

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LESTER LEFKOWITZ,

Plaintiff,

v.

McGRAW-HILL GLOBAL EDUCATION
HOLDINGS, LLC, *et al.*,

Defendants.

CASE NO. 15-cv-08875

Hon. Ronald A. Guzman
Magistrate Judge Sheila M. Finnegan

ANSWER

Defendants McGraw-Hill Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC (here, collectively “MHE”), through their undersigned counsel, pursuant to Rule 12(a) of the Federal Rules of Civil Procedure, hereby respond to the Complaint of Plaintiff Lester Lefkowitz (Dkt. No. 1, Oct. 6, 2015) with the following Answer corresponding to the paragraphs set out in the Complaint:

Statement of Action

1. MHE admits that this purports to be an action for copyright infringement and breach of contract by Plaintiff Lester Lefkowitz (“Lefkowitz”). MHE lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Complaint, and on that basis denies the remaining allegations.

Parties

2. MHE admits the allegations of Paragraph 2 of the Complaint

3. MHE admits that the named defendants in this action are limited liability companies organized under the laws of the State of Delaware, and that it is a publisher of textbooks and other educational products, and that it sells such books and products in this District, as well as elsewhere. MHE denies that any of Lefkowitz's photographs in this suit were unlawfully reproduced by MHE. MHE denies all other allegations of Paragraph 3 of the Complaint.

Jurisdiction

4. The allegations contained in Paragraph 4 of the Complaint are legal conclusions to which no answer is required. Nevertheless, MHE agrees that this Court has subject-matter jurisdiction over the claims raised in the Complaint.

Venue

5. The allegations contained in Paragraph 5 of the Complaint are legal conclusions to which no answer is required. Nevertheless, MHE agrees that this District is one of many across the country in which venue may be properly situated under 28 U.S.C. § 1391(a). MHE denies, however, that this District is the most convenient or appropriate venue for this action in light of the related case previously filed by Lefkowitz against MHE in the Southern District of New York, and MHE affirmatively alleges that the sole reason for Lefkowitz's selection of this District as the venue for this action is to forum-shop and thereby avoid the familiarity that the Southern District of New York already has obtained concerning his claims.

Facts

6. MHE is unable to respond to the allegations in Paragraph 6 of the Complaint because it fails to identify which exclusive copyright right Lefkowitz purports to own in the photographs cited in Exhibit 1 to the Complaint, and on that basis, MHE denies the allegations.

MHE further affirmatively states that Exhibit 1 is a summary exhibit for which the supporting documentation has not been attached or otherwise made available to MHE, and further that it was not created by Lefkowitz, but rather by his counsel, and it reflects the opinions, work-product, and assumptions of his counsel. As a result, absent adequate supporting foundation from Lefkowitz's attorneys, the summary chart is inadmissible. MHE denies any inference, implication, or assertion in or drawn from Exhibit 1 that is inconsistent with any document that Lefkowitz may later produce to support the chart.

7. MHE lacks sufficient information to determine the truth of the allegations of Paragraph 7 of the Complaint, and on that basis the allegations are denied. MHE further incorporates its response to Paragraph 6 of the Complaint. MHE affirmatively alleges that a citation to a copyright registration number, as listed in Exhibit 1 to the Complaint, is insufficient to identify the registration status of any specific photograph because the copyright registration numbers here refer to registrations of unspecified, mass groups of photographs, and absent evidence that the particular photo was submitted with the particular copyright registration, there is no evidence that the particular photo has been registered.

8. MHE admits the allegations of Paragraph 8 of the Complaint.

9. MHE lacks sufficient information to determine the truth of the allegations of Paragraph 9 of the Complaint and on that basis the allegations are denied. MHE further lacks sufficient information to determine the authenticity or completeness of the documents attached as Exhibits 2 and 3, and on that basis, MHE denies their admissibility.

10. The allegations of Paragraph 10 are legal conclusions to which no answer is required. Nevertheless, MHE denies Lefkowitz's allegations to the extent they purport to assert

or imply that Getty Images lacked authority to enter into transactions with MHE under which MHE used the Lefkowitz photos at issue in this action.

11. MHE admits that during the referenced period from 2004 to 2012, as well as before, and after, MHE and Getty Images worked under successive agreements pursuant to which Getty authorized MHE to use Getty's photos in MHE's books and other products, subject to the terms of the various successive agreements. MHE denies that the invoice numbers referenced in Exhibit 1 to the Complaint accurately identify the terms of the agreements under which Getty authorized MHE's use of the Lefkowitz photos at issue in this action. MHE denies all other allegations of Paragraph 11 of the Complaint. MHE further incorporates its response to Paragraph 6 with regard to the claim chart in Exhibit 1 to the Complaint.

12. MHE denies the allegations of Paragraph 12 of the Complaint.

13. MHE denies the allegations of Paragraph 13 of the Complaint.

14. MHE denies the allegations of Paragraph 14 of the Complaint. MHE further incorporates its response to Paragraph 6 with regard to the claim chart in Exhibit 1 to the Complaint.

15. MHE denies the allegations of Paragraph 15 of the Complaint.

16. MHE admits that it has conducted internal investigations concerning its use of other photos, not necessarily including those referenced in the Complaint. MHE lacks sufficient information to determine whether any of the photos alleged in Exhibit 1 to the Complaint are among those for which Getty has already received additional payments from MHE. MHE denies all other allegations of Paragraph 16 of the Complaint.

17. MHE denies the allegations of Paragraph 17 of the Complaint, which are in any event improper under Rule 12(f).

18. MHE denies the allegations of Paragraph 18 of the Complaint, which are in any event improper under Rule 12(f).

19. MHE denies that it has any practice, general or otherwise, of infringing the copyrights in the photographs used in its books or other products. MHE admits that it has been sued by Lefkowitz's own counsel numerous times for copyright infringement. MHE denies any other allegation in Paragraph 19 of the Complaint.

20. MHE admits the allegations of Paragraph 20 of the Complaint.

21. MHE denies the allegations of Paragraph 21 of the Complaint, which are in any event improper under Rule 12(f).

22. MHE denies the allegations of Paragraph 22 of the Complaint.

23. MHE lacks information sufficient to determine the truth of the allegations of Paragraph 23 of the Complaint, and on that basis the allegations are denied.

24. MHE admits that during certain periods of time, invoices issued to MHE by Getty did identify the working title of the book or product in which Getty's photographs were to be used, as well as other information, and that such information is usually, but not always, retained in MHE's business records. MHE denies all other allegations of Paragraph 24 of the Complaint.

25. MHE incorporates its response to Paragraph 6 with regard to the claim chart in Exhibit 1 to the Complaint. MHE denies any allegation of unauthorized use of the photographs referenced in Exhibit 1, as asserted in Paragraph 25 of the Complaint. MHE denies all other allegations contained therein.

26. The allegations of Paragraph 26 of the Complaint are legal conclusions to which no answer is required. Whatever agreements may have existed between Lefkowitz and Getty Images for the use of the photographs at issue in this action, those documents speak for

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