

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:14cv20189

GETTY IMAGES (US), INC., a New York
corporation,

Plaintiff,

v.

X5 STUDIOS, INC., a Florida corporation,

Defendant.

COMPLAINT FOR DAMAGES

Plaintiff, GETTY IMAGES (US), INC. (“GETTY IMAGES”), by and through its undersigned attorneys, sues Defendant, X5 STUDIOS, INC. and alleges as follows:

INTRODUCTION

1. Plaintiff, Getty Images brings this action to recover damages resulting from copyright infringements by Defendant, X5 STUDIOS, INC. (“X5 Studios”) of a photographic image exclusively licensed to Getty Images. Defendant, X5 Studios has reproduced, displayed, distributed and otherwise misused the protected image on its website, www.x5studios.com, without authorization and without paying Getty Images the required commercial license fee. Defendant’s conduct violates the rights of Getty Images and the rights of the photographer that Getty Images represents.

PARTIES

2. Plaintiff, Getty Images is a New York corporation with its principal place of business in New York, New York.

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3. Defendant, X5 Studios is a corporation organized under the laws of the State of Florida, with its principal place of business in Miami, Florida. X5 Studios does business in the city and county of Miami-Dade County, Florida. X5 Studios is the registered owner of the website www.x5studios.com. Upon information and belief, X5 Studios directly participated in the wrongful conduct alleged in this Complaint, and/or had the right and ability to supervise, direct and control the wrongful conduct of others, and derived a direct financial benefit from that wrongful conduct.

JURISDICTION AND VENUE

4. This Court has original and exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this action raises federal questions arising under the laws of the United States (copyright infringement) and pursuant to the Copyright Act, 17 U.S.C. § 101, *et seq.*

5. Defendant, X5 Studios is subject to personal jurisdiction in this Court because it is a resident of the State of Florida and/or purposefully aimed its activities at the State of Florida from which the claims asserted in this Complaint arise. Additionally, X5 Studios displays its website, www.x5studios.com, throughout the State of Florida, purposefully directs that website to residents of the State of Florida, and otherwise is engaged in business in the State of Florida.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a), as X5 Studios or its agent resides or may be found in Miami-Dade County, Florida. Upon information and belief, venue is also proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in the District.

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FACTUAL BACKGROUND

7. Getty Images is one of the world's leading digital content providers, supplying imagery, video and music to business customers. Getty Images licenses content for a wide variety of uses, including use online, in websites, books, newspapers, magazines, television and film productions, advertisements, marketing materials, products and packaging. Getty Images generates revenue from licensing the rights to use its content, including imagery, and from providing related services.

8. Getty Images was the first company to license imagery via the Internet and today delivers virtually all of its visual content digitally. Visitors to Getty Images' website, www.gettyimages.com, can search through and view millions of images and obtain licenses for those images online.

9. Getty Images owns some of the content that it licenses. Getty Images also acts as the distributor for more than 150,000 content suppliers – contributors, such as individual photographers, illustrators, filmmakers, media organizations, other stock photo agencies, and independent musicians. Content suppliers typically prefer to retain ownership of their work and, as a result, copyright to content remains with the artists in most cases, while Getty Images obtains by contract the right to market, distribute, and license that content to third parties. Some of this content is licensed to Getty Images on an exclusive basis.

10. In or about June 2012, Getty Images identified a photographic image, with the catalog description "10125296 (RM) SPIDER WEB WITH DEW, WISCONSIN," that had been reproduced, displayed, and distributed by Defendant X5 Studios on its website, www.x5studios.com, without authorization. The identified image was at that time and is still today exclusively licensed to Getty Images.

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11. The photographic image described in the preceding paragraph is the subject of copyright Certificate of Registration VA 1-876-256 (dated September 23, 2013). Attached as Exhibit A is a true and correct copy of the Certificate of Registration.

12. Getty Images brings this action to recover damages for the harm it has sustained, and for such further relief as sought herein.

COUNT I
(Copyright Infringement, 17 U.S.C. § 501, et seq.)

13. Getty Images repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 12, inclusive.

14. Getty Images is the exclusive licensee of the photographic image that is the subject of this action. Among the rights granted to Getty Images is the exclusive right to market and sublicense the right to copy, reproduce and display the image. Additionally, Getty Images is granted the exclusive right to make and control claims related to infringements of copyrights in the image. A copy of the copyright Certificate of Registration VA 1-876-256 issued by the United States Copyright Office, for the subject image, is attached as Exhibit A.

15. Defendant, X5 Studios has reproduced, displayed, distributed and made other infringing uses of the protected image, without authorization by Getty Images, including Defendant's infringing use of that image on www.x5studios.com.

16. As a result of its conduct, X5 Studios is liable to Getty Images for copyright infringement.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Getty Images respectfully requests that this Court grant the following relief:

a. That the Court enter a judgment against Defendant finding that it has infringed Getty Images' rights in the photographic image listed in Exhibit A;

b. That the Court enter an order, pursuant to 17 U.S.C. § 504(b), declaring that Defendant holds in trust, as constructive trustees for the benefit of Getty Images, all profits received by Defendant from its reproduction, distribution, display or other infringing uses of the photographic image listed in Exhibit A, and requiring Defendant to provide Getty Images a full and complete accounting of all profits received by Defendant;

c. That the Court order Defendant to pay damages to Getty Images, in an amount to be proved at trial, including an award of actual damages suffered by Getty Images as a result of the infringements and all profits of Defendant that are attributable to those infringements, pursuant to 17 U.S.C. § 504(b);

d. That the Court order prejudgment interest on the amount of any award to Getty Images; and

e. That the Court grant to Getty Images such other and additional relief as is just and proper.

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Dated: January 17, 2014

Respectfully submitted,

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