

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS

MICHAEL BOATMAN,

*Plaintiff,*

v.

PEORIA AREA ASSOCIATION OF REALTORS,

*Defendant.*

Civil Action No.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff MICHAEL BOATMAN, by and through undersigned counsel, pursuant to the applicable Federal Rules of Civil Procedure and the Local Rules of this Court, for his Complaint against Defendant PEORIA AREA ASSOCIATION OF REALTORS, hereby asserts and alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Michael Boatman (“Boatman”) is an individual residing in East Peoria, Illinois.
2. Defendant Peoria Area Association of Realtors (“PAAR”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at 7307 N. Willowlake Court, Peoria, Illinois, 61614. PAAR may be served through its registered agent, John Lehman, at 301 SW Adams Street, Suite 1000, Peoria, Illinois, 61602.
3. PAAR operates a multiple listing service (“MLS”).
4. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.* This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction).

5. This Court has personal jurisdiction over Defendant PAAR by virtue of its presence in this District and its transacting, doing, and soliciting business in this District.

6. Venue is proper in this Court under 28 U.S.C. § 1400(a).

### **OPERATIVE FACTS**

7. Boatman is a full-time professional photographer who, among other areas, specializes in interior architectural photography.

8. Boatman has forty years of experience in architectural, fashion, food, industrial, corporate, editorial, advertising, and event photography. Formally educated at the Art Institute of Ft. Lauderdale, Boatman's photography has been given numerous awards, including awards by Omni International, the Boston Academy of Fine Arts, the Advertising Photographers of America, and he has received multiple wins for the "Communication Arts in Advertising" award. Additionally, many of Boatman's clients, for work featuring his photography, have received the American Association of Advertising Agencies' "Addies" award.

9. At all relevant times, Boatman provided residential real estate photography services for multiple real estate agents in the Peoria, Illinois area.

10. The real estate agents who commissioned Boatman intended to use Boatman's photographs to market and sell the property depicted in the photographs because those real estate agents had obtained listing agreements from the owners of the property to represent those owners in the marketing and sale of their real estate.

11. Boatman photographed the exterior and interior of houses, edited the resulting images, and then licensed the photographs to the real estate agents who engaged him.

12. Attached hereto as Exhibit 1 is a list of 1,216 photographs (each a "Photograph," collectively the "Photographs") at issue in this case that Boatman licensed to real estate agents.

13. Boatman is the author and copyright owner of the Photographs pursuant to 17 U.S.C. § 201.

14. The Photographs in perspective, orientation, positioning, lighting, and other details are entirely original to Boatman.

15. The Photographs are protectable subject matter under the Copyright Act.

16. Boatman has fully complied with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, and all other laws and regulations governing copyrights and has secured the exclusive rights and privileges in and to the copyrights for the Photographs.

17. The Register of Copyrights for the U.S. Copyright Office issued to Boatman Certificates of Registrations for the copyrights to the Photographs and other images, numbered as follows:

- VA 1-980-161, effective December 30, 2013,
- VA 2-007-605, effective January 8, 2014,
- VA 1-964-540, effective June 26, 2015,
- VA 1-964-118, effective July 2, 2015,
- VA 1-965-006, effective July 2, 2015,
- VA 1-965-013, effective July 6, 2015,
- VA 1-976-962, effective October 3, 2015,

True and correct copies of the registration certificates referenced above are attached collectively as Exhibit 2.

18. Boatman never transferred ownership of copyright to his Photographs.

19. Boatman retained all the copyright rights to his Photographs and only issued limited licenses to his real estate agent clients.

20. Each of Boatman's real estate photographs have individual value beyond their intended use by his real estate agent clients and therefore it was important to Boatman that he retain all ownership rights in his photographs, including rights to control the use of those photographs in the future.

21. Boatman's licenses to his real estate agent clients granted them the rights to use Boatman's Photographs to advertise and market the properties depicted in the Photographs to prospective buyers during the term of the real estate agents' listing agreements for those properties.

22. Boatman's license to his real estate agent clients did not permit those clients to sublicense the use of Boatman's Photographs for any purposes unrelated to the sale of the real estate agent's listing.

23. Boatman limited the license granted to his real estate agent clients for each of the Photographs to the rights to copy, distribute, display, and make derivative works of the Photographs for the purpose of listing, marketing and displaying the properties depicted for sale during the term of the real estate agents' listing agreement.

24. Boatman's license granted to his real estate agent clients for each of the Photographs terminated when the listing sold, or the listing agreement otherwise terminated or expired. In other words, upon the closing of the sale of the property depicted in a Photograph, the license granted to Boatman's real estate agent clients for that Photograph terminated along with all other usage rights.

25. Boatman's real estate agent clients for the Photographs are members of PAAR and have access to the PAAR MLS.

26. After Boatman delivered the applicable Photographs to his real estate agent clients, those real estate agent clients uploaded the photographs to the MLS operated by PAAR.

27. After PAAR received the Photographs from Boatman's real estate agent clients, PAAR distributed the Photographs to other MLS members to market and promote those members' real estate listings.

28. Included within the scope of the license granted by Boatman to his real estate agent clients was the distribution of Boatman's Photographs to websites to promote the sale of the real estate agents' listings online.

29. PAAR sold access to the Photographs via feeds to websites that display MLS listings on the internet and that access was consistent with Boatman's license to his real estate agent clients.

30. It was the general practice of websites that display MLS listings on the internet to remove the listings and associated photographs when those listings sold.

31. Realtor.com is a website that displays MLS listings on the internet.

32. Realtor.com is operated by non-party Move, Inc. under license from the National Association of Realtors which owns the trademark REALTOR.

33. Realtor.com, like other websites that display MLS listings, removed listings and associated photographs when those listings sold.

34. At some point, Realtor.com's practice changed.

35. Realtor.com stopped removing photographs for sold listings after the properties sold.

36. Realtor.com began re-displaying photographs from prior listings after the properties sold.

37. Realtor.com displayed and used Boatman's Photographs after the properties depicted in the Photographs sold and after the listings closed.

38. Realtor.com obtained Boatman's Photographs from PAAR.

39. Realtor.com's display of Boatman's Photographs after the listings closed and the properties sold violated Boatman's license agreements with Boatman's real estate agent clients and infringed his rights under the Copyright Act.

40. Boatman never granted a license to Move, Inc. to use Boatman's Photographs after the listings closed and the properties sold.

41. Boatman never granted a license to his real estate agent clients to use Boatman's Photographs after the listings closed and the properties sold.

42. Boatman never granted a license to PAAR to use or sublicense Boatman's Photographs after the listings closed and the properties sold.

43. PAAR granted rights to third parties that exceeded the scope of Boatman's licenses.

44. On February 21, 2020, Boatman, through counsel, sent a letter by mail and email to PAAR notifying PAAR of its infringement and advising PAAR's that it lacked a license to use or sublicense the use of Boatman's Photographs after the listings closed and the properties sold.

45. Despite notice, PAAR's infringement has continued.

### **FIRST CAUSE OF ACTION**

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

46. Boatman re-alleges and incorporates by reference paragraphs 1 through 45 above.

47. Boatman owns valid copyrights in the Photographs at issue in this case.

48. The Photographs at issue in this case were registered with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

49. PAAR copied, displayed, made derivative works, and distributed the Photographs at issue in this case without Boatman's authorization in violation of 17 U.S.C. § 501.

50. PAAR's acts were willful.

51. Boatman has been damaged.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Michael Boatman prays that this Honorable Court:

- A. Order that PAAR's unauthorized conduct violates Boatman's rights under the Federal Copyright Act at 17 U.S.C. §101 *et seq.*;
- B. Order PAAR to account to Boatman for all gains, profits, and advantages derived from the unauthorized distribution of the Photographs;
- C. Award Boatman all profits and damages from PAAR in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for the infringements of Boatman's copyrights in the Photographs; alternatively, maximum statutory damages in the amount of \$30,000 for each of the PAAR Infringements pursuant to 17 U.S.C. § 504(c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
- D. Alternatively, award Boatman maximum statutory damages from PAAR in the amount of \$150,000 for each willful violation of 17 U.S.C. § 106 pursuant to 17 U.S.C. § 504(c)(2), or such other amount as may be proper pursuant to 17 U.S.C. § 504;
- E. Award Boatman his costs of litigation, reasonable attorneys' fees, and disbursements in this action pursuant to 17 U.S.C. § 505;
- F. Order PAAR to deliver to Boatman all copies of the Photographs and all other materials containing such infringing copies of the Photographs in their possession, custody, or control;

- G. Order PAAR, its agents, and servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of Boatman in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photographs; and
- H. For such other and further relief as this Honorable Court deems just and proper.

**JURY DEMAND**

Boatman demands a trial by jury on all issues so triable.

Respectfully submitted, this 30th day of June, 2020.

*/s/ Evan A. Andersen*

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Evan A. Andersen

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