

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARTHUR USHERSON,

Plaintiff,

- against -

BANDSHELL ARTIST MANAGEMENT

Defendant.

Docket No. 1:19-cv-06368-JMF

AFFIDAVIT OF ARTHUR USHERSON

I, ARTHUR USHERSON, declare under the penalty of perjury that the following is true and correct to the best of my personal knowledge.

1. I am the plaintiff in this action.
2. I submit this Declaration in response to the Court's Order, dated January 24, 2020

[Dkt. #59], the pertinent portion which reads:

Mr. Usherson shall also file a declaration . . . specifying (1) whether, as of the date this lawsuit was filed, he was aware that the Photograph had not been registered; (2) what, if any, information he provided to Mr. Liebowitz, Mr. Freeman, or any other attorney from the Liebowitz Law Firm about the registration of the Photograph and the date(s) on which he provided such information; and (3) what role, if any, he played in connection with Registration 272, including but not limited to the decision to seek registration and the actual filing of the registration.

The 046 Registration

3. On August 2, 2011, I personally applied to the U.S. Copyright Office ("USCO") for protection of my photographs which included several photographs I took of musicians Bob

Dylan and Leon Redbone at the Mariposa Folk Festival on July 16, 1972 (the “Mariposa Festival”). The Copyright Office assigned the registration number VAu001080046 (the “046 Registration”). Attached as Exhibit A is a true and correct of the 046 Registration, as maintained by the USCO’s website.

4. Specifically, twelve photographs on deposit with the 046 Registration depicted Bob Dylan at the Mariposa Festival. [*bearing JPG content titles: #0082, #0083, #0215, #0216, #0217, #0218, #0416, #0436, #0437, #0438, #0439; #0440*] Of those twelve photographs, five of them depicted Bob Dylan walking or standing with Leon Redbone. [*bearing JPG content titles: #0082, #0083, #0438, #0439; #0440*] (the “Dylan / Redbone Photos”). Attached as Exhibit B are true and correct copies of the Dylan / Redbone Photos that are on deposit with the 046 Registration.

Transmission of 046 Registration Materials to Liebowitz Law Firm

5. On January 24, 2019, I engaged Richard Liebowitz of Liebowitz Law Firm, PLLC (“LLF”) to be my copyright enforcement attorney. Shortly thereafter, I was informed that Zachary Cuff of LLF would serve as my “research analyst” to help me with issues pertaining to copyright registrations and searches for on-line infringements.

6. On February 1, 2019, I e-mailed Donna Halperin, LLF’s Director of Client Relations, and Mr. Cuff several screenshots of infringements that I had found on-line by googling “1972 Mariposa Folk Festival Toronto”. Attached as Exhibit C is a true and correct copy of the 2/1/19 e-mail I transmitted to LLF.

7. On February 6, 2019, I e-mailed Ms. Halperin and Mr. Cuff another screenshot from Facebook of a third-party infringement that I had found involving the identical photograph

at issue in this case. Attached as Exhibit D is a true and correct copy of the 2/6/19 e-mail I transmitted to LLF.

8. On February 7, 2019, Mr. Cuff responded to my 2/6/19 e-mail, asking me whether the screenshot I sent him on 2/6/19 included a photograph that was registered and whether I could send him the registration number. I responded back to Mr. Cuff the same day, indicating that the photograph was registered and that I would send him a disk containing all the photographs that I had already registered. Attached as Exhibit E is a true and correct copy of the 2/7/19 e-mail chain between myself and Mr. Cuff.

9. On or about February 11, 2019, I mailed Mr. Cuff a CD-Rom labeled *Copyright Registered Images #0001-#2,093* (“CD1”). CD1 contained all of the JPEG images that were registered with the Copyright Office in connection with the 046 Registration. I transmitted CD1 to LLF so that Mr. Cuff could search for more infringements on my behalf. Attached as Exhibit F is a true and correct copy of the label for CD1 which I transmitted to LLF.

My Discovery of Defendant’s Infringement and Authorization to File a Lawsuit

10. On or about June 5, 2019, I discovered the on-line infringement by Defendant Bandshell Artist Management (“Defendant”) of a photograph which depicted Bob Dylan standing with Leon Redbone at the Mariposa Festival (the “Photograph”). I immediately sent a screenshot of the Defendant’s infringing website (the “Infringing Screenshot”), which is attached as Exhibit B to the Complaint [Dkt. #1-2] to Richard Liebowitz and Zachary Cuff. Attached as Exhibit G is a true and correct copy of the 6/5/2019 e-mail I transmitted to LLF which attached a copy of the Infringing Screenshot.

11. At the time I transmitted the Infringing Screenshot to LLF, I believed that the Infringing Screenshot included a cropped version of one of the Dylan / Redbone Photos on file with the 046 Registration.

12. On or about July 8, 2019, I authorized Mr. Liebowitz to file a copyright infringement action against Defendant for unauthorized use of the Photograph, identifying the 046 Registration.

13. At the time the lawsuit was filed on July 10, 2019, I believed that the Photograph identified in Exhibit A of the Complaint was on deposit with the 046 Registration. I assumed that the Photograph which Defendant posted without my authorization was a part of the 046 Registration because it was one of a series of a photographs I took of Dylan and Redbone at the Mariposa Folk Festival on July 16, 1972. Defendant's use of the Photograph was also cropped, which I believe led to some confusion between similar photographs.

The 272 Registration

14. After learning of Defendant's infringement, and realizing that the Dylan / Redbone Photos were being targeted for infringement, I searched my personal archives and compiled some additional images from the Mariposa Festival and placed them on a CD-Rom in JPEG format. My intent in compiling these additional images was for LLF to register them with the USCO.

15. Sometime after July 10, 2019, I mailed Mr. Cuff a second CD-Rom, entitled *Bob Dylan at Mariposa Folk Festival, July 16, 1972*, which contained thirty additional photographs taken by me at the Mariposa Festival. ("CD2"). Attached as Exhibit H is a true and correct copy of the label for CD2 which I transmitted to Mr. Cuff at LLF.

16. Before or during the pendency of this action, I did not provide any information pertaining to copyright registrations directly to Mr. Liebowitz, Mr. Freeman¹ or any other attorney at LLF. Instead, all my communications and transmissions concerning registration issues were sent to Zachary Cuff, who was the assigned research analyst at LLF, and in some cases to Ms. Halperin.

17. On August 22, 2019, LLF applied for a copyright registration on my behalf for the thirty photographs contained on CD2. The USCO assigned registration number VAu 1-373-272 to these photographs, with effective date of August 22, 2019 (the “272 Registration”). Attached as Exhibit I is a true and correct copy of the 272 Registration, as maintained by the USCO website.

18. Although I did not play a direct role in the application process for the 272 Registration, which was handled by LLF, I provided CD2 to Mr. Cuff with the intent that the images contained on CD2 would be registered by LLF with the USCO.

19. I did not realize that the Photograph at issue in this action was not on deposit with the 046 Registration - but was instead on deposit with the 272 Registration - until preparing this declaration in response to the Court’s most recent Order.

20. In retrospect, it is fundamental to see how there was administrative confusion regarding the Photograph, with respect to being on deposit with the 046 Registration, because it was very similar to other photos of the identical subject matter that were in fact on deposit with

¹ I did not have any contact with Mr. Freeman until the evening of October 30, 2019, when he was copied on an e-mail sent to me by Mr. Liebowitz regarding the next day’s mediation.

046 Registration. *See* Exhibit B attached hereto. The confusion was compounded by the fact that Defendant used a cropped version of the Photograph.

21. Ultimately, I am the true and rightful author and owner of the Photograph, which is currently on deposit with the USCO.

Dated: February __, 2020
Roswell, GA

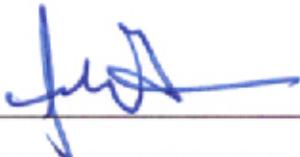
ARTHUR USHERSON

Notary

Q46 Registration. See Exhibit B attached hereto. The confusion was compounded by the fact that Defendant used a cropped version of the Photograph.

21. Ultimately, I am the true and rightful author and owner of the Photograph, which is currently on deposit with the USCO.

Dated: February 1st, 2020
Roswell, GA



ARTHUR USHERSON



Notary

LILIANA C GARCIA
NOTARY PUBLIC
Fulton County
State of Georgia
My Comm. Expires Sept. 18, 2022

----- Forwarded message -----

From: **Arthur Usherson** <[REDACTED]>

Date: Thu, Feb 6, 2020 at 12:51 PM

Subject: Notary -Signatures

To: Richard Liebowitz <RL@liebowitzlawfirm.com>, Donna Halperin <dh@liebowitzlawfirm.com>, Christopher Melbourne <cm@liebowitzlawfirm.com>

OK?

