

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 14 2004

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

By: JAMES S. McCORMACK, CLERK
DEP CLERK

MICHAEL GALSTER

PLAINTIFF

VS.

NO. 4-03-CV-01013 GTE

KELLY DUDA

DEFENDANT

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE ORIGINAL
COMPLAINT AND SUPPLEMENTAL MOTION TO AMEND ORIGINAL
COMPLAINT**

Comes now the Plaintiff, by and through his attorney, Joseph W. Woodson, Jr., and states the following:

1. The plaintiff is the owner of the copyright in the film "Factor Eight" and may receive injunctive relief from the district court, even in the absence of having registered the copyright pursuant to Title 17. Olin Mills, Inc. v. Linn Photo Co., 23 F.3d 1345, (8th Cir. 1994) citing Pacific and Southern Co. v. Duncan, 744 F.2d 1490, 1499 n.17 (11th Cir. 1984), cert. denied, 471 U.S. 1004, 105 S.Ct. 1867, 85 L.Ed.2d 161 (1985).
2. In light of Olin Mills, Supra., the plaintiff need not amend the original complaint to be entitled to injunctive relief upon a showing of ownership in the film. Therefore, the plaintiff prays this Court reconsider the original complaint for the sole purpose of granting injunctive relief.
3. In addition, the plaintiff has a registered copyright in the film "Factor Eight" and is entitled to bring an infringement action against the defendant. "A copyright holder can register a copyright and file suit after infringement occurs." Id. Thus, the timing of the registration is immaterial.


4. The plaintiff asks this Court for leave to amend the original complaint (Exhibit A) to allege that the plaintiff is a registered copyright holder under Title 17. This will not prejudice the defendant because the focus of the preliminary injunction hearing will remain the same (i.e. whether the plaintiff is the author and owner of the film "Factor Eight). The defendant has been aware of this issue since service of process was perfected on December 24, 2003. "The timing of registration only determines whether the copyright holder can recover statutory as opposed to actual damages." Id. Therefore, registration is a jurisdictional issue for the court, not a factual issue for the preliminary injunction hearing.

5. In the alternative, plaintiff requests this Court grant leave to amend the original complaint to establish the film as a derivative work of the plaintiff's book.

Respectfully Submitted,

Joseph W. Woodson, Jr.
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400 West Capitol, Suite 2990
Little Rock, Arkansas 72201
501-376-3564
501-376-6938 fax

By:


Joseph W. Woodson, Jr.
ABA 94019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing were served this 14th day of January, 2004 on Defendant's counsel via regular mail at P.O. Box 193101, Little Rock, Arkansas 72219-3101 and via facsimile at 501-907-5160.


Joseph W. Woodson, Jr.

**IN THE UNITED STATES DISTRICT COURT
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MICHAEL GALSTER

PLAINTIFF

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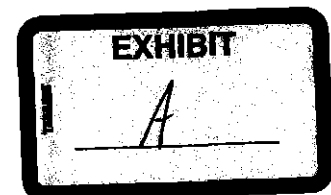
KELLY DUDA

DEFENDANT

FIRST AMENDED COMPLAINT

Comes now the Plaintiff, by and through his attorney, Joseph W. Woodson, Jr., and files this complaint against Kelly Duda, Defendant, and states the following:

1. Michael Galster is resident of Jefferson County, Arkansas, whose address is 2412 Poplar, Pine Bluff, Arkansas, 71601;
2. Kelly Duda is a resident of Pulaski County, Arkansas. Kelly Duda has been served with process at his residence: 500 East 6th Street, Apt. 6, Little Rock, Arkansas 72202;
3. Venue is proper because most of the acts complained of occurred in Jefferson County, Arkansas and/or Pulaski County, Arkansas.
4. Jurisdiction is appropriate pursuant to 28 U.S.C. §1338 giving this Court exclusive jurisdiction over all cases arising under any Act of Congress relating to copyright.
5. In 1998, the Plaintiff wrote a novel entitled "Blood Trail" using the pen name of Michael Sullivan. "Blood Trail" was published in 1998 by Jameson Publishers. The plaintiff holds the registered copyright to this book and the registered copyright for the film "Factor Eight."
6. In 1998, the Plaintiff hired the Defendant to work as an assistant director on the documentary film "Factor Eight." This film was produced, directed and financed by the Plaintiff.



7. From approximately April of 1998 through June of 2001, the documentary film was being produced. In June or July of 2001, the Defendant stole the "fixed" form of the film, and the production and source material that had accumulated over the previous two years. Numerous informal attempts by the Plaintiff failed to recover the stolen material.

8. On Wednesday, December 10, 2003 the Defendant was interviewed by National Public Radio and stated that he intended to publicly display, as his own, the documentary film "Factor Eight" at the Slamdance Film Festival in Park City, Utah on January 17, 2004. The Plaintiff, not the Defendant, is the author and owner of the documentary film "Factor Eight."

9. "Factor Eight" is a registered copyright of the plaintiff. The plaintiff is seeking all available remedies under Title 17 as a registered copyright holder. The plaintiff alleges that he is the author and owner of this film. As such, the plaintiff automatically holds a copyright to the film. Regardless of registration, the author and owner of a work gains "immediate copyright protection" from the moment a work is first fixed in tangible form. Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991). The evidence at the trial will establish that the plaintiff had produced a "fixed" form of the film prior to the defendant illegally taking possession of said film. Plaintiff alleges that the defendant was an employee for hire as defined by 17 U.S.C. §201(b) and does not have any right to publicly display the plaintiff's work.

10. The plaintiff has the exclusive rights to prepare derivative works based upon the copyrighted work ("Blood Trail") pursuant to 17 U.S.C. §106(2). The plaintiff alleges and will prove at trial that the subject film is a derivative work of that book. The subject film is entirely derived from this preexisting work and incorporates most, if not all, of the copyrighted book. The reason that the subject film is substantially similar to the copyrighted book is because the plaintiff personally produced, directed, and financed the film based upon the book he wrote. The

plaintiff will show that the defendant had access to the copyrighted material as an employee of the plaintiff. In short, the film claimed by the defendant is a violation of the plaintiff's copyright in his book "Blood Trail."

11. In its current form, the film "Factor Eight" is a distortion and modification of the plaintiff's work. This film is the plaintiff's sole cinematic production and it must be presented as the plaintiff envisioned. Any public display of the film in its current state will preclude all future possibilities of telling the story as it was originally intended by the plaintiff.

12. The defendant's claim to the subject film is an infringement of the plaintiff's copyright in his book and an infringement of plaintiff's copyright in the film itself because the plaintiff is the author and owner of the film. Additionally, any attempted public display of this film by the defendant is a violation of the plaintiff's registered copyright under Title 17.

13. Pursuant to 17 U.S.C. §502(a), the plaintiff seeks preliminary injunctive relief to prevent the Defendant from publicly displaying the documentary film "Factor Eight" at any public forum, including the Slamdance Film Festival in Park City, Utah on or about January 17, 2004, until such time as the parties have a trial on the merits.

14. Pursuant to 17 U.S.C. §§504 & 505, the Plaintiff seeks all elements of damages to which he is entitled, including, but not limited to: actual damages, statutory damages, profits, costs, and attorney's fees.

WHEREFORE, PREMISES CONSIDERED, the plaintiff prays this Court grant a preliminary injunction against the Defendant to prevent any public display of the film "Factor Eight" including its scheduled showing at the Slamdance Film Festival in Park City, Utah on or about January 17, 2004. Plaintiff further prays for judgment on the merits, compensatory

damages, attorney's fees, costs of court, and all other relief to which this Court may determine he is justly entitled, under law and in equity.

Respectfully Submitted,

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Joseph W. Woodson, Jr.