

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

BIBLE & GOSPEL TRUST,

Plaintiff,

v.

TIMOTHY J. TWINAM

117 Fitzsimmons Rd

Jericho, VT 05465,

SALLIE TWINAM

117 Fitzsimmons Rd

Jericho, VT 05465, and

WWW.PEEBS.NET

117 Fitzsimmons Rd

Jericho, VT 05465,

Defendants.

Case No. 2:07-cv-17

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Bible & Gospel Trust ("Plaintiff") hereby seeks relief against Defendants Timothy J. Twinam ("Mr. Twinam"), Sallie Twinam ("Mrs. Twinam"), and the website www.peebs.net ("Peebs.net") (collectively, "Defendants") alleging as follows:

NATURE OF THE ACTION

1. This action involves the infringement and threatened infringement by Defendants of Plaintiff's copyrighted material. It also involves the Defendants' conversion of Plaintiff's proprietary material and the Defendants' tortious interference with a contract between Plaintiff and a third-party, Richard K. Wyman ("Wyman"). The contract between Plaintiff and Wyman is a Settlement Agreement and Mutual Release executed on or about May 10, 2005 (the "Settlement Agreement"). The Settlement Agreement was entered and approved by the United States District Court for the District of Minnesota.

PARTIES

2. Plaintiff Bible & Gospel Trust is a charitable trust conducting business in the United Kingdom.

3. Defendant Mr. Twinam is a resident of Vermont. He started Peebs.net, operates it and performs work for the website. He is a former member of the Brethren.

4. Defendant Mrs. Twinam is a resident of Vermont. She has been an owner of Peebs.net and has helped run the website.

5. Defendant Peebs.net is a website which, upon information and belief, is owned, operated and/or controlled by Mr. Twinam from within Vermont.

JURISDICTION

6. This action arises in part under the Copyright Act, 17 U.S.C. § 101, et seq.

7. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1338(a) because it has exclusive jurisdiction over all claims based on copyright infringements, and pursuant to 28 U.S.C. § 1332 because of diversity of citizenship insofar as Plaintiff is a citizen of a foreign country and Defendants are citizens of the state of Vermont and the amount of controversy exceeds \$75,000, exclusive of interest and costs. In addition, under principles of supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), this Court has jurisdiction over all other claims.

VENUE

8. Venue is appropriate in this district under 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the wrongful conduct giving rise to Plaintiff's claims occurred in this district, Mr. Twinam and Mrs. Twinam reside in this district and, upon information and belief, Peebs.net is controlled and/or operated from within this district.

FACTS

9. Mr. Twinam was instrumental in developing the website Peebs.net, which provides a medium for members of the public to publish statements concerning the Brethren. The Brethren is an unincorporated association and religious organization that has members throughout the world. The Brethren as used here also is known as “the Exclusive Brethren.” Mr. Twinam is a former member of the Brethren.

10. Peebs.net has public and private sections. The public sections are open to members of the public to post statements concerning the Brethren and to read statements posted by others. The private sections are open for the same purposes to “Members,” i.e., members of the public who have registered with the website.

11. Mr. Twinam, upon information and belief, owns, operates and/or controls Peebs.net. Upon information and belief, Mr. Twinam also is an administrator and/or moderator of Peebs.net. Peebs.net's administrators and moderators, including Mr. Twinam, perform editorial functions by agreeing to remove or otherwise edit any material posted to the forums that they deem objectionable.

12. On or about February 9, 2004, Plaintiff and the Brethren filed a lawsuit against Wyman and others in the United States District Court for the District of Minnesota. The complaint alleged that certain statements published by Wyman on his website, www.exclusivebrethren.net, constituted a violation of the Copyright Act, defamation, and/or business interference.

13. On or about May 10, 2005, Plaintiff and the Brethren entered into the Settlement Agreement with Wyman. Under the terms of the Settlement Agreement, Wyman agreed among other things: (1) to transfer his interest in any website regarding Plaintiff and

the Brethren, including the contents thereof, to Plaintiff and the Brethren, including the websites with the addresses www.exclusivebrethren.net and www.cloudnet.com/~dwyman/pb.html; and (2) to not publish on the subject of Plaintiff and the Brethren.

14. On or about May 26, 2005 the Settlement Agreement was submitted by the parties to the United States District Court for the District of Minnesota. The Settlement Agreement was accepted and, on or about May 31, 2005, the district court dismissed the action with prejudice per the terms of the Settlement Agreement. The Agreement is available to the public on the Court's ECF system.

15. Defendants are aware of the Settlement Agreement and the terms thereof. On or about August 5, 2005, Wyman posted on Peebs.net detailed information concerning the Settlement Agreement. Wyman's posting also stated that the documents filed with the court are publicly available and provide a link to a website containing a copy of the Settlement Agreement. On or about December 10, 2006, the administrators of Peebs.net, i.e., including Mr. Twinam, referenced conversations with Wyman about whether Wyman or Peebs.net could republish content that had been on Wyman's old websites given the terms of the Settlement Agreement.

16. Included on Wyman's old website, among other things, were the following publications (the "Copyrighted Materials") which are owned by Plaintiff and registered with the United States Copyright Office:

- A. *Address at Leicester by R. Alan C. Ker (June 15, 2002);* and
- B. *An excerpt from B.D. Hales Vol. 9 "A Reproof Entereth More Deeply Into Him That Hath Understanding," (3d reading) (Sept. 7, 2002).*

17. At all relevant times, Plaintiff has been the owner and holder of all right, title,

and interest in and to the copyrights in Copyrighted Materials. No license to republish the materials has been issued to Defendants.

18. The Copyrighted Materials are original, copyrightable materials, and Plaintiff has complied in all relevant respects with the requirements of the Copyright Act, 17 U.S.C. § 101 et seq. Plaintiff therefore enjoys certain exclusive rights with respect to the materials, including the exclusive right to copy, distribute, display, publish, and prepare derivative works.

19. On or about November 30, 2006, Peebs.net published a poem that originally had appeared on Wyman's old website www.exclusivebrethren.net. In addition, Peebs.net stated along with the poem that: "The above was first published on the Dick Wyman site. We have all the material from the Wyman era and will be re-publishing it soon." Such publication would constitute a breach of the Settlement Agreement and a violation of Plaintiff's copyright interests in that the Wyman site includes the Copyrighted Materials.

20. On or about December 10, 2006, Peebs.net published statements informing others how to access, download, and view Wyman's old websites (together with the content thereof) that are now proprietary to Plaintiffs under the terms of the Settlement Agreement (i.e., www.exclusivebrethren.net and www.cloudnet.com/~dwyman/pb.html). In reference to the proprietary websites and content, moreover, Peebs.net stated that: "We will be making the entire [Wyman] site available either over the Christmas period or early 2007. As usual, it's just a matter of time." This threatened publication has been repeated.

21. Obtaining "all the material from the Wyman era" and "making the entire [Wyman] site available," as referenced above, required that Defendants copy and/or reproduce, among other things, the Copyrighted Materials. This violated Plaintiff's copyright.

22. The threatened publication by Defendants of Wyman's website also would constitute a violation of Plaintiff's copyright in that the Wyman site included the Copyrighted Materials. Such publication would also constitute a breach of the Settlement Agreement.

COUNT I: VIOLATION OF COPYRIGHT ACT

23. Paragraphs 1 through 22 are incorporated herein.

24. The Copyrighted Materials are owned by Plaintiff and registered with the United States Copyright Office.

25. Under the Copyright Act, 17 U.S.C. § 101 et seq., Plaintiff enjoys exclusive rights with respect to the Copyrighted Materials, including the exclusive rights to reproduce, distribute, publicly perform, display, and create derivative works based on such websites and content.

26. Plaintiff has been issued certificates of registration by the Register of Copyrights for the Copyrighted Materials.

27. Defendants have copied and/or reproduced the Copyrighted Materials in conjunction with their plans to publish the contents of the Wyman site.

28. Defendants are not authorized to copy, reproduce, publish, distribute copies of, publicly perform, display, or prepare derivative works based on all or any portion of the Copyrighted Materials. The aforementioned copying and reproduction of the Copyrighted Materials was made without the authorization, consent, or ratification of Plaintiff. The aforementioned threatened publication of the Copyrighted Materials would be made without the authorization, consent, or ratification of Plaintiff.

29. The aforementioned conduct by Defendants constitutes infringement of

Plaintiff's copyright in violation of 17 U.S.C. § 106.

COUNT II: CONVERSION

30. Paragraphs 1 through 29 are incorporated herein.

31. At various times, Defendants have published, distributed and/or otherwise used material and/or content that is protected by Plaintiff's proprietary rights. Defendants have used such material and/or content for their own use and beneficial enjoyment. Such benefits include, but are not limited to, influencing the opinions of people who visit Peebs.net.

32. Plaintiff enjoys exclusive rights with respect to the websites of www.exclusivebrethren.net and www.cloudnet.com/~dwyman/pb.html together with certain content thereof. Because Defendants have used such material for their own use and beneficial enjoyment, they have deprived Plaintiff of its right to exercise control over such material. Defendants have used this material in exclusion and defiance of Plaintiff's rights. Specifically, Defendants have deprived Plaintiff of its right not to make this material available to the public.

33. Defendants' conduct constitutes conversion of Plaintiff's property.

COUNT III: TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP

34. Paragraphs 1 through 33 are incorporated herein.

35. A contract, the Settlement Agreement, exists between Plaintiff and Wyman. Defendants are aware of this contract.

36. By publishing on Peebs.net material that was provided by Wyman, Defendants have facilitated and encouraged publication by Wyman on the subject of Plaintiffs in violation of his contract with Plaintiffs. By doing so, Defendants have intentionally procured a breach by Wyman of his contract.

37. There is no reason, purpose, or explanation that would justify Defendants' conduct.

38. Defendants' conduct constitutes a tortious interference with Plaintiff's contractual relationship with Wyman.

WHEREFORE, Plaintiff respectfully requests as relief in this action that the Court:

1. Enter a permanent injunction, as provided by 17 U.S.C. § 502 and other applicable law, prohibiting Defendants, alone or in concert with any agent, representative, employer, employee, or person, from:

(a) infringing Plaintiff's existing or future copyrights in any manner, by copying, duplicating, distributing, selling, publishing, reproducing, adapting, publicly performing, displaying, preparing derivative works based on, renting, leasing, offering, or otherwise transferring or communicating in any manner, orally or in written, printed, audio, photographic, electronic, or other form, including but not limited to any publication on the internet, the Copyrighted Materials; and

(b) otherwise engaging in any conduct that unlawfully subverts or attempts to subvert Plaintiff's ownership of the Copyrighted Materials.

2. Enter a permanent injunction, as provided by 17 U.S.C. § 502 and other applicable law, compelling Defendants to:

(a) remove from Peebs.net, or any other website owned, operated or controlled by Defendants, all references to the availability of Plaintiff's Copyrighted Material on any other websites;

(b) remove from Peebs.net, or any other website owned, operated or controlled by Defendants, all publications of any information provided by Wyman and of any

information that constitutes a publishing by Wyman concerning Plaintiff or the Brethren; and

(c) publish a retraction and apology stating the following:

Peebs.net regrets publishing, causing to be published or threatening to publish, the Bible & Gospel Trust's copyrighted material on the Internet. Peebs.net shall no longer participate in such publication in any form whatsoever.

3. Enter an order, as provided under 17 U.S.C. § 503(a), impounding all copies or reproductions of the Copyrighted Materials found to have been made or used by Defendants.

4. Enter an order, as provided under 17 U.S.C. § 503(b), compelling Defendants to destroy all copies or reproductions of the Copyrighted Materials found to have been made or used by Defendants.

5. Award Plaintiff damages, as provided under 17 U.S.C. § 504, in the amount of Plaintiff's actual damages plus any additional profits of the Defendants; or, if so elected by Plaintiff prior to final judgment, in such amount as the Court deems just as statutory damages.

6. Award Plaintiff compensatory damages in an amount to be established at trial.

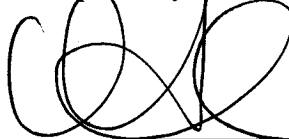
7. Award Plaintiff punitive damages against Defendants in an amount to be established at trial.

8. Award Plaintiff its costs incurred in this action, including reasonable attorneys' fees, as provided by 17 U.S.C. § 505 and any other applicable law.

9. Award Plaintiff any further relief that this Court deems just and proper.

Dated: March  2008

Respectfully submitted,



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