

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

ROB FLEMING,

Plaintiff,

v.

Civil Action _____

CVS Caremark Corporation,

Defendant.

JURY TRIAL DEMANDED

COMPLAINT FOR COPYRIGHT INFRINGEMENT

EXECUTIVE SUMMARY

1. The Plaintiff, Rob Fleming, brings the instant civil action under the Copyright Law of the United States of America.
2. The Plaintiff, Rob Fleming is the rightful owner of certain copyrights that have been unlawfully infringed by the Defendant, CVS Caremark Corporation.
3. The infringement detailed herein has been purposeful and willful within the meaning of the Copyright Act.
4. Moreover, the infringement detailed herein is believed to be widespread, systematic and pervasive within the corporate culture of CVS.
5. Despite Plaintiff's significant efforts to stop CVS' infringement prior to the initiation of this lawsuit, CVS continues to invade Plaintiff's exclusive rights under the Copyright Act with no signs of retreat.
6. It is against this backdrop that Plaintiff commences the instant action in further efforts to stop CVS' willful copyright infringement and to seek maximum statutory damages as monetary relief.

THE PARTIES

7. The Plaintiff is Rob Fleming, an individual and United States Citizen.
8. The Defendant is CVS Caremark Corporation (hereinafter "CVS"), also known as, and doing business as, "CVS/pharmacy."
9. Plaintiff, Rob Fleming (hereinafter "Fleming"), is a resident of the State of Alabama and resides in Demopolis, Alabama.

10. Plaintiff, Fleming, is a professional photographer doing business across the West and Central part of Alabama.
11. Plaintiff, Fleming, owns and operates a professional photography business located in Demopolis, Alabama, named Fleming Photography.
12. Plaintiff, Fleming, is the rightful owner of the copyrighted material referenced herein.
13. Defendant, CVS, is a highly ranked Fortune 500 Corporation doing business in 44 states, the District of Columbia, and Puerto Rico.
14. Defendant, CVS, serves over 4 million customers each day, employs over 215,000 individuals across the Nation, and intakes over \$87 billion in annual revenue.
15. Defendant, CVS, is headquartered in Woonsocket, Rhode Island at One CVS Drive, Woonsocket, RI 02895.
16. Defendant, CVS, has, as detailed herein, wrongfully infringed upon the copyrights owned by Fleming.

JURISDICTION & VENUE

17. This copyright infringement action is brought under the laws of the United States, specifically The United States Copyright Act, 17U.S.C.A. § 101 *et seq.*
18. This Court has jurisdiction over this action pursuant to 28 U.S.C.A. 1338(a) and 17 U.S.C.A. § 106.
19. Venue is proper in this judicial district pursuant to 17 U.S.C.A. § 1400(a).

COPYRIGHT INFRINGEMENT

20. Plaintiff, Rob Fleming, is a professional photographer who takes photographs, develops images, reproduces images,

and markets and sells his work throughout the Southeast United States.

21. Fleming noticed in approximately 2007 that several of his professional photographs had been reproduced in violation of the copyright laws by CVS/pharmacy.
22. Fleming further learned through investigation that CVS/pharmacy would readily and without question or hesitation duplicate his professional photographs.
23. Moreover, it seemed to Fleming that CVS had developed a lucrative business model based in part on the duplication of professional copyrighted photographs.
24. Initially, Fleming attempted to put a stop to CVS/pharmacy's reckless behavior by issuing a cease and desist letter through Fleming's attorney.
25. In July of 2007, CVS's "Senior Legal Counsel" responded that CVS took Fleming's allegations very seriously, that CVS had "strict protective measures to safeguard against copyright infringement," that CVS would undertake to "retrain the staff at the locations in question," and that such violations would "not occur again."
26. Notwithstanding such assurances, CVS failed to do as promised and the copyright infringement continued to occur.
27. Plaintiff, Rob Fleming, is the rightful owner of a valid copyright in the photograph annexed as Exhibit A (titled "Demopolis River").

28. With reference to the photograph annexed as Exhibit A, the work represents an original work under the guidelines contained in 17 U.S.C.A. § 102.
29. Plaintiff, Rob Fleming, has properly registered said copyright with reference to the photograph annexed as Exhibit A in accordance with the statute, 17 U.S.C.A. 408.
30. Said "Certificate of Registration" was issued as of April 16, 2009 and bears the official Registration Number, VAu 981-367.
31. The aforementioned Certificate of Registration is annexed hereto as Exhibit A⁷⁷.
32. The copyrighted photograph annexed as Exhibit A has never been "published" in accordance with 17 U.S.C.A. 101. Alternatively, the work was first published at the time of proper registration.
33. Defendant, CVS, has wrongfully infringed upon the copyright referenced as Exhibit A by illegally duplicating such photograph and/or allowing such duplication on the following occasions to wit:
 - a. July 10, 2009, x 1 at 4280 Mitt Lary Road, Northport, Alabama;
 - b. July 7, 2009, x 1 at 102 Twn Country, Greensboro, Alabama;
 - c. July 7, 2009, x 1 at Buford Plz Highway 82, Northport, Alabama;
 - d. July 10, 2009, x 2 at Buford Plz Highway 82, Northport, Alabama;

- e. July 10, 2009, x 2 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama;
- f. July 6, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama;
- g. July 7, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama;
- h. August 14, 2009, x 1 at 101 Highway 80 West, Demopolis, Alabama;
- i. July 10, 2009, x 2 at 4715 Rice Mine Road, Tuscaloosa, Alabama.
- j. October 25, 2009, x 1 at 1100 Montgomery Highway, Vestavia, Alabama.
- k. October 25, 2009, x 1 at 3030 Montgomery Highway, Homewood, Alabama.
- l. October 25, 2009, x 1 at 4500 Montevallo Road, Birmingham, Alabama.
- m. October 25, 2009, x 1 at 49 Church St., Mt. Brook, Alabama.
- n. October 25, 2009, x 1, at 1769 Montgomery Highway, Birmingham, Alabama.
- o. October 22, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama.
- p. October 27, 2009, x 1 at 4715 Rice Mine Road, Tuscaloosa, Alabama.
- q. October 27, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama.

r. October 27, 2009, x 1 at 4600 University Blvd. East, Tuscaloosa, Alabama.¹

34. In addition to the allegations recited above, Plaintiff, Rob Fleming, is the rightful owner of a valid copyright in the photograph annexed as Exhibit B.
35. With reference to the photograph annexed as Exhibit B, the work represents an original work under the guidelines contained in 17 U.S.C.A. § 102.
36. Plaintiff, Rob Fleming, has properly registered said copyright with reference to the photograph annexed as Exhibit B in accordance with the statute, 17 U.S.C.A. 408.
37. Said "Certificate of Registration" was issued as of March 28, 2008, and bears the official Registration Number, VA 1-658-742.
38. Said registration was received and completed within three months of the photograph's first publication.
39. The aforementioned Certificate of Registration is annexed hereto as Exhibit B⁸⁸.
40. The first date of publication of such photograph was January 30, 2008.
41. Defendant, CVS, has wrongfully infringed upon the copyright referenced as Exhibit B by illegally duplicating such photograph and/or allowing such duplication on the following occasions to wit:

¹ On this particular occasion, the CVS attendant looked directly at the copyright marking while at the same time remarking that a code on the machines is designed to prevent the unauthorized copying of professional works. He proceeded to process the transaction anyway, despite the clear knowledge that this work was indeed protected.

- a. July 10, 2009, x 1 at 4715 Rice Mine Road, Tuscaloosa, Alabama;
 - b. July 10, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama;
 - c. July 10, 2009, x 2 at Buford Plz Highway 82, Northport, Alabama;
 - d. July 7, 2009, x 1 at 808 Veterans Memorial Parkway, Tuscaloosa, Alabama.
42. Plaintiff further alleges that each of the aforementioned violations of Fleming's Copyright were "willful" pursuant to 17 U.S.C.A. 504.
43. In addition, for each of the illegal copies made above, Plaintiff alleges that CVS employees either personally and specifically inspected the photograph and the copyright marking itself, or had the full opportunity to see and observe the copyright marking.
44. Further, Plaintiff alleges that CVS is liable to Fleming for vicarious infringement if proven that its employees, servants and agents were responsible for infringing upon Plaintiff's exclusive rights under the United States Copyright Act.
45. Moreover, Plaintiff alleges that CVS is liable for contributory infringement by virtue of its fostering, aiding, and assisting would-be customers to make illegal duplicates of copyrighted material.

FIRST CAUSE OF ACTION

Copyright Infringement (17 U.S.C.A. § 101 *et seq.*)

46. Plaintiff hereby expressly incorporates, repeats and re-alleges the allegations and information contained in paragraphs 1-45, *supra*.
47. Defendant, CVS Caremark Corporation, has unlawfully engaged in copyright infringement as detailed herein, inclusive of the specific infringements recited *supra*.
48. Defendant, CVS Caremark Corporation is liable to Plaintiff for statutory damages in an amount to be determined by the trier of fact pursuant to 17 U.S.C.A. 101 *et seq*.
49. Moreover, Plaintiff seeks all legal and equitable relief to which he is entitled, inclusive of statutory damages per violation, attorneys' fees, costs, and interest.
50. Plaintiff hereby demands a trial by jury on said claim as afforded by the Seventh Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

Willful Copyright Infringement (17 U.S.C.A. § 101 *et seq.*)

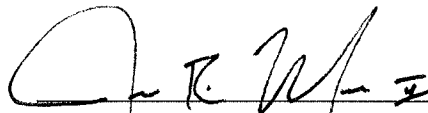
51. Plaintiff hereby expressly incorporates, repeats and re-alleges the allegations and information contained in paragraphs 1-50, *supra*.
52. Defendant, CVS Caremark Corporation, has unlawfully and willfully engaged in copyright infringement as detailed herein, inclusive of the specific infringements recited *supra*.
53. Defendant, CVS Caremark Corporation is liable to Plaintiff for statutory damages in an amount to be determined by the trier of fact pursuant to 17 U.S.C.A. 101 *et seq*.

54. Moreover, Plaintiff seeks all legal and equitable relief to which he is entitled, inclusive of statutory damages per violation, attorneys' fees, costs, and interest.

55. Plaintiff hereby demands a trial by jury on said claim as afforded by the Seventh Amendment of the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

Wherefore, Plaintiff respectfully requests all relief requested herein as well as any other relief as may be just and appropriate, including the following:

- (a) permanent injunctive relief pursuant to 17 U.S.C.A. 502 against Defendant's further copying and/or reproduction of Plaintiff's copyrighted material;
- (b) injunctive relief requiring Defendant to circulate an approved memorandum to all CVS Photo Centers on a quarterly basis outlining its corporate policy of prohibition on the duplication of copyrighted works;
- (c) injunctive relief requiring Defendant to maintain a written approved policy of its prohibition of the duplication of copyrighted works at all times in each of CVS's Photo Centers;
- (d) Statutory and enhanced damages to the maximum extent allowed by 17 U.S.C.A. 504;
- (e) Reasonable attorneys fees and full costs pursuant to 17 U.S.C.A. 505;
- (f) Pre and post-judgment interest as well as any other legal and/or equitable relief as deemed appropriate and just by this Court.



James R. Moncus, III
Attorney for Plaintiff

OF COUNSEL:

HARE, WYNN, NEWELL & NEWTON

The Massey Building; Suite 800
2025 Third Avenue North
Birmingham, Alabama 35203
Tel: (205) 328-5330
Fax: (205) 324-2165

- and -

LLOYD & DINNING, LLC

Woodford W. Dinning, Jr.
P.O. Drawer 740
Demopolis, Alabama 36732
Tel: (334) 289-0556
Fax: (334) 289-5506

**PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AT THE
FOLLOWING ADDRESS:**

CVS CAREMARK CORPORATION
c/o The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109