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4 Attorneys for Plaintiff  
Star Publishing Co.

5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 STAR PUBLISHING CO., an Arizona ) No.  
9 Corporation, )

10 Plaintiff, )

11 vs. )

**VERIFIED COMPLAINT**

12 DAVID STINE, AARON PILLSBURY,  
13 DAMON PILLSBURY, JAMES RAPP, and )  
NICK FREYTAG, )

14 Defendants. )

15 For its complaint against Defendants, Plaintiff Star Publishing Co. ("Star  
16 Publishing") alleges as follows:

17 **NATURE OF THE ACTION**

18 1. This action involves the unauthorized, wrongful, knowing, and continuing  
19 appropriation, use and copying of Star Publishing's original copyrighted work of art  
20 consisting of a photograph owned by the Star Publishing. and published in its  
21 newspaper, *The Arizona Daily Star* ("The Star"). This wrongful and willful  
22 appropriation, use, copying and reproduction of Star Publishing's original copyrighted  
23 works of art violates the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.* Star  
24 Publishing seeks to enjoin Defendants' unlawful activities and to recover damages and  
25 profits resulting from Defendants' misconduct.

**JURISDICTION AND VENUE**

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2           2.       This court has jurisdiction of this civil action pursuant to 17 U.S.C. § 101  
3 *et seq.* (action arising under the Copyright Act), 28 U.S.C. § 1338(a) (Act of Congress  
4 relating to copyrights).

5           3.       Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391 as  
6 the acts complained of have substantially occurred in this District.

**THE PARTIES**

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8           4.       Plaintiff Star Publishing Company is an Arizona corporation with its  
9 principal place of business located in Tucson, Arizona.

10          5.       Star Publishing Company publishes *The Arizona Daily Star*, a newspaper  
11 of general circulation published daily in Tucson, Arizona.

12          6.       Defendant David Stine is an individual, who upon information and belief,  
13 resides in Tucson, Arizona and is a member of the musical group “Awful Truth.”

14          7.       Defendant Aaron Pillsbury is an individual, who upon information and  
15 belief, resides in Tucson, Arizona and is a member of the musical group “Awful Truth.”

16          8.       Defendant Damon Pillsbury, is an individual, who upon information and  
17 belief, resides in Tucson, Arizona and is a member of the musical group “Awful Truth.”

18          9.       Defendant James Rapp, is an individual, who upon information and belief,  
19 resides in Tucson, Arizona and is a member of the musical group “Awful Truth.”

20          10.       Defendant Nick Freytag, is an individual, who upon information and  
21 belief, resides in Tucson, Arizona and is a member of the musical group “Awful Truth.”

**STATEMENT OF FACTS UNDERLYING ALL CLAIMS**

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23          11.       On or about June 1, 2008, Tucson police officer Erik Hite was shot in the  
24 line of duty. He died of his injuries the following day.

25          12.       *The Star* published a newspaper article about the Officer Hite shooting in  
26 the June 2, 2008 edition of its newspaper.

1           13.     The June 2, 2008 edition of *The Star* also included a photograph that  
2 showed two police officers kneeling over the body of Officer Hite (hereafter “the  
3 Photograph”).

4           14.     The Photograph was taken by a photographer employed by Star  
5 Publishing.

6           15.     The Photograph is the property of Star Publishing.

7           16.     Star Publishing is the owner of the copyrights in the Photograph.

8           17.     The Photograph is the subject of Copyright Registration No. VA 1651649,  
9 effective February 3, 2009.

10          18.     Star Publishing recently learned that a punk rock band had taken the  
11 Photograph and used it as the cover art for a compact disc that contained the musical  
12 group’s material.

13          19.     The punk rock group that used the Photograph as the cover art on its  
14 compact disc refers to itself as “Awful Truth.”

15          20.     The name of the compact disc is “Kill a Cop for God.”

16          21.     Star Publishing learned from its coverage of the local Tucson music scene  
17 that David Stine, Aaron Pillsbury, Damon Pillsbury, James Rapp, and Nick Freytag are  
18 members of the punk rock band “Awful Truth.”

19          22.     On or about January 13, 2009, Star Publishing wrote a demand letter to  
20 James Roop, David Stine, Damon Pillsbury and Nick Freytag advising them that they  
21 were to cease and desist in using the Photograph.

22          23.     The January 13, 2009 letter was mailed certified mail. James Rapp signed  
23 the certified mail receipt on January 17, 2009.

24          24.     After the January 13, 2009 cease and desist letter was sent, Defendant  
25 Damon Pillsbury told an employee of Star Publishing that Star Publishing could go  
26 ahead and sue the members of the musical group because they would not remove the  
27 image from the compact disc.  
28

COUNT ONE

(Copyright Infringement — 17 U.S.C. § 501 *et seq.*)

25. Star Publishing incorporates the allegations in the preceding and ensuing paragraphs of the Complaint as if fully set forth herein.

26. Star Publishing owns the Photograph.

27. The Photograph is the subject of Copyright Registration No. VA 1651649, effective February 3, 2009.

28. Defendants copied and reproduced the Photograph, or caused the Photograph to be copied or reproduced, on covers of compact discs for their band, Awful Truth, without permission.

29. Defendants' unauthorized use and reproduction of the Photograph constitutes copyright infringement in violation of the Copyright Act, 17 U.S.C. § 501 *et seq.*

30. Defendants' actions have caused, and will continue to cause, unless enjoined, monetary damage and irreparable injury to Star Publishing for which there is no adequate remedy at law.

31. As the direct and proximate result of Defendants' infringement, Star Publishing has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation and goodwill, and therefore is entitled to injunctive relief, damages, and all other relief set forth in the Copyright Act.

32. Star Publishing has complied in all respects with the requirements for the creation and enforcement of its copyrighted materials, including the Photograph, and, therefore, is entitled to an injunction enjoining, restraining and preventing Defendants' further use, copying, distribution, broadcasting and any other use of Star Publishing's Copyrights, including the Photograph.

WHEREFORE, *The Star* prays for judgment in its favor with respect to all the causes of action set forth above and that relief be granted as follows:

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- A. That Defendants, their officers, partners, agents, servants, affiliates, employees, attorneys and representatives and all those in privity or acting in concert or participation with Defendants, and each and all of them, be temporarily, preliminarily, and permanently enjoined from appropriating, using, copying and/or distributing any copyrighted work owned by Star Publishing, including the Photograph, without the prior written consent of Star Publishing.
- B. That Defendants be required to return all copies of Star Publishing’s Copyrights, including the Photograph, in their possession, custody or control;
- C. That Defendants be required to pay Star Publishing damages it has proximately suffered from Defendants’ infringement of Star Publishing’s Copyrighted works.
- D. That Star Publishing be awarded such other and further relief as the Court may deem just and proper.

DATED this 16th day of February, 2009.

LEWIS AND ROCA LLP

By /s/ D. Douglas Metcalf  
D. Douglas Metcalf  
Attorneys for Plaintiff  
Star Publishing Co.