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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MASTERFILE CORPORATION,

Plaintiff,

vs.

WALTER WETHERED DVM, PA, doing
business as EWING ANIMAL HOSPITAL
and as NORTHWEST ANIMAL HOSPITAL;
and WALTER WETHERED, an individual,

Defendant.

Case No. _____

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

Plaintiff Masterfile Corporation (“Masterfile”), as and for its complaint against Defendants, Walter Wethered DVM, PA, doing business as Ewing Animal Hospital and as Northwest Animal Hospital, and Walter Wethered (collectively “Defendants”), alleges as follows:

**I.
JURISDICTION AND VENUE**

1. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*, and is for infringement of copyrights registered in the Copyright Office of the United States. Masterfile alleges a claim of copyright infringement based upon Defendants’ unauthorized public display and reproduction of one (1) of Masterfile’s copyrighted images.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and personal jurisdiction over Defendants pursuant to 28 U.S.C. §§1391(b) and (c).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

**II.
PARTIES**

4. Masterfile is a well-known stock photography company with its principal place of business at 3 Concorde Gate, 4th Floor, Toronto, Ontario, Canada M3C 3N7. Masterfile is in the business of licensing reproduction rights in images to users for a fee.

5. Upon information and belief, Defendant Walter Wethered DVM, PA conducts, and at all relevant times did conduct, business as Northwest Animal Hospital, with its principal place of business at 7107 W. Fairview Ave., Boise, Idaho 83704.

6. Upon information and belief, Defendant Walter Wethered DVM, PA conducts, and at all relevant times did conduct, business as Defendant Ewing Animal Hospital, with its principal place of business at 2318 N. 36th Street, Boise, Idaho 83703.

7. Defendants are in the business of veterinarian services and maintain a website for this purpose at www.northwestanimal.com and www.ewinganimalhospital.com (the “Websites”).

8. Upon information and belief, Defendants provide their services and products to clients in Idaho, and solicits clients in Idaho through the Websites.

9. Upon information and belief, Defendant Walter Wethered is an individual residing in Idaho. Walter Wethered is the President of Northwest Animal Hospital and Ewing Animal Hospital and is responsible for all of its operations. Walter Wethered had the right, ability and duty to control the operations of Northwest Animal Hospital and Ewing Animal Hospital, including the design and implementation of the Websites and the registrations of the domain names where the Websites are hosted, and received a direct financial benefit from the operations of Northwest Animal Hospital and Ewing Animal Hospital.

III. FACTS

10. Masterfile, a stock photography company, acquires, organizes, distributes and licenses images for commercial use in media ranging from print advertising to website.

11. Masterfile owns and operates a website located at the URL www.masterfile.com whereby professional photo users are able to search Masterfile’s database of images in order to license selected images for an appropriate license fee.

12. Masterfile’s images are acquired under exclusive contract from professional photographers and illustrators who are paid a royalty every time an image is licensed.

13. By assignment agreements executed pursuant to contracts between Masterfile and the photographers it represents, Masterfile is the assignee of copyright in the images it acquires for its collection from photographers.

14. As part of its usual course of business, Masterfile registers all images in its collection with the Copyright Office.

15. Masterfile is the assignee of copyright in the one Image identified in Exhibit A.

16. Masterfile registered its copyright in and to the Image with the United States Copyright Office and holds a valid certificate of registration in the Image, effective as of January 28, 2002. The Certificate of Registration is attached as Exhibit B.

17. On or about March 22, 2011, Masterfile discovered that Defendants were displaying the Image on the Websites owned by Defendants. Printouts from the Defendants' Websites displaying the Image are attached as Exhibit C.

18. On or about March 24, 2011, March 31, 2011 and April 20, 2011, Masterfile notified Defendants that Defendants' unauthorized use of the Image violates Masterfile's exclusive rights as copyright owner pursuant to 17 U.S.C. § 106, and gave Defendants an opportunity to enter into a retroactive licensing agreement to make payment for Defendants' past unauthorized use prior to instituting the present action.

19. Despite Masterfile's repeated requests for payment, Defendants refused to compensate Masterfile for Defendants' unauthorized use of the Image on the Websites.

20. Defendant has represented that it removed the infringing image from its Websites.

COUNT I
Infringement Of Copyright - Copyright Act, 17 U.S.C. §501 *et seq.*

21. Masterfile incorporates by reference each and every averment contained in paragraphs 1 through 20 above.

22. Defendants infringed Masterfile's copyrights in the Image by reproducing and publicly displaying the Image on the Websites for advertising purposes. Defendants are not, and have never been, licensed or otherwise authorized to reproduce, display, distribute or use the Image.

23. Defendants' conduct in reproducing and publicly displaying the Image constitutes copyright infringement under the Copyright Act of 1976, 17 U.S.C. §501.

24. The infringement of Masterfile's rights in and to the Image constitutes a separate and distinct act of infringement.

25. The foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Masterfile's rights.

26. As a result of the copyright infringement described above, Masterfile is entitled to relief, including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorney's fees and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Masterfile prays that this Court:

1. Preliminarily and permanently enjoin Defendants, their officers, directors, principals, agents, servants, employees, successors and assigns from:

- a) copying, or making any unauthorized use of the Image, in any form, including but not limited to print or electronic use and any other copyright image in the Masterfile portfolio;
- b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Image; and
- c) using any simulation, reproduction, counterfeit, or copy of the Image, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product or service of Defendants.

2. Direct Defendants to deliver for destruction all products, magazines, signs, prints, packages, dies, wrappers, receptacles, digital files and advertisements in their possession or under their control, bearing the Image, or any simulation, reproduction, counterfeit, or copy, and all plates, molds, matrices and other means of making the same.

3. Direct Defendants to account for and relinquish to Masterfile all gains, profits, and advantages derived by Defendants through Defendants' infringement of Masterfile's copyrights.

4. Alternatively, direct Defendants to pay to Masterfile such damages, including statutory damages of up to \$30,000 per Image, as Masterfile is entitled to as a consequence of Defendants' infringement of Masterfile's copyrights in its Image.

5. Award to Masterfile the costs of this action together with reasonable attorney's fees.
6. Award to Masterfile prejudgment interest on the amount of the award to Masterfile.
7. Award to Masterfile such other and further relief as the Court may deem just and proper.

DATED THIS 12th day of January, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By /s/ _____
Ryan T. McFarland, ISB No. 7347
Attorneys for Plaintiff