

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

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

**JAN 22 2004**

JAMES W. McCORMACK, CLERK  
By: **PLAINTIFF** DEP CLERK

**MICHAEL GALSTER**

**VS.**

**NO. 4-03-CV-01013 GTE**

**KELLY DUDA**

**DEFENDANT**

**SECOND 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 6<sup>th</sup> 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.

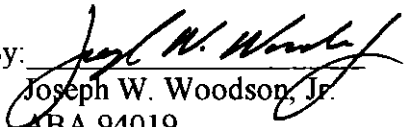
WHEREFORE, PREMISES CONSIDERED, the plaintiff prays this Court grant a preliminary injunction against the Defendant to prevent any public display of the film "Factor Eight" including its scheduled showing at the Slamdance Film Festival in Park City, Utah on or about January 17, 2004. Plaintiff further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

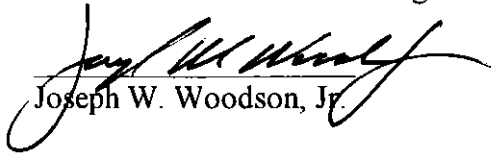
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501-376-3564  
501-376-6938 fax

By:

  
Joseph W. Woodson, Jr.  
ABA 94019

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing were served this 22<sup>ND</sup> day of January, 2004 on Defendant's counsel via regular mail at P.O. Box 193101, Little Rock, Arkansas 72219-3101.

  
Joseph W. Woodson, Jr.