

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARLA FRIEDMAN,

Plaintiff,

v.

SUCCESSORIES.COM, LLC and
TWS PARTNERSHIP, LLC,

Defendants.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Marla Friedman (“Ms. Friedman”), by and through her attorneys, hereby complains of Defendants Successories.com, LLC and TWS Partnership, LLC (collectively “Defendants”) as follows:

PARTIES

1. Marla Friedman resides in Wilmette, Illinois, and is a nationally renowned artist who has built a considerable body of work. One such body of work, the Abraham Lincoln portrait, which is statutorily protected and duly registered with the Copyright Office, is the subject of this litigation.

2. Defendant Successories.com, LLC (“Successories”) is a Florida limited liability company with its principal place of business at 1040 Holland Drive, Boca Raton, Florida 33487. Successories was originally founded in 1985 by Arnold M. “Mac” Anderson in Aurora, Illinois.

3. Successories is an industry leader for motivational and inspirational products, and maintains its web site at www.successories.com. In addition to offering its own products for sale in the United States through its web site, its web site includes a platform that allows customers to customize and personalize their own recognition products. The platform contains exclusive

images from renowned photographers and artists from around the world, including Ms. Friedman.

4. Defendant TWS Partnership, LLC (“TWS”) is a Florida limited liability company with its principal place of business at 1040 Holland Drive, Boca Raton, Florida 33487. On information and belief, in late 2008, TWS acquired Successories.

JURISDICTION

5. This is an action for copyright infringement brought under the Copyright Act, 17 U.S.C. §§ 101 et seq. This court has original and exclusive jurisdiction of the copyright claim(s) in this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). This Court has subject matter jurisdiction over the related state law claim under 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in this judicial district. Defendants market and sell the accused infringing products throughout the United States and in this judicial district by, *inter alia*, means of the www.successories.com web site. In particular, at <http://www.successories.com/ordering-shipping>, Defendants show a map of the United States, and specify that shipping time to Illinois is three (3) days. Defendants also offer contact information to customers in this judicial district on its web site at <http://www.successories.com/contact-us>, such as a phone number at 1-800-535-2773 and an e-mail address at ContactUs@successories.com. Defendants offer “live chat” to customers in this judicial district through their web site at www.successories.com. Through Defendants’ website at www.successories.com, customers are permitted to “Create Your Own” product, which includes and encompasses the infringed work, as further set forth below in this Complaint. In addition, Defendants’ products, including the accused infringing products, are marketed and sold through a variety of third party web sites, as further set forth below in this Complaint, which also ship to this judicial district, including, for example, Amazon at www.amazon.com. By the

foregoing and more, Defendants have engaged in acts and omissions within this judicial district causing injury to Plaintiff. In addition, Defendants have engaged in acts outside of this judicial district causing injury to Plaintiff within this judicial district, as Plaintiff resides in this judicial district. Finally, the oral contract pertaining to the related state law claim was entered into in this judicial district. Thus, Defendants have established minimum contacts with this judicial district in at least the aforementioned ways.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events or omissions giving rise to the claim occurred in this district, including the creation of the infringed work, the creation of the oral contract pertaining to the infringed work, and the marketing and sale of infringing products.

MS. FRIEDMAN AND THE ABRAHAM LINCOLN PORTRAIT

8. Ms. Friedman is a renowned painter and sculptor who specializes in portraiture. Ms. Friedman is internationally recognized for her portrait commissions, which include a number of public figures.

9. Ms. Friedman graduated from the American Academy of Art in Chicago, Illinois and further trained at the Art Students League in New York City, the National Academy of Design in New York City, and the L'Ecole Albert Defois in the Loire Valley, France.

10. While in New York, in the late 1980s, Ms. Friedman was accepted into the legendary Grand Central Gallery on West 57th Street and set up her painting studio in coveted space in the historic Carnegie Hall Studios.

11. In approximately 1990, Ms. Friedman met with Mac Anderson at the Successories offices in Aurora, Illinois and was orally commissioned to paint a portrait of Abraham Lincoln for Successories for \$5,000 (“the Abraham Lincoln portrait”). It was agreed that Ms. Friedman would retain all rights to the Abraham Lincoln portrait.

12. At that time, Mr. Anderson and Ms. Friedman orally agreed that Successories would only market and sell the Abraham Lincoln portrait through the SkyMall shopping magazine in its print form.

13. Shortly thereafter, and as agreed, Ms. Friedman painted the Abraham Lincoln portrait in Chicago, Illinois.

14. Ms. Friedman registered the Abraham Lincoln portrait with the U.S. Copyright Office on July 10, 2013. A true and correct copy of Ms. Friedman's copyright registration is attached as Exhibit A.

15. In the summer of 2004, Ms. Friedman had a one-woman show at Hollis Taggart Galleries in Chicago of over forty paintings that included portraits of Abraham Lincoln, Mark Twain, her father, and conductor George Solti. In a July 23, 2004 review in the Chicago Tribune, art critic Alan Artner described the show as "Friedman Show Evinces Portraiture elegance ... [Her paintings] present the artist's strong technique with admirable, ever beguiling, clarity."

16. From 2008 to 2011, The Abraham Lincoln Presidential Library and Museum ("ALPLM") in Springfield, Illinois commissioned Ms. Friedman to paint the oil portraits of their five Lincoln Leadership Prize recipients. The five prize recipients were retired United States Supreme Court Justice Sandra Day O'Connor, Archbishop Desmond Tutu, former astronaut Captain James A. Lovell, the late Tim Russert of NBC's Meet the Press, and former President of Poland and Nobel Prize Winner Lech Walesa. Ms. Friedman had sittings with Justice O'Connor that took place at the United States Supreme Court in Washington, DC. The portraits are on permanent exhibit at the ALPLM.

17. Ms. Friedman's paintings of Abraham Lincoln are on permanent display at the Illinois Governor's Mansion in Springfield, Illinois and her large-scale narrative depiction of the assassination of Wild Bill Hickok, "Aces and Eights", hangs at the site of Wild Bill's last card

game in Deadwood, South Dakota. Ms. Friedman also has paintings on permanent display at the Naval Academy Museum in Annapolis, Maryland; the Museum of Surgical Science in Chicago, Illinois; the Captain James A. Lovell Federal Health Care Center in North Chicago, Illinois; and the Armenian General Benevolent Union in New York City.

DEFENDANTS' CONDUCT

18. Since the early 1990s, Successories has marketed and sold copies of the Abraham Lincoln portrait, under the moniker of the "Lincoln Perseverance" product. On information and belief, Successories has marketed and sold copies of the Abraham Lincoln portrait to the public in a number of different formats, such as motivational posters and framed desktop prints. On its web site, Successories describes these products as "Painted exclusively for Successories by acclaimed portrait artist Marla Friedman[.]" (See Exhibit B).

19. On its web site, Successories also allows customers to "Create Your Own" recognition product. As part of this process, Successories allows customers to select the type of product they would like to create, such as motivational posters, photo plaques, framed prints, wood mounted, greeting cards, photo acrylic, desk clocks, metal art, and wall acrylics. After selecting the product, the customer may "Choose Your Photo." Among the photos the customer may choose from for their customized product are images from Successories renowned archive of 100s of images. Among these images is the Abraham Lincoln portrait.

20. Successories has an Authorized Successories Distributor program, where it offers its distributors an opportunity to buy original, exclusive Successories products at wholesale prices and sell at retail.

21. Upon information and belief, WeMotivate.com is an authorized Successories franchise.

22. In or around Spring of 2012, Ms. Friedman learned via a third party that Defendants and/or their franchisees and/or their distributors were advertising and selling prints

and posters of the Abraham Lincoln portrait through third-party web sites without Plaintiff's authorization, including the web sites WeMotivate.com and MonsterMarketPlace.com.

23. In addition, Ms. Friedman discovered that Defendants and/or their franchisees and/or their distributors are advertising and selling copies of the Abraham Lincoln portrait to the public through at least the following third-party web sites without Plaintiff's authorization: www.shopzilla.com; www.shopping.com; www.shopwiki.com; www.takeonshopping.com; www.nextag.com; www.bizrate.com; www.amazon.com; and www.sears.com.

24. Defendants do not have any license, authorization, permission or consent to reproduce, distribute, or prepare derivative works based upon the Abraham Lincoln portrait in this manner.

25. On or about September 5, 2012, Ms. Friedman contacted Defendants and stated "I am extremely distressed and do not authorize the promotion or distribution of my work in this manner. Please take my work off of these sites immediately. There is a proliferation on the Internet of these portraits, originally created for Successories in 1991 and intended only for SkyMall magazine in print form, that your company has now placed all over the Internet that I do not support or authorize. This has a negative impact on my career. I have never authorized my work being sold or promoted on the internet and placed on sites such as these. It is a violation of any agreement that I originally had with Successories."

26. In addition, in approximately September 2012, Ms. Friedman's attorneys sent a cease and desist letter to Defendants, stating, in part, "Your use and sale of the Copyrighted Material on your website, Successories.com, as well as on affiliate and "franchise" sites is not authorized. Ms. Friedman demands that you immediately cease all use and sale of the Copyrighted Material and all use of Ms. Friedman's name to promote your site and your products."

27. On or about March 6, 2013, Ms. Friedman again contacted Defendants and stated “It is now over six months since I first became aware of and expressed my concern to you that the proliferation of my artwork on your Internet sites have been damaging to my career. I once again ask that you please remove my work from all Successories sites. I do not authorize my art to be displayed on sites such as WeMotivate.com or MonsterMarket.com. – and would appreciate your immediate attention to this matter.” In addition, Ms. Friedman again reiterated that “I only authorized for the portraits of Vince Lombardi and Abraham Lincoln to be sold in print in Skymall magazine. I ask that you remove my work immediately from these sites and have consideration for the career I have spent my entire adult life developing.”

28. On or about April 24, 2013, Ms. Friedman once again contacted Defendants, stating “It is now nearly a year since I first learned of my work being presented on sites such as these and immediately contacted you with my concerns regarding the internet exposure of my artwork on your Successories related subsites. I have not authorized this and it is damaging to my career. I have asked you repeatedly to take this off the internet. I have not given and do not give Successories permission to use my work and name in this manner. I have been fastidious in every decision of my career. This is in complete disregard to the career I have worked my entire adult life to create. Again, please understand that I do not authorize or give Successories copyright permission to use my work and name in this manner. I would greatly appreciate your immediate attention to this matter.”

COUNT I

COPYRIGHT INFRINGEMENT

(17 U.S.C. §§ 106 and 501)

Against TWS and Successories

29. Ms. Friedman repeats and re-alleges each and every allegation contained in paragraphs 1 through 28 above, as if fully set forth herein.

30. The acts of Defendants complained of herein constitute infringement of Ms. Friedman's registered copyright and exclusive rights under copyright in violation of 17 U.S.C. §§ 106 and 501.

31. Defendants, without the permission or consent from Ms. Friedman, have reproduced and distributed copies or substantially similar derivatives of the Abraham Lincoln portrait for sale to the public through their own web site at www.successories.com, and through at least the following third party web sites: www.wemotivate.com; www.monstermarketplace.com; www.shopzilla.com; www.shopping.com; www.shopwiki.com; www.takeonshopping.com; www.nextag.com; www.bizrate.com; www.amazon.com; and www.sears.com.

32. Defendants, without the permission or consent from Ms. Friedman, have reproduced and distributed copies or substantially similar derivatives of the Abraham Lincoln portrait for sale to the public through its "Create Your Own" functionality on the www.successories.com web site.

33. Defendants, without the permission or consent from Ms. Friedman, have reproduced and distributed copies or substantially similar derivatives of the Abraham Lincoln portrait for sale to its distributors and franchisees.

34. Defendants have knowingly and systematically induced, caused, and materially contributed to the unauthorized reproduction and distribution of the Abraham Lincoln portrait or substantially similar derivatives of the Abraham Lincoln portrait and, thus, to the infringement of Ms. Friedman's copyright in the Abraham Lincoln portrait via its distributors and franchisees.

35. Defendants have knowingly and systematically induced, caused, and materially contributed to the unauthorized copying and distribution of the Abraham Lincoln portrait or substantially similar derivatives of the Abraham Lincoln portrait and thus to the infringement of

Ms. Friedman's copyright in the Abraham Lincoln portrait via its "Create Your Own" recognition product functionality on the www.successories.com web site.

36. Defendants continue to infringe on Ms. Friedman's copyright by reproduction and distribution of unauthorized copies or substantially similar derivatives of the Abraham Lincoln portrait for their own commercial and financial benefit.

37. Defendants have failed to compensate Ms. Friedman for their infringing activities.

38. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifference to Ms. Friedman's rights.

39. As a direct and proximate result of said infringement by Defendants, Ms. Friedman is entitled to damages in an amount to be proven at trial.

40. Ms. Friedman is also entitled to Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504(b), including an account of and a constructive trust with respect to such profits.

41. Ms. Friedman is further entitled to her attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.

42. As a direct and proximate result of the foregoing acts and conduct, Ms. Friedman has sustained and will continue to sustain substantial, immediate, and irreparable injury for which there is no adequate remedy at law. Ms. Friedman is informed and believes and on that basis avers that unless enjoined and restrained by this Court, Defendants will continue to infringe Ms. Friedman's rights to the Abraham Lincoln portrait. Ms. Friedman is entitled to preliminary and permanent injunctive relief to restrain and enjoin Defendants' continuing infringing conduct.

COUNT II

BREACH OF CONTRACT

(Against Successories)

43. Ms. Friedman repeats and re-alleges each and every allegation contained in paragraphs 1 through 42 above, as if fully set forth herein.

44. In early 1990, Ms. Friedman and Mac Anderson, the founder of Successories, entered into an oral agreement whereby Ms. Friedman would paint the Abraham Lincoln portrait for \$5,000, and Successories would be permitted to sell copies of the Abraham Lincoln portrait, or derivatives thereof only via the Skymall print magazine.

45. Ms. Friedman has performed all of the conditions required by her to be performed in accordance with the terms and conditions of the contract, by painting the Abraham Lincoln portrait, and permitting Successories to sell copies of it, or derivatives thereof, via the Skymall print magazine.

46. Defendant Successories has breached the oral agreement with Ms. Friedman by selling copies of the Abraham Lincoln portrait via a wide variety of sources that far exceed the Skymall print magazine, including via its own web site at www.successories.com, through its distributors and franchisees, via its "Create Your Own" functionality on its web site, and via third party web sites such as www.wemotivate.com; www.monstermarketplace.com; www.shopzilla.com; www.shopping.com; www.shopwiki.com; www.takeonshopping.com; www.nextag.com; www.bizrate.com; www.amazon.com; and www.sears.com.

47. As a direct result of the breach, Ms. Friedman has suffered and continues to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

Wherefore, Ms. Friedman prays for relief against Defendants as follows:

- a. For damages in such amount as may be found, or as otherwise permitted by law.

b. For an accounting of, and the imposition of constructive trust with respect to, Defendants' profits attributable to their infringement of Ms. Friedman's copyright in the Abraham Lincoln portrait.

c. For a preliminary and permanent injunction prohibiting Defendants and all persons acting in concert or participation with them, including their respective agents, servants, employees, officers, successors, licensees, assigns, distributors and franchisees, from continuing to infringe Ms. Friedman's copyright in the Abraham Lincoln portrait.

d. For prejudgment interest according to law.

e. For Ms. Friedman's attorneys' fees, costs, and disbursements in this action.

f. Grant such other relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff Marla Friedman hereby demands a trial by jury on all issues so triable before this Court.

MARLA FRIEDMAN

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