

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNION SQUARE PARTNERSHIP, INC.,

Plaintiff,

-v- **GARAUFIS, J.**

SAVITRI DURKEE,

AZRACK, J. Defendant.
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08 3101

Docket No. _____

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
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BROOKLYN OFFICE

COMPLAINT

Plaintiff Union Square Partnership, Inc. ("USP"), by its undersigned counsel, Cowan, DeBaets, Abrahams, & Sheppard, LLP, as for its complaint herein, alleges as follows:

INTRODUCTION

1. This copyright infringement action arises out of defendant Savitri Durkee's knowing and intentional copying of protected elements of USP's website.

JURISDICTION AND VENUE

2. This case 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 by reason of her commission of tortious acts in the State of New York and within this district pursuant to New York CPLR § 302.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that the defendant resides in this judicial district.

PARTIES

5. Plaintiff USP is a non-for-profit New York corporation that maintains its principal place of business at 4 Irving Place, Room 1148S, New York, New York 10003.

6. Upon information and belief, defendant Savitri Durkee is an individual residing at 317 Greenwood Avenue, # 2, Brooklyn, New York 11218.

FACTS

A. USP'S History

7. In 1976, New York City's Union Square neighborhood was in decline. In an effort to halt the deterioration and lay the groundwork for the area's economic revival, a coalition of local business, community and government interests was formed, leading to the establishment of a Local Development Corporation ("LDC"). The LDC successfully lobbied the City to create its first Business Improvement District ("BID") in 1984. Working together for over 20 years, the LDC and BID formally joined together in September 2003 under one name – Union Square Partnership.

8. USP has played a lead role in the area's development and provides the Union Square community with a variety of programs and services including, but not limited to, facilitating ongoing development by acting as a liaison among residents, business and government leaders; advocating for neighborhood enhancements; offering support to local business owners; spearheading long-term area improvements; and providing sanitation and public safety.

9. USP also operates an award-winning Education Program in Washington Irving High School, the neighborhood's largest public high school. USP works with a broad

spectrum of local businesses, non-profit organizations and academic institutions to develop programs and secure resources for the students.

10. USP's activities and programs have strengthened Union Square's identity. To further foster connections between Union Square residents and businesses and to encourage other city residents and tourists to visit Union Square, USP produces free community events, educational seminars and networking receptions and advertises such events to the public.

11. Among USP's most important marketing efforts is its website, hosted at <http://www.unionsquarenyc.org/> (the "USP Website"). The USP Website provides the public with up-to-date information regarding the activities sponsored by USP and other community events, as well as detailed directories of local businesses and maps of the area, resources for small businesses and residents, and information regarding other services provided by USP. A true and correct copy of the USP Website's main page is attached hereto as Exhibit A.

12. The USP Website is topped with the title "Union Square Partnership" and comprised of three columns of text and a blank fourth column. The leftmost column contains the USP logo in a magenta box, a purple box with buttons linking to other sections of the website, a dark bluish box entitled "Events Calendar", a black box entitled "Get Involved", and another dark bluish box containing contact information for the USP and a Copyright notice. The middle column (colored yellowish-green) contains information regarding the USP and additional information regarding recent events and press. The righthand column (colored orange) is titled "Community Highlights" and contains pictures and information regarding upcoming events and USP services. The last column contains no text and is merely colored purple.

13. USP owns all rights, title and interest, including copyrights, in the USP Website, with the exception of a couple of photographs to which USP has been licensed the right to use such photography.

14. On July 25, 2008, USP filed an application with the United States Copyright Office for the "Union Square Partnership Website" via the Copyright Office's Electronic Copyright Office. USP requested Special Handling of the application, requesting that the Copyright Office expedite its review because of the instant litigation. As of the filing of this Complaint, USP's application has been approved; however, the Copyright Office has not yet assigned a registration number to the application. A true and complete copy of a print-out of the claim status report, dated July 30, 2008, from the Electronic Copyright Office website is attached hereto as Exhibit B.

15. Given USP's reliable compilation of information regarding events taking place in Union Square and regarding services provided to the Union Square community, the USP Website is a trusted and reliable resource that has generated substantial goodwill to USP.

B. Defendant's Infringing Activities

16. Upon information and belief, defendant, with full knowledge of plaintiff USP, registered the domain names www.unionsquarepartnership.org and www.unionsquarepartnership.com on or about May 15, 2008.

17. On those domain names, defendant created a website to which both domain names resolve that copies the USP Website (the "Infringing Website"). A true and correct copy of the Infringing Website as it appeared on June 30, 2008 is attached hereto as Exhibit C.

18. Like the original USP Website, the Infringing Website is topped with the title “Union Square Partnership” in a similar size and font. The website further is comprised of three columns of text and a blank fourth column. The leftmost column mimics the leftmost column of the USP Website, specifically containing a copy of the USP logo in a magenta box, a purple box with buttons linking to other sections of the website, a dark bluish box entitled “Events Calendar”, a black box entitled “Get Involved”, and another dark bluish box containing the actual contact information for USP. The middle column similarly is colored yellowish-green and contains information critical regarding a project that the USP is sponsoring. The righthand column is also colored orange, similarly titled “Community Highlights”, and contains pictures and information (including a picture of fruit to which USP holds a non-exclusive license). Again, mimicking the USP Website, the last column contains no text and is merely colored purple.

19. Indeed, it is clear that defendant knew that USP claimed rights in the USP Website, as defendant went so far as to copy all of the contact information, but change the copyright notice from a symbol to the misspelled word “copywrite.” *See Ex. C.*

20. Moreover, to further confuse the viewing public, defendant further published on the Infringing Website a video purporting to be from USP’s Executive Director.

21. Thus, in copying the USP Website, it is clear that defendant has intentionally and willfully sought to confuse the public by pawning off on USP’s established goodwill and reputation to present and publicize her own agenda.

C. USP Sends a DMCA Notice and Takedown Letter to Defendant’s Internet Service Provider

22. Pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512, USP served defendant’s internet service provider, New Dream Network, LLC d/b/a DreamHost Web

Hosting ("DreamHost"), with a takedown letter on July 1, 2008, requesting that access to the Infringing Website be disabled. A true and correct copy of the July 1, 2008 letter to DreamHost is attached hereto as Exhibit D.

23. On July 5, 2008, DreamHost complied with the request and disabled access to the Infringing Website. A true and correct copy of the July 5, 2008 e-mail from DreamHost is attached hereto as Exhibit E.

24. On July 16, 2008, DreamHost forwarded to USP's counsel a Counter-Notification executed by defendant. DreamHost indicated that it would reinstate the removed content within 10-14 business days if a lawsuit was not filed. A true and correct copy of the July 16, 2008 e-mail from DreamHost is attached hereto as Exhibit F.

25. Therefore, defendant intends to continue publication of the Infringing Website.

FIRST CAUSE OF ACTION
(Copyright Infringement, 17 U.S.C. § 502, et seq.)

26. Plaintiff USP repeats each allegation contained in paragraphs 1 through 25 of this Complaint.

27. USP owns a valid copyright registration in and to the USP Website including, but not limited to, the compilation of visual expression contained therein. *See Ex. A.* These registrations were duly and lawfully issued by the Copyright Office and remain in full force and effect.

28. Upon information and belief, Defendant had access to the publically available USP Website.

29. Defendant, without license, authorization or permission from USP, copied and/or created derivative works from the copyrighted USP Website.

30. Defendant's Infringing Website looks substantially similar to, if not is an exact reproduction of, the official USP Website. *Compare* Ex. A with Ex. C. Moreover, the Infringing Website prominently features the Union Square Partnership name and logo in the same locations as they are on the official USP Website and the Infringing Website is posted on domain names registered by the defendant that wholly incorporate the Union Square Partnership name.

31. Defendant's conduct thus constitutes copyright infringement under the Copyright Act, 17 U.S.C § 501.

32. Plaintiff is entitled to recover damages, which include its actual losses and any and all profits Defendant has made as a result of her infringing conduct. 17 U.S.C. § 504. Alternatively, Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c).

33. Upon information and belief, Defendant's actions are willful, in that her actions were at least in reckless disregard of plaintiff's rights in and to the USP Website. Accordingly, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

34. Moreover, USP has been and continues to be irreparably damaged by defendant's activities and conduct. Unless defendant's conduct is enjoined, USP and its goodwill and reputation will suffer irreparable injury which cannot be adequately calculated or compensated solely by money damages. Accordingly, USP seeks preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

35. Furthermore, Plaintiff is entitled to recover its full costs, including reasonable attorneys' fees pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff prays that this Court:

- A. Enjoin Defendant, her agents, employees, successors, assigns and anyone acting in concert with her from copying, publishing, displaying, advertising or making any unauthorized use of the USP Website in any form, including but not limited to print or electronic publication;
- B. Award damages to USP in the amount of either: 1) all of defendant's profits, gains or advantages of any kind attributable to defendant's infringement and USP's actual losses; or alternatively, 2) statutory damages.
- C. Award to Plaintiff the costs of this action together with reasonable attorney's fees.
- D. Award to Plaintiff prejudgment interest on the amount of the award to Plaintiff, and;
- E. Award to Plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 30, 2008

Respectfully Submitted,

COWAN, DEBAETS, ABRAHAMS,
& SHEPPARD, LLP

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