

The Honorable Robert S. Lasnik

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

<p>JACK MACKIE, an individual, Plaintiff, vs. MICHAEL J. HIPPLE, an individual; MICHAEL J. HIPPLE dba MIKE HIPPLE PHOTOGRAPHY, a Washington business; AGE FOTOSTOCK AMERICA, INC., a Delaware Corporation; and PUBLITEK, INC. dba FOTOSEARCH LLC, a Wisconsin Corporation, Defendants.</p>	<p>No. 2:09-cv-00164-RSL CORRECTED COMPLAINT FOR INFRINGEMENT OF COPYRIGHT</p>
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COMES NOW plaintiff through his attorneys and alleges as follows:

PARTIES

1. Plaintiff Jack Mackie ("Mackie") is a resident of Seattle, Washington.
2. Defendant Michael J. Hipple ("Hipple") resides at 10801 32nd Avenue SW, Seattle, WA 98146. Hipple is a professional photographic artist who does business under the name of Mike Hipple Photography, a Washington business.

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Corrected Complaint for Infringement of
Copyright

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Cutler Nylander & Hayton
Professional Service Corporation
1191 Second Avenue, Suite 1650
Seattle, Washington 98101
Telephone 206 340-4600

1 3. Defendant Age Fotostock America, Inc. ("Age Fotostock") is a Delaware
2 profit corporation whose registered agent is Corporation Service Company, 2711
3 Centerville Road, Suite 400, Wilmington, DE 19808. Age Fotostock's principal
4 address is 594 Broadway #707, New York, NY 10012-3257 and conducts its
5 business mainly on its website at www.agefotostock.com.

6 4. Defendant Publitek, Inc. dba Fotosearch LLC ("Publitek") is a Wisconsin
7 profit corporation whose registered agent is Rick F. Wintersberger. Publitek's
8 principal address is 2115 Watertown Road, Waukesha, WI 53186-1898 and
9 conducts its business mainly on its website at www.fotosearch.com.

10 **JURISDICTION AND VENUE**

11 5. This is an action for the infringement of Mr. Mackie's copyright in one
12 element ("Sub-installation") of a pictorial and sculptural work of art entitled Dance
13 Steps on Broadway ("Work"). This action is being brought under the provisions of
14 the Federal Copyright Act of 1976, as amended, 17 U.S.C. Sec. 101 et seq.
15 ("Copyright Act"). The Sub-installation in question is entitled "The Mambo".

16 6. This Court has jurisdiction pursuant to the Copyright Act and 28 U.S.C.
17 Sec. 1338(a) (original jurisdiction for civil action arising under federal law pertaining
18 to copyright etc.).

19 7. Venue lies in this Court pursuant to 28 U.S.C. Sec. 1400(a). Some of the
20 infringement at issue in this matter occurred in the Western District of Washington.
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22 **FACTS**

23 8. Mr. Mackie is one of the two authors of the Work.

24 9. All of the eight sub-installations of the Work fancifully depict dance
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1 movements. Each such sub-installation include bronze shoe soles and arrow
2 diagrams. Each such sub-installation is installed in public sidewalks adjacent to
3 Broadway Avenue in Seattle, Washington. The Work was created in 1979 and
4 installed in this publicly exposed location between 1981 to 1982. Each sub-
5 installation bears a bronze title block bearing both the title of a dance and a notice
6 of Mr. Mackie's claim to copyright. These title blocks have been associated with
7 each sub-installation at all times since the creation of the Work. All such notices
8 are sufficient under the provisions of 17 U.S.C. Sec. 401. The notice for this Sub-
9 installation states, inter alia:

10 Jack Mackie, Chuck Greening, Artists, © '79

11 10. Neither Mr. Mackie nor his co-author transferred any interest in the
12 copyright to the Work or any sub-installation thereof to any person. Neither Mr.
13 Mackie nor his co-author authorized Hipple to use the image of the Work or any of
14 its sub-installations, including this Sub-installation.

15 11. The Register of Copyrights, Copyright Office, Library of Congress,
16 registered Mr. Mackie's copyright in the Work as of October 13, 1998. The
17 copyright registration number is VAu 441-310. A true and correct copy of the
18 registration is **Exhibit 1** hereto.

19 12. Hipple unilaterally used the image of the Sub-installation in a piece of
20 graphic art ("Infringing Work"). He provided the infringing work for use by Age
21 Fotostock America, Inc. and Publitek, Inc. dba Fotosearch LLC, knowing that the
22 images were to be provided for purchase by customers of these companies, on
23 their webpages. The subject Sub-installation is plainly recognizable in the
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1 Infringing Work.

2 13. In Infringing Work, Hipple obliterated Mackie's copyright notice, but used
3 other parts of the rest of the Sub-installation.

4 14. Mr. Mackie's first knowledge of Hipple's infringement occurred in
5 approximately August 2007 when he was alerted to the existence of Hipple's
6 photographic image depicting portions of the Sub-installation being available for
7 purchase online. A true and correct copy of the webpages depicting Hipple's
8 photographic image are attached as **Exhibit 2** hereto.

9 **CAUSE OF ACTION FOR INFRINGEMENT**

10 15. Facts asserted above show that defendants have infringed Mr. Mackie's
11 copyright, 17 U.S.C. § 101 et seq.

12 **REQUEST FOR RELIEF**

13 WHEREFORE, Jack Mackie seeks the following relief from all defendants:

14 A. An order for the destruction of all copies, negatives, and digital archives
15 of Infringing Work.

16 B. An order for the removal and proof of the removal of all images of
17 Infringing Work from the websites of defendants, Age Fotostock America, Inc., and
18 Publitek, Inc. dba Fotosearch LLC.

19 B. Monetary damages in such amount as proven at trial.

20 C. Such further relief as the Court deems just, including attorneys fees.

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22 “

23 “

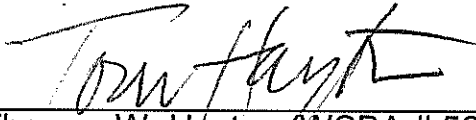
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1 Dated this 11th day of March, 2009.
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4 Thomas W. Hayton (WSBA # 5657)
5 Robert G. Nylander (WSBA #17264)
6 Cutler Nylander & Hayton, P.S.
7 1191 Second Avenue, Suite 1650
8 Seattle, WA 98101
9 Email: rgnlander@cnhlaw.com
10 Email: tomhayton@cnhlaw.com
11 Email: philcutler@cnhlaw.com
12 Counsel for Plaintiff Jack Mackie
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