

Defendant Mercedes' unjust enrichment through the use of Mr. Prochnow's works and derivatives thereof.

2. Caleb Prochnow is an artist and instructor at the Ringling College of Art and Design, based in Sarasota, Florida. Mr. Prochnow's original, pictorial illustrations have been purchased by a variety of corporations for use in advertising and marketing around the world.

3. In 2005, Mr. Prochnow created original pictorial illustrations of a cartoon hippopotamus who is now immediately recognizable and referred to by Mercedes as "Henry the Histo-Potamus" ("Henry"). Mercedes received limited ownership rights from Mr. Prochnow to use thirteen original illustrations of Henry in free, promotional calendars. No rights in the copyright were granted to Mercedes, nor were derivative rights provided to Mercedes.

4. For the next four years, Mr. Prochnow was asked by Mercedes to provide, and Mr. Prochnow provided, illustrations to Mercedes for use by Mercedes exclusively in annual free calendars. Each year the nominal price paid by Mercedes was less than published rates for limited-use calendar illustrations and confirmed that Mercedes's right to use the works was limited to free, promotional calendar illustrations. At no time did Mr. Prochnow grant or license copyright or derivative rights in any of his works of authorship to Mercedes.

5. In 2010, Mr. Prochnow received an offer from Mercedes to expand the use of Mr. Prochnow's Henry images and in return pay Mr. Prochnow quarterly an eight percent (8%) royalty on sales of products sold in conjunction with the use of Mr. Prochnow's Henry illustrations. The offer was accepted by Mr. Prochnow on at least March 26, 2010.

6. Soon thereafter, communications from Mercedes ceased, no royalty payments were sent to Mr. Prochnow, and Mr. Prochnow's contact at Mercedes left. Mr. Prochnow assumed that Mercedes had chosen not to use his illustrations with the sale of Mercedes products. Indeed, Mr. Prochnow believed that Mercedes had stopped using images of Henry entirely because they did not contact him for additional calendars or additional Henry illustrations.

7. In late 2015, Mr. Prochnow learned that Mercedes had and continues to use Mr. Prochnow's Henry illustrations and derivatives thereof directly with the sale of Mercedes products, including through sale of products on Mercedes' website, and on product packaging, catalogs, and other advertising materials relating directly to the sale of Mercedes' histology-related products.

8. Despite being explicitly informed of Mr. Prochnow's rights of authorship and copyrights in the original, pictorial illustrations, Mercedes' unauthorized use of the illustrations without remuneration to Mr. Prochnow continues unabated. Such actions by Mercedes constitute willful copyright

infringement, a breach of the parties' 2010 agreement, and unjust enrichment by Mercedes at the expense of Mr. Prochnow's efforts and work.

9. Attempts by Plaintiff to reach an amicable and mutually acceptable resolution without the need for litigation have been rebuffed by Defendant, leaving Mr. Prochnow with no choice but to institute the current action.

JURISDICTION AND VENUE

10. Jurisdiction of this Court is invoked at least under 28 U.S.C. §1338(a) pursuant to the Copyright Act of 1976, 17 U.S.C. §101 et seq.

11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(a).

THE PARTIES

12. Plaintiff Caleb Prochnow is an individual and resident of Manatee County.

13. Mr. Prochnow is an illustration instructor at Ringling College and has expertise as an artist creating content for use in products, advertising, and marketing for a variety of corporations around the world.

14. On information and belief, Defendant Mercedes Medical, LLC is a company organized under the laws of Florida, with its principal place of business in Sarasota County located at 7590 Commerce Court, Sarasota, FL 34243, and also maintains an office at 7590 Commerce Court, Sarasota, FL 34243.

15. Defendant Mercedes is a national medical distribution company and sells over 20,000 medical products from over 1,000 manufacturers.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

16. Starting in 2005, Mr. Prochnow was asked by Defendant Mercedes to prepare artwork relating to a vaguely described cartoon hippopotamus, a character Mercedes wished to use in free, promotional calendars.

17. On information and belief, prior to this time Mercedes' Henry character was relegated to plush animal toys; a hippo outfit used at Histology events; and a flat, two-dimensional generic hippopotamus. A picture of the two-dimensional depiction of a hippopotamus provided to Mr. Prochnow in 2005 is attached as Exhibit 1.

18. Mr. Prochnow, utilizing his training and skill as an artist, agreed to create his own expression of a hippopotamus for Mercedes to use in free, promotional calendars. Mr. Prochnow proceeded to bring Henry to life, as he is known today, in October of 2005.

19. As shown in Exhibit 2, Mr. Prochnow's work is conspicuously recognizable as a mischievous, smart, and sometimes athletic hippopotamus having large round eyes, defined ears and nostrils, and other original expressions of authorship created by Mr. Prochnow.

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