

----- Forwarded message -----
From: Alexis Kreuz <akreuz@higbeeassociates.com>
Date: Tue, Sep 8, 2020, 8:47 AM
Subject: Re: Copyright case 528550 - Immanuel Community Services - Adlife Marketing
To: Curt Archambault <curt@ppstrat.com>

Mr. Archambault,

As I already explained to you, our client can choose to seek either statutory damages or actual damages in federal court. If our client chooses to seek actual damages, he very well will be able to seek the lost licensing cost and disgorgement of profits that were made from the use of his image. If you are unable to find this information on your own, I highly suggest you speak to a copyright attorney to assist you.

Suggesting you "already paid" our client is false. Simply because you sent a check for \$750.00 does not mean it is accepted, nor has it been processed.

I'm so sorry we were unable to help you resolve this matter amicably. We will be advising our client to file suit in federal court.

Kind regards,

Lexi Kreuz
Claims Resolution Specialist
Copyright Division

Claims Resolution Specialists are non-attorney staff members who assist attorneys in attempting to resolve copyright claims prior to litigation. All correspondence is reviewed by staff attorneys.

Law Offices of Higbee & Associates (<http://www.HigbeeAssociates.com>)
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On Sep 4, 2020, at 4:00 PM, Curt Archambault <[REDACTED]> wrote:

Hello,

You cannot double-dip by seeking my supposed profits as calculated including the non-payment of a reasonable license fee; but, in any event, I made no profits. All proceeds from the fundraiser went to Immanuel Community Services.

Moreover, almost every one of the donors to the campaign was somebody I knew (as friends, or family, or staff of Immanuel Community Services), and I think what you will find if you file suit as you are threatening to do, is that every one of them gave for the cause or because of their relationship with me and that none of them gave money because they liked your client's photo. So, the profits attributable to the infringement will be found to be zero.

Finally, your email is mistaken in asserting that the photo came from Immanuel Community Services. Your threat to sue me even though I have already paid you \$750 is simply greedy and ill-advised. If you were to sue Immanuel Community Services, after being warned that it had no involvement in the alleged infringement, that lawsuit would be legally frivolous.

Thank you.

Curt Archambault

On Wed, Sep 2, 2020 at 9:41 AM Alexis Kreuz <[REDACTED]@higbeeassociates.com> wrote:
I have tried calling and emailing and have not heard back from you. Please let me know by September 8th, 2020 how we are proceeding.

Thank you,

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On Aug 27, 2020, at 10:01 AM, Alexis Kreuz <[REDACTED]@higbeeassociates.com> wrote:

Hello Curt,

Please let me know if there is an update on my email sent on the 25th.

Thank you,

Lexi Kreuz
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On Aug 25, 2020, at 12:18 PM, Alexis Kreuz
[REDACTED]@higbeeassociates.com> wrote:

Hello Curt,

Thanks for your response. Our client will be able to seek statutory damages since the image used was uploaded after registration. While the minimum statutory damages is \$750.00, our client will also be awarded court costs and attorney fee's which will put them far over \$750.00. As per copyright law, our client's have the opportunity to seek either statutory or actual damages. If they choose to seek statutory damages, this will guarantee a bracket of \$750.00 to \$30,000.00 for unintentional infringement or up to \$150,000.00 for intentional infringement.

IF our client chooses to seek actual damages, they are in fact able to add the profits of the infringing use to the licensing fee. Actual damages are factored by lost licensing cost and any profits made. To clarify, it is up to the discretion of our client's to choose which one suits them as the copyright holder the best. More than likely in their case, statutory damages will be the preferred option.

To provide you with additional information, statutory damages are a damage awarded in civil law, in which the amount awarded is stipulated within the statute, and NOT calculated based on the degree of harm to the plaintiff. To receive statutory damages, plaintiffs don't have to prove they lost a certain amount. Instead, they only have to prove the defendant has violated the law. Which in this matter the exhibits displayed in the initial demand and URLs directly substantiate infringement.

Since the image came from Immanuel Community Services, that is who our client is pursuing damages from. Please advise if there is another entity that the name should be changed to on the release agreement.

The offer of \$750.00 has been respectfully declined. In an effort to resolve this matter efficiently, we have been given approval to lower the demand to \$2,000.00. If you do not accept, please provide the attorneys contact information on who will be representing you in court this way we know where to send the drafted complaint to.

Kind regards,

Lexi Kreuz
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On Aug 25, 2020, at 10:00 AM, Curt Archambault
[REDACTED] wrote:

Hello,

Thank you for your patience as I have been reviewing all my options here. As you can imagine during covid-19 quarantine orders, furloughs, and various other challenges during this uncertain time, taking extra time to review is a natural response.

I have thought long and hard about your last response from Lily Garcia.

I completely disagree with your actual damages claims. The fact that your client only licenses access to its entire database of food photos is irrelevant to the issue of what the lost license fee for my alleged infringement was – you only get the market value of the infringing use, and there is no way that the market value of the photo of a turkey dinner is in the thousands of dollars.

Nor do you get to add the profits of the allegedly infringing use to the lost license fee. Either you recover the profits as a measure of damages, or you recover the lost license fee, but you can't recover both. I did not make any profit from the use of the photo – the photo was used on a fundraiser to enable the non-profit I support, to provide Thanksgiving dinners for the less fortunate in our Seattle neighborhood. The total amount of money raised was \$750, and there is no way that the main reason people donated was that they loved that one photo.

On the other hand, you are now threatening to seek statutory damages if I don't pay you the extortionate amount of actual damages that you demand. You cite the maximum award, but you don't mention the \$750 minimum. I don't think there is any reason to believe that a Seattle jury would reward you for suing over the use of a photo in a charitable fundraiser by awarding any greater amount of statutory damages than the minimum

Finally, and very importantly, you keep threatening to sue Immanuel Community Services. The fundraiser was my personal initiative not that of the non-profit. The non-profit was in no way involved at any point in selecting the particular photo in question, or posted the photo, or created the fundraiser; it just received the proceeds.


I am, therefore, sending by mail a check in the amount of \$750. That is all I am willing to pay, If

you demand more, I will wait to receive your lawsuit. The check will be sent today via certified mail to the address listed in your email.

Thank you,

Curt Archambault

On Mon, Aug 24, 2020 at 12:27 PM Alexis Kreuz

@higbeeassociates.com> wrote:

To whom it may concern :

My name is Lexi Kreuz, I am the new point of contact moving forward for your case. Your case was escalated to me in hopes to get this matter resolved amicably before being escalated over to the attorneys. According to the notes from the previous case manager, we are still waiting for a response from you. I do need to hear from someone within 7 days.


Please make it in your best interest to reply back to my email or call my direct line at 714-597-8999.

Thank you,

Lexi Kreuz

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[Redacted]

Curt Archambault
V [Redacted]@strategres

A Seattle WA
P [Redacted]
E [Redacted]
W [Redacted]

Find a time on Curt's schedule

IMPORTANT: The contents of this email and any attachments are confidential. They are intended for the named recipient(s) you have received this email by mistake, please notify the sender immediately and do not disclose the contents to anyone or copies thereof.

[Redacted]

Curt
Vice [Redacted]

A Seattle WA
P [Redacted]

Find a time on Curt's schedule

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