

February 22, 2008

VIA CERTIFIED MAIL and ELECTRONIC MAIL

Address

RE: Violation of Property Rights of XYZ, Corp.

Dear Mr./Ms.:

We represent XYZ Corp. ("XYZ"), the owner and operator of the 123 website (located at <http://www.123.com/>) and owner of the copyrights in the photographs and images of the products that are sold through the website, as well as the text describing these products (the "Content").

It has come to our client's attention that ABC, Inc. ("ABC"), on the ABC.com website which it operates (located at <http://www.abc.com/>), has engaged in the blatant copying of Content originating from the xyz.com website.

ABC's conduct of willful copying for commercial purposes constitutes infringement of XYZ's rights under the Copyright Act, Title 17 of the United States Code. It is a violation of the Copyright Act regardless of whether ABC copied directly from ABC's website xyz.com or from third parties who may have xyz.com Content.

Even if ABC in some instances has made slight revisions to the original Content, such as removing the content's "watermarks" or slightly altering the text describing the products sold on our client's website, this will not protect it from liability under the Copyright Act. Importantly, under U.S. copyright law, our client need only demonstrate that the text and photographs displayed on exoticmegastore.com are substantially similar (not identical) in order to prevail on an infringement claim. See e.g., *Dr. Suess Enterprises, L.P. v. Penguin Books, USA*, 109 F.3d 1394, 1398 (9th Cir. 1997).

Even absent any direct proof of copying, XYZ could prevail on an infringement claim where, as here, there exists such a "striking similarity" between the two works that a trier of fact

could infer copying on that basis alone. *See Baxter v. MCA, Inc.*, 812 F.2d 421, 423 (9th Cir. 1987). Not only is there a striking similarity between the works, they are actually virtually identical in pertinent part. See Exhibit "A," enclosed herein. Although ABC may have slightly altered the original copyrighted works of our client in a futile attempt to conceal its acts of copyright infringement, the infringement remains obvious. It is manifest given fact that, when saving the images from the respective websites to a computer, the copying becomes apparent, as ABC even duplicated the unique file names that our client uses to identify its copyrighted photographs. See Exhibit "B," enclosed herein.

As a result of ABC's blatant and willful copying and display of XYZ's protected content, it may be liable for damages under the U. S. Copyright Act up to \$150,000 for each act of infringement, as well as for attorneys' fees. 17 U.S.C. § 504 (c)(2).

Furthermore, we allege that ABC has obtained the Content from xyz.com by engaging in "web scraping." Such practice is prohibited by the Terms and Conditions of the xyz.com website as set forth in the Legal Terms of said website:

"Use of Site (...) may not use any "page-scrape," "grabber," "spider," "robot," "deep-link" or any other program, automatic device, algorithm or methodology which accomplishes the same things, in order to access, acquire, copy, or monitor any portion of this Web Site. (...)"

ABC's conduct is a violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and it is liable for committing the tort of trespass to chattels.

On behalf of our client, we hereby demand that ABC immediately cease and desist and refrain from any future copying and/or scraping of any and all Content, including but not limited to product photographs and description texts, made available by our client on its website xyz.com. Furthermore, we demand that ABC remove any and all Content that it has obtained by copying and/or scraping xyz.com and refrain from any future public use of such Content. Moreover, we request that ABC deliver to us no later than Thursday, January 10, 2008 a letter that sets forth its full compliance with the aforementioned demands.

If we have not received the letter and an affirmative response from your company reflecting full compliance with these requirements by the date stated above, we shall take further action against ABC and its website exoticmegastore.com. We look forward to your immediate response to this letter.

The foregoing is not intended to be a complete statement of the facts or of the law relevant to this matter, nor of our client's legal and equitable rights and remedies and nothing hereinabove

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set forth or omitted shall be deemed a waiver or limitation of any right, remedy or cause of action of any kind whatsoever, all of which are hereby expressly reserved to our client.

Should you not comply with the aforesaid demands, we will proceed to protect our client's rights to the fullest extent permitted under the law.

Your next step in the handling of this matter governs ours.

Best Regards,

Michael Clayton

Enclosures