

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
ST. LOUIS CITY

MARK MCCLOSKEY and PATRICIA
MCCLOSKEY,

Plaintiffs,

v.

REDBUBBLE, INC.,

Serve: Corona Davis
111 Sutter Street
17th Floor
San Francisco, CA 94104

UNITED PRESS INTERNATIONAL, INC.,

Serve: CT Corporation System
1015 15th St N.W.
Suite 1000
Washington, DC 20005

WILLIAM D. GREENBLATT, and
WILLIAM GREENBLATT
PHOTOGRAPHY, LLC

Serve: William D. Greenblatt
20 Nantucket Lane
Olivette, MO 63132

Defendants.

Case No.: _____

Division No.: _____

JURY TRIAL DEMANDED

PETITION

COME NOW Plaintiffs Mark McCloskey and Patricia McCloskey (“Plaintiffs” or “McCloskeys”), by and through their undersigned counsel, and for their causes of action against Defendants Redbubble, Inc. (“Redbubble”), United Press International, Inc. (“UPI”), William D.

Greenblatt (“Greenblatt”), and William Greenblatt Photography, LLC (collectively, “Defendants”), state and allege the following:

PARTIES

Plaintiffs

1. Plaintiff MARK MCCLOSKEY is a citizen and resident of St. Louis City, Missouri, and resides at 1 Portland Place, St. Louis, Missouri 63108.
2. Plaintiff PATRICIA MCCLOSKEY is a citizen and resident of St. Louis City, Missouri, and resides at 1 Portland Place, St. Louis, Missouri 63108.

Defendants

3. Defendant Redbubble is a Delaware corporation with its headquarters and principal place of business located at 111 Sutter Street, 17th Floor, San Francisco, California 94104. On information and belief, at all relevant times, Redbubble also regularly conducted, transacted, and solicited business in the State of Missouri, in part, by selling products to individuals in the State of Missouri that are the subject of this litigation.
4. On information and belief, Defendant Redbubble is in the business of selling, marketing, advertising, printing, and distributing screen-printed items on a variety of products worldwide, including in the State of Missouri. Further, Redbubble is in the business of marketing, promoting, selling, and/or advertising products, which Redbubble receives financial benefit from, in the State of Missouri, including products giving rise to the present claims. In addition, Redbubble has committed tortious acts within this State and transacted business in this State. The tortious actions and business conducted are both related to the present claims.
5. Defendant UPI is a Delaware corporation with its headquarters and principal place of business located at 1133 19th St. N.W., Suite 800, Washington, DC 20036. At all

relevant times, UPI also regularly conducted, transacted, and solicited business in the State of Missouri, in part, on information and belief, by employing, contracting, and/or exercising control over Defendant Greenblatt and acquiring from him the Photo which is the subject of this litigation.

6. Defendant Greenblatt is a citizen and resident of Olivette, Missouri and resides at 20 Nantucket Lane, Olivette, Missouri 63132.

7. Defendant Greenblatt is a citizen and resident of the State of Missouri and as such is prohibited from removing this action to federal court by 28 USC §1441(b).

8. Defendant William Greenblatt Photography, LLC is a limited liability corporation organized and existing under the laws of the State of Missouri. On information and belief, Defendant William Greenblatt Photography, LLC is an entity through which Defendant Greenblatt conducts his photography business. Defendant Greenblatt contacted Plaintiffs on behalf of Defendant William Greenblatt Photography, LLC seeking compensation for Plaintiffs' alleged use of the Photo (defined *infra*) bearing Plaintiffs' likeness.

9. On information and belief, at all times material to this Petition, Defendant Greenblatt was an agent, and/or employee of Defendant UPI, and/or was acting for the pecuniary benefit of Defendant UPI such that Defendant UPI knowingly benefited from Defendant Greenblatt's tortious actions, and was at such times, acting within the full course, scope, and authority of Defendant Greenblatt's position with Defendant UPI, therefore imputing liability for his acts and resulting damages under the principles of respondeat superior and/or the law of agency. On information and belief, Defendant Greenblatt is or was a Staff Photographer for Defendant UPI. On information and belief, this gives Defendant UPI the power and/or right to

control and direct the physical conduct of Defendant Greenblatt in the performance of his duties as a Staff Photographer.

VENUE

10. Jurisdiction is proper over the Defendants in the State of Missouri pursuant to at least MO. REV. STAT. § 506.500 because Defendants committed tortious acts within the State of Missouri and transacted business within the State of Missouri.

11. Venue is proper in St. Louis City under MO. REV. STAT. § 508.010(4) because the Plaintiffs were first injured in St. Louis City.

FACTUAL BACKGROUND

12. On Sunday, June 28, 2020, as Plaintiffs quietly sat in their home at 1 Portland Place, St. Louis, MO 63108, a private residence on a private street, an angry mob of protesters tore down an iron gate guarding the entrance to the private street and illegally entered Plaintiffs' property. The illegal trespassers included, among others, Defendant Greenblatt.

13. Many of the illegal trespassers filmed and photographed Plaintiffs, including Defendant Greenblatt, while continuing to trespass, verbally harass, and threaten Plaintiffs.

14. The trespassers, including Defendant Greenblatt, ignored repeated requests by Plaintiffs to leave Plaintiffs' property.

15. One of Defendant Greenblatt's photos has risen to national fame.



The Photo

16. Defendant Redbubble offers for sale numerous products containing the above Photo and other depictions of Plaintiffs on its website.

17. At no time prior to Defendant Greenblatt's entrance onto Plaintiff's private property, nor at any time after Defendant Greenblatt's entrance onto Plaintiffs' property, did Plaintiffs consent to his presence.

18. At no time prior to the Photo being taken, nor at any time after the subsequent editing and printing of Plaintiffs' names, images, and likenesses onto t-shirts and other items, was Plaintiffs' consent obtained.

19. Because, on information and belief, Defendant Greenblatt's acts were committed in the scope and course of his employment and/or agency relationship with Defendant UPI, and

while under the control and/or direction of Defendant UPI, Defendant UPI is liable under the law of Respondeat Superior and/or the law of agency.

COUNT ONE – COMMON LAW TRESPASS

20. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

21. At all relevant times hereto, Plaintiffs were the legal owners of the property located at 1 Portland Place, St. Louis, MO 63108.

22. At all relevant times hereto, Defendant Greenblatt acted intentionally and unreasonably when Defendant Greenblatt entered and remained upon the land legally owned in whole or in part by Plaintiffs, in flagrant disregard for posted “no trespassing” signs, and despite Plaintiffs’ repeated requests for Defendant Greenblatt to leave the premises.

23. As a direct and proximate result of Defendant Greenblatt’s aforementioned acts, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants Greenblatt and UPI, in a fair and reasonable sum in excess of \$25,000.00, which is just, fair, and adequate under the circumstances, costs and fees expended herein, for an order transferring ownership of the Photo and any other media captured while trespassing depicting Plaintiffs to Plaintiffs, and for such further and other relief as the Court deems just and appropriate.

COUNT TWO – INVASION OF PRIVACY – RIGHT OF PUBLICITY

24. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein.

25. Plaintiffs are prominent attorneys who handle cases throughout the State of Missouri. Plaintiffs have devoted a tremendous amount of time and effort to developing their

careers and the goodwill, reputation, and brand associated with being an officer of the court. Such efforts have created considerable commercial value in their names, images, identities, and personas.

26. In the time since the trespassers' entrance onto Plaintiffs' private property, Plaintiffs have obtained significant national recognition and infamy, and as a result, have suffered damages.

27. Defendants' unauthorized use of Plaintiffs' names, images, identities, and personas in connection with the Photo constitute a violation and misappropriation of Plaintiffs' right of publicity in that Defendants misappropriated Plaintiffs' names, images, likenesses, identities, and personas by using the Photo for the purposes of commercial gain without permission.

28. The misappropriation of Plaintiffs' publicity rights was for Defendants' commercial advantage, in that Plaintiffs' names, likenesses, images, identities, and personas were used for commercial gain. On information and belief, such use was intended, at least in part, to further Defendants' pecuniary gain and profits, by designing, printing, offering for sale, and selling t-shirts, masks, and other items, and licensing use of photographs bearing Plaintiffs' likenesses, without obtaining Plaintiffs' consent.

29. Defendants continue to use Plaintiffs' publicity rights, without consent, by continuing to sell and offer for sale items and to license photographs bearing the Plaintiffs' names, images, likenesses, identities, and personas. Defendants sales of these items have resulted in commercial gain for Defendants to the detriment of Plaintiffs.

30. Unless enjoined and restrained by an Order of this Court, Defendants acts will continue to cause Plaintiffs severe and irreparable injury which cannot be adequately compensated by monetary damages.

31. As a direct and proximate result of Defendants' aforementioned acts, Defendants have earned profits attributable to the unauthorized commercial use and exploitation of Plaintiffs' names, images, likenesses, identities, and personas. Plaintiffs are entitled to recover all said unjust enrichment, including all profits earned by Defendants as a result of the Defendants' unauthorized commercial exploitation as herein alleged.

32. As a direct and proximate result of Defendants' aforementioned acts, Plaintiffs have been injured.

33. Moreover, Plaintiffs are entitled to seek, and hereby do seek, the market value of the use of Plaintiffs' publicity rights, in the manner in which they were commercially exploited without obtaining Plaintiffs' consent.

WHEREFORE, Plaintiffs pray for judgment against Defendants, in a fair and reasonable sum in excess of \$25,000.00, which is just, fair, and adequate under the circumstances, costs and fees expended herein, for an injunction, for an order transferring ownership of the Photo and any other media captured while trespassing depicting Plaintiffs to Plaintiffs, and for such further and other relief as the Court deems just and appropriate.

COUNT THREE – INVASION OF PRIVACY – MISAPPROPRIATION OF NAME AND LIKENESS

34. Plaintiffs incorporate by reference every other paragraph of this Petition as if each were set forth fully and completely herein.

35. Plaintiffs are prominent attorneys who handle cases throughout the State of Missouri. Plaintiffs have devoted a tremendous amount of time and effort developing their

careers and the goodwill, reputation, and brand associated with being an officer of the court. Such efforts have created considerable commercial value in their name, image, identity, and persona.

36. In the time since the trespassers' entrance onto Plaintiffs' private property, Plaintiffs have obtained significant national recognition and fame, as evidenced by being repeatedly featured on both the national and international news. In addition, Plaintiffs have received death threats and have been subject to additional trespassers protesting on their property, all resulting in shame, humiliation, and garden-variety severe emotional distress.

37. Defendants' unauthorized use of Plaintiffs' names, images, identities, and personas in connection with the Photo and other works depicting Plaintiffs is a violation and misappropriation of Plaintiffs' names and likenesses. Defendants misappropriated Plaintiffs' names, images, likenesses, identities, and personas by using the Photo in a manner that resulted in an intrusion upon Plaintiffs' private self-esteem and dignity, which have now been irreparably harmed.

38. The misappropriation of Plaintiffs' names and likenesses was for Defendants' own purposes and commercial advantages, irrespective of Plaintiffs' objections, and without obtaining Plaintiffs' consent.

39. Unless enjoined and restrained by an Order of this Court, Defendants' continued acts will cause Plaintiffs continued severe and irreparable injury which cannot be adequately compensated by monetary damages.

40. As a direct and proximate result of Defendants' aforementioned acts, Plaintiffs have suffered injury, anxiety, embarrassment, humiliation, shame, and severe garden-variety emotional distress.

41. Moreover, Plaintiffs are entitled to seek, and hereby do seek, pecuniary losses suffered as a result of Defendants' misappropriation of Plaintiffs' names and likenesses without obtaining Plaintiffs' consent.

WHEREFORE, Plaintiffs pray for judgment against Defendants in a fair and reasonable sum in excess of \$25,000.00, which is just, fair, and adequate under the circumstances, costs and fees expended herein, for an injunction, for an order transferring ownership of the Photo and any other media captured while trespassing depicting Plaintiffs to Plaintiffs, and for such further and other relief as the Court deems just and appropriate.

COUNT FOUR – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

42. Plaintiffs incorporate by reference every other paragraph of this Petition as if each were set forth fully and completely herein.

43. At all relevant times hereto, Defendants Greenblatt and UPI acted intentionally and unreasonably in capturing the Photo and causing it to be disseminated to third parties when Defendants Greenblatt and UPI knew, or should have known, that severe emotional distress would likely result.

44. Further, Defendant Redbubble acted intentionally and unreasonably in publishing, distributing, advertising, selling and offering for sale, hosting, shipping, and/or disseminating merchandise bearing the Photo and other depictions of Plaintiffs, frequently in conjunction with mocking and pejorative taglines or captions, when it knew or should have known that severe emotional distress would likely result.

45. Defendants' conduct was intentional and malicious, performed for the purposes of causing Plaintiffs humiliation, mental anguish, and severe emotional distress, and was done with the wanton and reckless disregard of the inevitable consequences to the Plaintiffs.

46. In performing the acts alleged herein, Defendants acted outrageously and beyond all reasonable bounds of decency, with their conduct regarded as atrocious and intolerable by any member of a civilized society.

47. As a direct and proximate result of the aforementioned wrongful conduct, Plaintiffs have suffered substantial monetary damages, including damages to their personal and professional reputations, and severe garden-variety emotional distress, anxiety and worry.

WHEREFORE, Plaintiffs pray for judgment against Defendants in a fair and reasonable sum in excess of \$25,000.00, which is just, fair, and adequate under the circumstances, costs and fees expended herein, and such further and other relief as the Court deems just and appropriate.

COMPLIANCE WITH MO. REV. STAT. § 510.261(5)

48. Plaintiffs contend that punitive damages are warranted. In compliance with MO. REV. STAT. § 510.261(5), Plaintiffs intend to move the Court for leave to file a pleading containing a claim for a punitive damages award in accordance with the statutory requirements.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: November 6, 2020

Respectfully Submitted,

THE SIMON LAW FIRM, P.C.

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