

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NKECHI DIALLO A/K/A RACHEL DOLEZAL,
Plaintiff,

- against -

CBS INTERACTIVE INC
Defendant.

Docket No. 1:21-cv-04505

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Nkechi Diallo a/k/a Rachel Dolezal (“Plaintiff”) by and through his undersigned counsel, as and for his Complaint against CBS Interactive Inc (“Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction, distribution and public display of a copyrighted Photograph of Nkechi Diallo a/k/a Rachel Dolezal with a gentleman registered by Plaintiff. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant is incorporated and/or transacts business in Delaware and is registered with the New York Department of State Division of Corporations.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff is an American former college instructor and activist in the business of licensing her photographs, having a usual place of business at 5755 East River Road Apt. 622, Tucson, Arizona 85750 United States.

6. Upon information and belief, Defendant is a corporation duly organized and existing under the laws of Delaware, with a place of business at 51 West 52nd Street (19-13), New York, New York, 10019.

7. Upon information and belief, Defendant is registered with the New York Department of State Division of Corporations to do business in New York.

8. At all times material hereto, Defendant has owned and operated a website at the URL: <https://www.etonline.com> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. On or about August 9, 2012, Plaintiff created a self-portrait photograph with a gentleman (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Plaintiff is the author of the Photograph and at all times material hereto has been the sole owner of all rights, title and interest in and to the Photograph, including the copyright thereto.

11. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-094-553, with effective date of March 4, 2018 (the “553

Registration”). A true and correct copy of the 553 Registration certificate is attached hereto as Exhibit B.

12. The Photograph is on deposit with the 553 Registration. An attorney declaration stating that a request for reproduction of copies deposited in connection with the 553 Registration (Litigation Statement Form LS) has been submitted to the US Copyright Office is attached hereto as Exhibit C.

13. The content title of the Photograph, as listed on the face of the 553 Registration, is “8.19.12_06021249.jpg”.

B. Defendant’s Infringing Activities

14. On or about June 12, 2015, Defendant re-published the Photograph as part of an online titled “NAACP Activist Rachel Dolezal Accused of Lying About Being Black by Her Parents” published at URL:

https://www.etonline.com/news/166099_naACP_activist_rachel_dolezal_race_in_question_after_her_parents_come_forward (the “Infringing Article”). A true and correct copy of the Infringing Article is attached hereto as Exhibit D.

15. On May 24, 2018 Plaintiff actually discovered the infringement.

16. Defendant did not license the Photograph from Plaintiff for its Infringing Article, nor did Defendant have Plaintiff’s permission or consent to reproduce, distribute or publicly display the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT)
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Defendant infringed Plaintiff's copyright in the Photograph by reproducing, distributing and publicly displaying the Photograph on the Infringing Article.

19. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

20. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright law in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

21. Upon information and belief, the foregoing acts of infringement by Defendant have been willful and/or in reckless disregard of Plaintiff's rights.

22. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright law, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;

5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: White Plains, New York
May 19, 2021

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