener-now-miles-](https://jazzinphoto.wordpress.com/2012/12/07/photo-leigh-wiener-now-miles-davis/)
22 [davis/](https://jazzinphoto.wordpress.com/2012/12/07/photo-leigh-wiener-now-miles-davis/). When MLKSHK folded and MLTSHP was formed in 2017, MLKSHK's users were
23 given the option of moving images over to the new site. One of those users, pheezy, took
24 advantage of that option, and posted the Miles Davis marquee photo. The photo remains in
25 place on the "Jazz in Photo" blog.

26 16. Plaintiff did not post the Miles Davis marquee photo, and it was unaware of the
27 posting until defendant's counsel wrote to it in October, 2019.

28 17. Unlike mlkshk.com, postings on MLTSHP are not generally available to the

1 public, but only to the registered users of MLTSHP. Only if an algorithm deems an image
2 to have been of particular interest will that image be moved automatically to the “popular”
3 thread, which is available to the general public; such images will also be tweeted by
4 MLTSHP’s “Best of MLTSHP” Twitter account.

5 18. The Miles Davis marquee photo was never on the “popular” thread, and
6 MLTSHP never tweeted it.

7 19. Plaintiff did not encourage the posting of the Miles Davis marquee photo on
8 pheezy’s account, and it has derived no financial benefit from the photo or the posting that
9 included it.

10 **DEFENDANTS’ ACTS COMPRISING ACTUAL CONTROVERSY**

11 20. Defendant’s attorney Mathew Higbee sent West a letter dated October 4, 2019,
12 claiming that MLTSHP was infringing the copyright of defendant 7410, because the Miles
13 Davis marquee photo had been located on MLTSHP, and demanding payment of \$3,500.
14 The letter is attached as Exhibit A.

15 21. The letter demanded that West contact Mr. Higbee’s firm in California to
16 negotiate an alternative settlement, and warned that unless West “cooperat[ed]” by either
17 paying the demanded amount or putting forward a counteroffer, “our only option is to
18 litigate the matter, which we frequently do, so please do not make the mistake of ignoring
19 this.” The letter further warned that in the event of litigation, defendant “will ask for the
20 maximum justifiable damages,” that “the demand amount will likely quadruple or more,”
21 and that MLTSHP “may also have to pay attorneys fees.” Indeed, the letter warned West
22 that she might be held personally liable, and face “wage garnishments and liens on
23 property.”

24 22. Accompanying the October 4 letter was a draft settlement agreement that
25 included a California forum selection clause and a California choice-of-law provision.
26 Access to that attachment was also made available through a web link identified in the
27 October 4 letter; defendant’s demand for payment and a credit-card payment mechanism
28 remain live on that link today. Copies of the attachments as available through that link are

1 included in Exhibit A.

2 23. MLTSHP took down the Miles Davis marquee photo within a day of receiving
3 defendant's letter.

4 24. MLTSHP responded to the letter through counsel, saying that if anyone had
5 infringed it was the MLTSHP user who posted the photo, that MLTSHP had no knowledge
6 of the posting of the photo, and that MLTSHP itself had not engaged in any volitional
7 conduct connected with the infringement. Over a series of responses, MLTSHP repeatedly
8 stated that it is shielded from either direct or secondary liability for a user's alleged
9 infringement, citing Ninth Circuit precedent.

10 25. An attorney from the Higbee firm responded by insisting that MLTSHP could not
11 be protected from liability because it had not registered an agent for the receipt of copyright
12 takedown notices until June 14, 2019. He said, "Here we are again! Another of my client's
13 works being used without permission/license and no legal excuse for the use." He asked
14 whether MLTSHP was willing to enter a settlement, "or must you face a judge?" In a
15 subsequent email, he asked whether, if MLTSHP was not willing to admit liability and
16 pay money as demanded, "will you be accepting service?" A copy of the email
17 exchange is attached as Exhibit B.

18 26. Defendant has not withdrawn its threats of litigation for copyright infringement
19 or in any way indicated that it no longer intends to pursue the litigation and damages claims
20 threatened in its initial letter and ensuing emails.

21 27. On information and belief, the Higbee firm uses image search software to scour
22 the Internet for photographs taken by its various clients, seeking to identify targets for
23 demand letters. Plaintiff does not know and has no way of knowing whether any of the
24 120,000-plus user posts to the mltshp.com site contain any of defendant's other
25 photographs. Plaintiff also has no way of knowing if or when defendant will send additional
26 demands and litigation threats regarding posts on the site that might include any of
27 defendant's other photographs.

28 28. Plaintiff believes that the inclusion by MLTSHP users in their posts of

1 copyrighted photographs, without plaintiff's knowledge, participation, or benefit, did not
2 constitute infringement for which plaintiff would be responsible. Moreover, plaintiff desires
3 to continue to allow users of MLTSHIP to upload images, subject to removal if it learns that
4 an image is infringing. However, given defendant's ongoing threats of litigation seeking
5 damages, which continued even after plaintiff immediately removed the user post containing
6 the Miles Davis marquee photo, plaintiff is compelled to bring this action to obtain a judicial
7 declaration of non-infringement.

8 **CAUSE OF ACTION**

9 29. A justiciable and actual controversy exists by way of defendant's credible threats
10 of immediate litigation seeking damages from the plaintiff.

11 30. Plaintiff is entitled to declaratory judgment that it is not infringing, has not
12 infringed, and is not liable for infringing any valid copyright owned by defendant based on
13 the posting by MLTSHIP users of any of defendant's photos to mltshp.com.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, plaintiff prays for relief against defendants as follows:

16 A. Declare that mltshp.com users' posting of defendant's photographs is not
17 infringement for which plaintiff is legally liable in the absence of plaintiff's volitional acts
18 or direct financial benefit from the alleged infringement;

19 B. Award plaintiff's costs and attorney's fees against defendants as allowed by law;
20 and

21 C. Grant such other or further relief as allowed by law and that the Court deems
22 appropriate.

23 DATED: February 7, 2020

PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, D.C. 20009

25 By: /s/ Paul Alan Levy
(pro hac vice to be sought)
26 Telephone: (202) 588-7725
plevy@citizen.org

27 JUELGAARD INTELLECTUAL PROPERTY
28 AND INNOVATION CLINIC

Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, California 94305-8610

By: /s/ Phillip R. Malone
California Bar No. 163969
Telephone: (650) 724-1900
pmalone@stanford.edu

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Exhibit A

October 04, 2019,
Re: Claim Number: 542035 FRE 408 Settlement Communication

Dear Jessamyn West,

Copyrighted work(s) owned by our client, 7410 Inc, The Estate of Leigh Wiener, were identified on MLTSHP Inc. website(s) (see attached screenshots). Unfortunately, we are unable to find any record of a license for such use. If you have a license, thank you for purchasing it. Please provide us the details at claims@higbeeassociates.com with the claim number (542035) included. Once we receive the license, we will close the claim and apologize for the brief intrusion.

The unauthorized use of our client's work deprives them of income and causes them to incur substantial costs in detection and enforcement.

If MLTSHP Inc. does not have a license, we believe the use of the work is a violation of The Copyright Act, Title 17 of the United States Code. My client has no desire to put you through any of the following, but I have an obligation to caution you about the seriousness of the matter. If forced to go to court to resolve the matter, my client will ask for the maximum justifiable damages. My client may also ask the court to order MLTSHP Inc. to pay their attorneys fees and court costs. Copyright lawsuits can result in judgments, wage garnishments and liens on property. In some instances, the business owner can be held individually liable. Please see the enclosed relevant section of the law and sources of additional information.

7410 Inc, The Estate of Leigh Wiener would prefer to resolve this matter outside of court and is willing to offer a complete release of all liability associated with this image for \$3500. This offer is made based on rather limited information available to 7410 Inc, The Estate of Leigh Wiener.

If you think this amount is disproportionate to the facts, please provide us with details about how long you used the work, the size of your business, any other ways the work was used, and any other details you deem relevant. Also provide a counteroffer for us to provide to 7410 Inc, The Estate of Leigh Wiener. We can be reached by email at claims@higbeeassociates.com or by phone at 800-716-1245. You may also wish to have an attorney contact us.

The overwhelming majority of these types of claims get resolved in a fair and efficient manner. However, without your cooperation, our only option is to litigate the matter, which we frequently do, so please do not make the mistake of ignoring this. If this matter is litigated, the demand amount may likely quadruple or more, and then you may also have to pay attorneys fees. If you have general business liability insurance, you may wish to contact your provider.

If we do not hear from you within 10 days, we will assume that you do not have a license and that you do not want to resolve this matter outside of court.

If you wish to simply resolve this claim without contacting us, you can view details of the claim and make a payment at the URL provided.

To resolve this matter efficiently and amicably out of court, please follow these steps:

(1) Within five business days after receipt of this letter, remove all occurrences of the image from your website(s), cease using it in any way, and confirm in writing that you have done so.

AND

(2) Within seven business days after receipt of this letter, return to our firm the attached Release License, along with your payment of **\$3500** made payable to **Higbee & Associates Client Trust Account**. This can be returned to us via US Mail. You can also pay over the phone or online at <http://copyright.higbeeassociates.com/resolution>. Your login is 542035. Your password is mc2lw0x2. If you choose to make your payment online, you can return the Release License via email to claims@higbeeassociates.com. Please include the case number (542035) in the subject line.

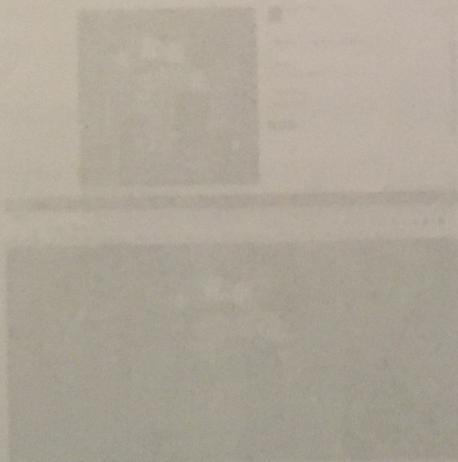
Please feel free to call or email us to discuss this matter, 800-716-1245 or send an email to claims@higbeeassociates.com

Sincerely,

Matthew K Higbee

Mathew K. Higbee
Attorney at Law

Infringing images and screenshots are shown below. You can receive copies of these images via email by sending a request to infringement@higbeeassociates.com. The email must include the case number (542035) in the subject line.



Higbee & Associates

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EXHIBIT A



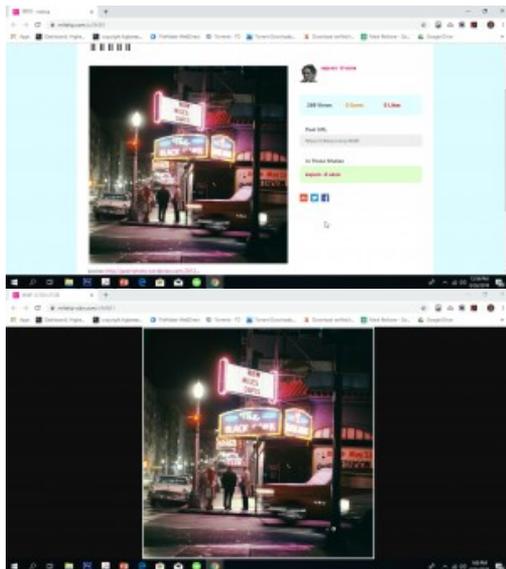
Infringing Webpages:

- <https://mltshp.com/p/M4B1>

Infringing File Locations:

- <https://mltshp-cdn.com/r/M4B1>

Infringing images and screenshots are shown below. You can receive copies of these images via email by sending a request to infringements@higbeeassociates.com. The email must include the case number (542035) in the subject line.



Higbee & Associates

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Mathew Higbee: CA # 241380, MI # P73980, MN # 0388759, NV # 11158, OR # 106514, UT # 11133, WA # 42755, TX # 24076924, IL # 6319929, OH #0094107 *

Ray Ngo: UT # 11936, NY # 4780706

Melissa Higbee: CA # 247998, AZ # 024644, FL # 62465, PA # 322114, NJ # 030812012, TN # 034677

Theodore Sell: CO # 44157

Taryn Murray: MA # 703750

Naomi Sarega: CA # 306967, IN # 34182-49 *

* Multiple additional federal courts

LETTER OF REPRESENTATION POWER OF ATTORNEY

RE: 7410, Inc, The Estate of Leigh Wiener

To Whom It May Concern:

Please be advised that the Law Firm of Higbee & Associates has been retained by 7410, Inc, The Estate of Leigh Wiener regarding a copyright infringement matter. As such, we have been appointed as attorney in fact with full power and authority in determining the validity of the above matter and assist in any negotiation, settlement, and payment. We are further authorized to pursue any legal remedies available to our client as a result of this matter. Any attorney, staff member or agent of Higbee & Associates is hereby authorized to discuss any effort to settle and resolve the above matter.

Effective immediately, all communication (mail, phone, electronic or otherwise) regarding the above matter must be forwarded to Higbee & Associates at:

Higbee & Associates
1504 Brookhollow Drive, Suite 112
Santa Ana, CA 92705
(714) 617-8385 Telephone

Sincerely,

Mathew Higbee Ray Ngo Melissa Clark Taryn Murray Naomi Sarega Theodore Sell

The undersigned have retained Higbee & Associates and grant full power and authority as described above.

Date:

Client: 7410, Inc, The Estate of Leigh Wiener

Signature:

Devik Wiener, CEO 5/2/19



RELEASE AND SETTLEMENT AGREEMENT

This RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into on February 06, 2020 ("Effective Date") by and between 7410 Inc, The Estate of Leigh Wiener("RELEASOR") and MLTSHP Inc. ("RELEASEE") (the "Parties" or individually the "Party").

The Parties agree as follows:

1. The Parties acknowledge and agree that this Agreement is made in resolution to the RELEASEE's alleged unlicensed use of image(s) referenced in the Exhibit(s) below ("Images").
2. RELEASOR hereby represents and warrants that it has the exclusive rights in the settlement and resolution of the claims related to the alleged unlicensed use of the copyrighted Images.
3. In consideration of the release and other consideration granted herein, RELEASEE will pay to RELEASOR the sum of \$3,500.00 by February 06, 2020. Upon Payment in full, RELEASOR will release RELEASEE from all copyright claims arising out of the use of the Images through the Effective Date.
4. Payment shall be made payable to "Higbee & Associates Client Trust Account" and delivered to 1504 Brookhollow Dr., Suite 112, Santa Ana, CA 92705. Payment may also be made online at <http://copyright.higbeeassociates.com/resolution>

ADDITIONAL TERMS AND CONDITIONS

5. Except for the agreements, obligations, and covenants arising under this Agreement, the Parties will release the other party from any and all claims arising from the use of the Images.
6. The Parties acknowledge that all terms of this Agreement are supported by legally sufficient consideration so as to make this Agreement binding and valid.
7. The terms of this Agreement are confidential; provided however, that each Party may disclose the terms of this Agreement, as necessary to enforce its terms, in response to valid legal process or as otherwise required by law, and/or to its financial advisors and/or legal advisors.
8. The Parties warrant that they have read and understand the provisions of this Agreement and have full authority to execute and consummate the transactions contemplated by this Agreement.
9. This Agreement may not be modified or amended except by written agreement, signed by all Parties.
10. This Agreement, along with its terms and conditions will be binding upon and inure to the benefit of each of the Parties and to their heirs, executors, administrators, successors in interest and assigns.
11. The Parties acknowledge that if any provision or application of this Agreement is held invalid or unenforceable then any such provision will be deemed severed from this Agreement and the remaining provisions and applications of this Agreement will not be affected, but will remain valid and enforceable.
12. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles, notwithstanding the fact that one or more counterparts hereof may be executed outside of such state, or one or more of the obligations of the Parties hereunder are to be performed outside of such state. Any suit, action or proceeding to determine, construe or enforce any provision of this Agreement, or the rights of any party hereunder, will be brought in the State of California, and the Parties agree that jurisdiction will lie therein.
13. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement, or to interpret or enforce any

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rights under this Agreement, the prevailing party is entitled to recover reasonable costs and attorney's fees from the other party.

14. Payments that are received more than 5 calendar days late will be accessed a \$40 late fee. Additionally, an interest rate based on a 15% annual will be charged on overdue balances after 30 days.

15. This Agreement constitutes and contains the entire agreement between the Parties with respect to the alleged unlicensed use referred to in this Agreement and there are no other agreements, understandings or representations with respect to this subject matter, which are not expressly set forth herein.

16. This Agreement can be signed in counterparts.

Jessamyn West
On Behalf of
RELEASEE(s)MLTSHP Inc.

Date



Mathew K. Higbee, Esq.
on Behalf of Licensor(s)
7410 Inc, The Estate of Leigh
Wiener

February 06, 2020

Date



CREDIT CARD PAYMENT AUTHORIZATION FORM

The Law Firm of Higbee & Associates offers interest-free payment plans through our automated billing system. Sign and complete this form to authorize the Law Firm of Higbee & Associates to make the agreed upon credit or debit card or ACH payments. RELEASEE agrees to pay the settlement amount of \$3,500.00 in 1 automatic payment.

By signing this form you give us permission to bill your credit/debit card or bank account for the amount indicated on the dates above plus any additional fees, penalties, or interest charges which have accrued in accordance with the Release and Settlement Agreement ("Settlement Agreement"). This is permission for all transactions related to the Settlement Agreement, and does not provide authorization for any additional unrelated charges.

Please complete the information below:

PAYMENT METHOD (Please Choose One & Provide Requested Information):

CREDIT CARD

Name as it Appears on Card: _____

Credit Card #: _____

Expiration Date: _____ CCV (Security Code): _____

Billing Address: _____

ACH / DIRECT DEPOSIT

Name on the Account: _____

Account Type: Savings Checking

Account #: _____

Routing #: _____

Bank Name: _____

I hereby authorize The Law Firm of Higbee and Associates to automatically bill my account on the dates indicated in the payment plan above.

PRINT NAME: _____

TITLE: _____

COMPANY: _____

Signature: _____ Date: _____

I authorize the above named business to charge the credit card indicated in this authorization form according to the terms outlined above. This payment authorization is for the goods/services described above, for the amount indicated above only, and is valid for the specified use only. I certify that I am an authorized user of this credit card and that I will not dispute the payment with my credit card company; so long as the transaction corresponds to the terms indicated in this form.

Exhibit B

From: Dan Booth dbooth@boothsweet.com
Subject: Re: Copyright Case 542035 - MLTSHP, Inc. - 7410 Inc.
Date: November 26, 2019 at 2:20 PM
To: Theodore Sell tsell@higbeeassociates.com
Cc: Cody Donnell cdonnell@higbeeassociates.com



Mr. Sell,

I have explained repeatedly that MLTSHP cannot be held liable for a Leigh Wiener photograph posted by one of its users that MLTSHP removed immediately upon notice. It had no reason to know that there was any infringement, or any claim of infringement, until the day it received Mr. Higbee's notice. No volitional act could support direct copyright infringement, and nothing MLTSHP did could constitute "inducing" infringement for contributory liability.

And as you must know, any claim of vicarious liability is also not tenable. Such a claim would require not just the legal right to police any infringement, but also a "practical ability to do so." *VHT, Inc. v Zillow Grp., Inc.*, 918 F.3d 723, 746 (9th Cir. 2019). MLTSHP did not and does not have the technical means to screen user-uploaded content to identify potential infringements, and the law does not require "ferreting out claimed infringement" from the thousands of images on the site, which would be "beyond hunting for a needle in a haystack." *Id.* Vicarious liability also requires a "direct financial benefit," which hinges on "whether there is a causal relationship between the infringing activity and any benefit a defendant reaps." *Erickson Prods. v. Kast*, 921 F.3d 822, 829 (9th Cir 2019). Specifically for website owners, "a direct financial benefit from the presence of infringing material" can be found only "where the availability of infringing material acts as a draw for customers." *Id.* "If the infringing material is just an added benefit, rather than a draw, it does not confer a direct financial benefit on the website owner." *Id.* No one paid MLTSHP for the chance to see Mr. Wiener's photograph, which is freely available elsewhere online, and it did not act as a draw for any customers.

Your last email asserted that "there is financial benefit in providing its users an opportunity to post works, sometimes of others as infringements." But as you must know, "the direct financial benefit prong of the vicarious infringement test demands more than evidence that customers were 'drawn' to [the website] to obtain access to infringing material in general." *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 674 (9th Cir. 2017). The benefit must derive from "infringement of the plaintiff's copyrighted material, rather than general infringement." *Id.* Under that standard, there is no basis to claim that a general "opportunity to post works" gives MLTSHP a sufficiently direct financial benefit tied to Mr. Wiener's photograph.

I should not have to do your legal research for you. Your law firm specializes in copyright infringement claims, so I expect you to know the law. Continuing to assert infringement against MLTSHP, despite binding legal precedent to the contrary, is simple harassment. We should have nothing further to discuss.

Happy holidays.

Dan Booth
Booth Sweet LLP
32R Essex Street #1A
Cambridge, MA 02139
boothsweet.com
617.250.8629

On Nov 26, 2019, at 11:51 AM, Cody Donnell <cdonnell@higbeeassociates.com> wrote:

Dear Mr. Booth,

According to our case notes, we are still waiting for a response from you, please have a response to my supervising attorneys email sent back on the 23rd of October.

The purpose of this email is to obtain an update in regards to the copyright infringement claim that we have been attempting to resolve. Please give me a call at (714) 597-8993 referencing claim number 542035 when calling. Or reply to this email:
cdonnell@higbeeassociates.com

Please let me know how you wish to resolve this matter moving forward.

Thank you for your time.

Cody Donnell
Senior Claims Resolution Specialist
Copyright Division

Claims Resolution Specialists are non-attorney staff members who assist attorneys in attempting to resolve

Claims Resolution Specialists are non-attorney staff members who assist attorneys in attempting to resolve copyright claims prior to litigation. All correspondence is reviewed by staff attorneys.

Law Offices of Higbee & Associates (<http://www.HigbeeAssociates.com>)
1504 Brookhollow Dr. Suite 112, Santa Ana, CA. 92705
DIRECT PHONE: (714) 597-8993
Phone: (800) 716-1245 - Fax: (714) 597-6559

<PastedGraphic-1.tiff>

CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

On Oct 23, 2019, at 12:19 PM, Theodore Sell <tsell@higbeeassociates.com> wrote:

Mr. Booth,

You are saying MLTSHIP receives no benefit from hosting and/or displaying the works of its users? When then does it incur the costs and liability of such? There is financial benefit in providing its users an opportunity to post works, sometimes of others as infringements. And, despite the availability of Safe Harbor, your client refused to avail itself of that Safe Harbor and, interestingly, still does not.

Theodore (Ted) W. Sell, Esq.
Colorado Bar No. 44157
Attorney at Law - Copyright Division
Law Firm of Higbee & Associates
1504 Brookhollow Dr. Suite 112
Santa Ana, CA 92705
<mailto:tsell@higbeeassociates.com>
Phone: (657) 229-6215

This electronic mail message and any attachment is confidential and may also contain privileged attorney-client information or work product. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, disseminate, distribute or copy this communication. If you have received the message in error, please immediately notify us by reply electronic mail or by telephone and delete this original message. Thank you very much.

On Oct 22, 2019, at 9:27 AM, Dan Booth <dbooth@boothsweet.com> wrote:

Mr. Sell,

As you acknowledged last month, volitional conduct is an element of direct copyright infringement. It cannot be found here. A website user uploaded the image. MLTSHIP's only volitional act was taking it down upon notice. So there is no basis to claim direct infringement. There is no basis to claim secondary liability either, as I told you on both September 20 and October 18: "MLTSHIP received no financial benefit from the use, so it is not vicariously liable. And MLTSHIP did not know of the use, much less induce it, so it has no contributory liability."

Considering these foundational principles of copyright liability, I ask again: what exactly do you think MLTSHIP did wrong? Not the uploader -- MLTSHIP. What is its infringing act? You have not identified anything it did that could make it liable for infringement.

Dan Booth
Booth Sweet LLP
32R Essex Street #1A
Cambridge, MA 02139
boothsweet.com
617.250.8629

On Oct 22, 2019, at 11:33 AM, Theodore Sell <tsell@higbeeassociates.com> wrote:

Mr. Booth,

The theory of liability is not hard to find. The DMCA provides a method of escape of liability to service providers, called Safe Harbor, and MLTSHIP did not avail itself to that Safe Harbor. This is not rocket science.

MLTSHIP displayed the work as it was on MLTSHIP. For MLTSHIP to divert liability to the user, it must have adhered to the DMCA, which - again - it did not do.

The infringement is clear and my client seeks restitution for the infringement of its copyright. Will there be a good faith effort at settlement? If not, will you be accepting service?

Theodore (Ted) W. Sell, Esq.
Colorado Bar No. 44157
Attorney at Law - Copyright Division
Law Firm of Higbee & Associates
1504 Brookhollow Dr. Suite 112
Santa Ana, CA 92705
<mailto:tsell@higbeeassociates.com>
Phone: (657) 229-6215

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On Oct 18, 2019, at 3:51 PM, dbooth@boothsweet.com wrote:

Mr. Sell,

Reading your email I search in vain for a theory of liability. You are threatening MLTSHIP, not the user who uploaded the image to its website. What exactly do you think MLTSHIP did wrong?

MLTSHIP did not infringe copyright. The user who uploaded the image was not acting on behalf of MLTSHIP. With no volitional act, and no agency relationship, MLTSHIP is not directly liable for the user's actions. There is also no basis for secondary liability. MLTSHIP received no financial benefit from the use, so it is not vicariously liable. And because MLTSHIP did not know of the use, much less induce it, it has no contributory liability. This is all Copyright 101.

Mr. Higbee is the second person ever to ask that any image on the website be taken down. As you recall, he was also the first. While I enjoy teaching these basic principles of copyright law, MLTSHIP should not have to pay me to provide his continuing legal education, or yours.

When MLTSHIP's agent received his letter, the image was taken down promptly, in compliance with the DMCA. And when your paralegal mentioned the image on the server, it was promptly removed. MLTSHIP did not know of the use before hearing from your firm. It responded with rectitude.

I'm authorized to offer that if you'll agree to a full release of all claims, then MLTSHIP will provide you a sworn affidavit attesting to all of the above.

Regards,

Dan Booth
Booth Sweet LLP
32R Essex Street #1A
Cambridge, MA 02139
boothsweet.com
617.250.8629

On Oct 18, 2019, at 11:58 AM, Theodore Sell <tsell@higbeeassociates.com> wrote:

Dan,

Here we are again! Another of my client's works being used without permission/license and no legal excuse for the use. No DMCA Safe Harbor. The claim is not frivolous as copyright exists from the moment the image was saved "to a tangible medium" 17 USC 102. And, if you'll recall, that copyright registration in that other case was the USCO's fault

rights in the work. If you have any questions, please contact us. We appreciate your attention to this matter, and we are sorry that you had to deal with this issue. We will be happy to discuss this matter with you, and we will be happy to discuss this matter with you, and we will be happy to discuss this matter with you.

The DMCA provides you Safe Harbor for your user's actions only if you complied with the DMCA, which you had not. My client is willing to resolve this in settlement, are you or must you face a judge?

Theodore (Ted) W. Sell, Esq.
Colorado Bar No. 44157
Attorney at Law - Copyright Division
Law Firm of Higbee & Associates
1504 Brookhollow Dr. Suite 112
Santa Ana, CA 92705
<mailto:tsell@higbeeassociates.com>
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From: Dan dan@danboothlaw.com
Subject: Re: Copyright (Legal) - 741 Inc/Estate of Leigh Wiener - MLTSHP Inc. - 542035
Date: October 16, 2019 at 11:38 PM
To: Cody Donnell cdonnell@higbeeassociates.com

Mr. Donnell,

Thank you for your note. You are not an attorney, but one is your supervisor, and for that you have my sympathies.

Earlier this year, a non-attorney at your firm wasted months of my time giving me the runaround over an incorrectly identified copyright registration. I will not discuss Mr. Higbee's claims with a non-litigator again. Life is too short.

His claims against MLTSHP are totally frivolous, as I grow tired of explaining. I cannot conceive a good faith basis to hold MLTSHP liable for a user's acts uploading an image, without any knowledge or volitional conduct by MLTSHP, and without MLTSHP receiving any financial benefit from the use.

Regards,

Dan Booth
Dan Booth Law LLC
60 Thoreau Street #121
Concord, MA 01742
646-573-6596
dan@danboothlaw.com

On Oct 16, 2019, at 1:42 PM, Cody Donnell <cdonnell@higbeeassociates.com> wrote:

Dear Dan Booth,

Hello, my name is Cody Donnell and I am a case manager here at the law firm of Higbee & Associates and will be your point of contact going further.

Our clients do appreciate the removal of the image on the website. Please have your client also remove the image from their server location which is located at this URL: <https://mltshp-cdn.com/r/M4B1>

At this time we were able to confirm that MLTSHP was registered as an ISP through the copyright office but I was not able to confirm registration before June 2019. Since this image was posted 6 years ago we would need confirmation that MLTSHP was registered before the upload of the image. If you could provide that to me that would be great for my supervising attorneys' review of your DMCA claim.

Thank you for your time.

<20191016 Current DMCA 542035.png>
<PastedGraphic-2.png>

Cody Donnell
Senior Claims Resolution Specialist
Copyright Division

Claims Resolution Specialists are non-attorney staff members who assist attorneys in attempting to resolve copyright claims prior to litigation. All correspondence is reviewed by staff attorneys.

Law Offices of Higbee & Associates (<http://www.HigbeeAssociates.com>)
1504 Brookhollow Dr. Suite 112, Santa Ana, CA. 92705
DIRECT PHONE: (714) 597-8993
Phone: (800) 716-1245 - Fax: (714) 597-6559

<PastedGraphic-2.tiff>

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On Oct 16, 2019, at 8:57 AM, Infringements Team <infringements@higbeeassociates.com> wrote:

Best,
Jessica

Begin forwarded message:

From: Dan Booth <dbooth@boothsweet.com>
Subject: Case no 542035 - 741 Inc/Estate of Leigh Wiener - MLTSHIP Inc.
Date: October 15, 2019 at 5:06:16 PM PDT
To: claims@higbeeassociates.com

Dear Mr. Higbee,

I write on behalf of MLTSHIP, Inc., in response to your letter dated October 4, 2019, sent to Jessamyn West, the registered DMCA agent for mltshp.com.

The work identified in your letter was promptly taken down upon receipt, pursuant to 17 U.S.C. § 512(c).

Thank you for your notification.

Regards,

Dan Booth
Booth Sweet LLP
32R Essex Street #1A
Cambridge, MA 02139
boothsweet.com
617.250.8629

From: Cody Donnell cdonnell@higbeeassociates.com
Subject: Copyright (Legal) - 741 Inc/Estate of Leigh Wiener - MLTSHP Inc. - 542035
Date: October 16, 2019 at 1:43 PM
To: dbooth@boothsweet.com



Dear Dan Booth,

Hello, my name is Cody Donnell and I am a case manager here at the law firm of Higbee & Associates and will be your point of contact going further.

Our clients do appreciate the removal of the image on the website. Please have your client also remove the image from their server location which is located at this URL: <https://mltshp-cdn.com/r/M4B1>

At this time we were able to confirm that MLTSHP was registered as an ISP through the copyright office but I was not able to confirm registration before June 2019. Since this image was posted 6 years ago we would need confirmation that MLTSHP was registered before the upload of the image. If you could provide that to me that would be great for my supervising attorneys' review of your DMCA claim.

Thank you for your time.

Copyright © 2019
DIGITAL MILLENNIUM COPYRIGHT ACT

Service Provider History: Effective: June 14, 2019 to Present (Active)

Service Provider/Designated Agent Information	Alternate Address
Service Provider: MLTSHP 2310 S. State - Box 345 Randolph, VT 05690 Designated Agent: Jesse Lynn West MLTSHP Box 345 Randolph, VT 05690 Phone: 802-234-8910 Email: jesse.lynn@mltshp.com Status: Active Effective: June 14, 2019 to Present	Alternate Address: MLTSHP Inc. mltshp.com Showing 1 to 2 of 2 entries Previous Next

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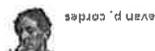
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- "Active" refers to the service provider's current designation.
- "Inactive" refers to an older designation that is no longer in use by the service provider and has been succeeded by a newer designation.
- "Terminated" refers to a designation that is no longer active and for which the service provider has not provided any succeeding designation.

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269 Views 0 Saves 0 Likes

Post URL
<https://mltshp.com/pr/M4B1>



In These Shakes

supra: 'd uew



source: <http://jazznphoto.wordpress.com/2012...>

originally posted by O_C

6 years ago

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Follow The MLTSHIP User!

Cody Donnell
Senior Claims Resolution Specialist
Copyright Division

Claims Resolution Specialists are non-attorney staff members who assist attorneys in attempting to resolve copyright claims prior to litigation. All correspondence is reviewed by staff attorneys.

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