PolMedia

Polmedia Polish Pottery <support@polmedia.com>

Copyright Infringement Notice: Sumfinidade Unipessoal LDA / Polmedia, Inc. (1-11955)

1 message

robert.fechner@fechner.legal <robert.fechner@fechner.legal> Thu, Oct 12, 2023 at 6:30 AM
To: support@polmedia.com

Case: 1-11955

Via E-Mail to: support@polmedia.com

Copyright Infringement Notice: Sumfinidade Unipessoal LDA / Polmedia, Inc. (1-11955)

To Whom It May Concern,

I hereby notify you that I was entrusted to represent the legal interest of the media company Sumfinidade Unipessoal LDA, Avenida do Infante nº50, 9004-521 Funchal, Portugal (www.sumfinity.com), represented by Nico Trinkhaus in this specific matter. In my capacity as an attorney, I hereby verify that I am duly authorized to act in this matter.

In the name and on the authority of my client I must inform you of the following state of affairs:

I.

My client was made aware by www.photoclaim.com that you have made publicly available a photo to which my client has the exclusive usage rights on the website under the URL

https://www.artisanimports.com/blog/

With this act of publication, you have violated the exclusive rights of use of my client. The matter in dispute relates to the photograph reproduced on the last page of this letter, which you are using in breach of the exclusive rights of use of my client. Your website has been secured to the extent necessary for use as evidence in court and will be presented as such evidence should you contest the claim.

II.

With the publication of the photograph, you have acted in violation of the rights of exclusive use due to my client as the holder of the right of the exclusive use, in particular, the right to make works publicly available pursuant to section § 31 Abs. 3 S. 1 UrhG and consequently against the right of reproduction. There is no doubt that the photograph of my client has a copyrighted work within the meaning of the Copyright Act and that my client has been granted the exclusive right of use of the photograph in question by a written contract with the author.

You are not entitled to disseminate the photograph, as you have done in flagrant disregard the right of the exclusive use of my client. The appropriation of third-party creations without the consent of the rights holder represents a violation of copyright law. At no time did my client agree to the publication of the contested photograph in its present form.

The deliberate act of incorporating the photograph into your website is sufficient reason for us to assert the contested use by you of the photograph in question. It has no bearing on the claims in the present matter whether the rights of my client have been violated deliberately or accidentally. Instead, the sole focus of the present matter is on the fact that the photograph was used without consent in the manner described above.

III.

To effectively rule out the risk of any recurrence, it is necessary to issue a cease and desist declaration enforced by a penalty for the future. I, therefore, request that a declaration to cease and desist is submitted by

18.10.2023.

On the last page of this letter you will find a pre-formulated declaration to cease and desist enforced by a penalty, which you are at liberty to use. A jurisdiction clause and a clause determining the applicable law is common practice goes

beyond the notified infringement. The same applies to the scope of the obligation to completely remove the copyrighted work. The reimbursement of damages and legal fees is a legal obligation and the placement thereof in the declaration also goes beyond the infringement notified. The reimbursement of damages and legal costs and the declaration to cease and desist are two claims that are not connected to each other. You are, of course, also free to draft your own declaration to cease and desist. I would, however, draw your attention to the risk that an incorrectly or inadequately formulated declaration may not be sufficient to obviate the risk of reoffending.

If we do not receive a signed declaration to cease and desist from you by the stipulated deadline, we will assume that you have declined to accept this obligation. In this case, I am instructed to take further legal action immediately.

IV.

Due to the unlawful use of the photograph by your party, we request you to pay damages. The amount of compensation depends, among other factors, on the duration of illegal use.

For this reason, based on § 101 UrhG, we ask you to provide further information. Please state for how long the subject of infringement was publicly available on your website.

In addition, in accordance with § 101 UrhG, you are also obliged to provide full information on a possible larger extent of the use of the photograph in question.

Claims related to such extensive use are explicitly reserved. Should you wish to claim that your party is not responsible for the copyright infringement, according to § 101 UrhG we claim for information in that regard. In such case, please provide all data at your disposal within the stipulated deadline as to who made the photograph in question publicly available.

We hope that a lawsuit won't be necessary and we will help you with any questions you may have.

Yours faithfully,

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2 attachments

Robert Fechner_Power of Attorney_Sumfinidade Unipessoal LDA.pdf
176K

1-11955-RF Copyright Infringement Notice.pdf
383K