

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

BEE CREEK PHOTOGRAPHY,

Plaintiff,

- against -

THE HORN COMPANY RESIDENTIAL REAL  
ESTATE, LLC, IHOUSEWEB, INC.

Defendant.

Docket No. 5:18-cv-1233-OLG

JURY TRIAL DEMANDED

**AMENDED COMPLAINT**

Plaintiff Bee Creek Photography (“Bee Creek” or “Plaintiff”) by and through its undersigned counsel, as and for its Amended Complaint against Defendants The Horn Company Residential Real Estate, LLC (“Horn”) and iHouseweb, Inc. (“iHouseweb”) [collectively, “Defendants”] hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendants’ unauthorized reproduction and public display of a copyrighted aerial panoramic photograph of the city of San Antonio, Texas, owned and registered by Bee Creek, a Texas based commercial photography studio. Accordingly, Bee Creek seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Horn because Horn resides in and/or transacts business in Texas.

4. This Court has personal jurisdiction over iHouseweb because iHouseweb conducts business in this District and the infringing content generated by iHouseweb was *specifically targeted* to those residing in this District given that Horn operates a localized residential real estate company.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

6. Bee Creek is a commercial photography studio specializing in high quality image and prints for editorial, architectural and commercial usage having a usual place of business at 21003 West Lakeshore Drive, Spicewood, TX 78669.

7. Upon information and belief, Horn is a domestic limited liability company duly organized and existing under the laws of the State of Texas, with a place of business 15001 Old Bandera Road, Helotes, TX 78023. Upon information and belief Horn is registered with the Texas Department of State Division of Corporations to do business in the State of Texas. At all times material, hereto, Horn has owned and operated a website at the URL: [www.thehornco.com](http://www.thehornco.com) (the "Website").

8. Upon information and belief, iHouseweb is a foreign corporation duly organized and existing under the laws of the State of California with a place of business at 8950 Cal Center Drive, Building One, Suite 202, Sacramento, CA. At all times material, hereto, iHouseweb has owned and operated a website at the URL: [www.ihouseweb.com](http://www.ihouseweb.com).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff's Ownership of the Photograph**

9. Tod Grubbs, who is the owner of Bee Creek Photography, photographed the

aerial panoramic photograph of the city of San Antonio, Texas (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Grubbs added a watermark onto the Photograph stating “BeeCreekPhotography.com”. See Exhibit A.

11. Bee Creek has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

12. The Photograph was registered with the United States Copyright Office and was given registration number VAu001259726. See Exhibit B.

**B. Defendants’ Infringing Activities**

13. Horn created their Website in order to advertise their business titled *The Horn Company Real Estate Group*. See URL <https://www.thehornco.com/home-page>. The Website prominently featured the Photograph as part of a changing banner on their homepage. A true and correct copy of this banner on the Website and a screenshot of the Photograph on the Website are attached hereto as Exhibit C.

14. According to Horn, the Photograph was sourced and uploaded to the Website by iHouseweb.

15. Defendants did not license the Photograph from Plaintiff for use on the Website, nor did Defendants have Plaintiff’s permission or consent to publish the Photograph on the Website.

**FIRST CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANTS)**  
**(17 U.S.C. §§ 106, 501)**

16. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-15 above.

17. Defendants, jointly and severally, infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website.

18. Defendants have not, and have never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

19. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

20. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

21. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

22. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

23. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

**SECOND CLAIM FOR RELIEF**  
**FOR VICARIOUS AND/OR CONTRIBUTORY LIABILITY**  
**AGAINST DEFENDANTS**

24. Plaintiff repeats, re-alleges, and incorporates by reference as though fully set forth herein, the allegations contained in paragraphs 1 through 23 of this Complaint.

25. Upon information and belief, Defendants, and each of them, knowingly induced, participated in, aided and abetted, and resultantly profited from the illegal reproduction and display of the Photograph on the Website.

26. Upon information and belief, Defendants, and each of them, are

vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

27. By reason of Defendants', and each of their, acts of contributory and/or vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial.

28. Due to Defendants' acts of contributory and/or vicarious copyright infringement, Defendants, and each of them, have obtained direct and indirect profits they would otherwise not have realized but for their infringement of the Photograph.

**THIRD CLAIM FOR RELIEF**  
**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION**  
**AGAINST DEFENDANTS**  
**(17 U.S.C. § 1202)**

29. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-28 above.

30. Upon information and belief, in its article on the Website, one or both of the Defendants cropped out Plaintiff's watermark and placed it on its Website without the watermark.

31. Upon information and belief, one or both of the Defendants intentionally and knowingly removed copyright management information identifying Plaintiff as the owner of the Photograph.

32. The conduct of Defendants violates 17 U.S.C. § 1202(b).

33. Upon information and belief, Defendants' falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

34. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Horn intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Horn also knew, or should have known, that such falsification, alteration and/or said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

35. As a result of the wrongful conduct of Horn as alleged herein, Plaintiff is entitled to recover from Defendants the damages sustained and will be sustained, and any gains, profits and advantages obtained by Defendants because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

36. Alternatively, Plaintiff may elect to recover from Defendants statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendants be ordered to permanently remove the Photograph from the Website;
3. That Defendants be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202(b).
4. That with regard to the First and Second claims for relief, Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work

infringed pursuant to 17 U.S.C. § 504;

5. That, with regard to the Third Claim for Relief, Plaintiff be awarded either:
  - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
6. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
7. That Plaintiff be awarded its costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
8. That Plaintiff be awarded pre-judgment interest; and
9. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
April 10, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz

Richard Liebowitz (NY-RL1234)  
11 Sunrise Plaza, Suite 305  
Valley Stream, New York 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff  
Bee Creek Photography*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date shown below, a copy of the AMENDED COMPLAINT was served on Defendant The Horn Company Residential Real Estate, LLC in the foregoing matter via electronic mail / ECF properly addressed as follows:

This 10th day of April, 2019.

Richard W. Espey  
ESPEY & ASSOCIATES, PC  
12400 San Pedro Avenue, Suite 200  
San Antonio, Texas 78232  
Telephone: (210) 404-0333  
[espeyservice@lawespey.com](mailto:espeyservice@lawespey.com)

*Attorneys For Defendant  
Horn Company Residential Real Estate, LLC*

**/s/richardliebowitz/**  
Richard Liebowitz (NY: RL1234)  
LIEBOWITZ LAW FIRM, PLLC  
11 Sunrise Plaza, Ste. 305  
Valley Stream, NY 11580  
(516) 233-1660