

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Vietnam Women’s Memorial Foundation, Inc.
1735 Connecticut Avenue, N.W. 3rd Floor
Washington, DC 20009
(866) 822-8963

Plaintiff,

v.

Sunbeam Trading Inc.
1327 4th Street, N.E.
Washington, DC 20002-7001
(202) 546-2780;

Shin Sung Souvenir Co.
101 R Street, S.W.
Washington, DC 20024-3418
(202) 479-4199;

P&D Souvenir
520 10th Street, N.W.
Washington, DC 20004-1413
(202) 783-1003;

Penguin Marketing Group
2800 Dorr Avenue
Fairfax, VA 22031-1512
(703) 205-2400;

Oscar Mayers
3332 10th Place, S.E.
Washington, DC 20032
(202) 561-4407;

Oscar and Yelca Tovar
5507 Heming Ave.
Springfield, VA 22151
(703) 725-5805;

Civil Action No. _____

**COMPLAINT AND
JURY DEMAND**

Guest Services, Inc.)
3055 Prosperity Avenue)
Fairfax, VA 22031)
(703) 849-9300;)
.)
John Doe # 1;)
)
John Doe # 2;)
)
John Doe # 3;)
)
John Doe # 4;)
)
And)
)
John Doe # 5)
)
Defendants.)
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COMPLAINT

Plaintiff Vietnam Women’s Memorial Foundation, Inc. (“VWMF”), by and through its undersigned counsel, for its Complaint against Defendants Sunbeam Trading Inc., Shin Sung Souvenir Co., P&D Souvenir, Penguin Marketing Group, Oscar S. Mayers, Oscar and Yelca Tovar, Guest Services, Inc., and John Does # 1 through # 5 (“Defendants”) in this action, avers as follows:

PARTIES

1. Plaintiff, VWMF, is a non-profit organization incorporated in 1984 and based in the District of Columbia. VWMF was instrumental in the establishment of the Vietnam Women’s Memorial (“Memorial”) and its ongoing goals include identifying the military and civilian women who served during the Vietnam War, educating the public about their role, and facilitating research on the physiological, psychological, and sociological issues correlated to their service.

2. Upon information and belief, Defendant Sunbeam Trading Inc. is an importer and retailer of general merchandise with its headquarters located at 1327 4th Street, N.E., Washington, D.C. 20002-7001.

3. Upon information and belief, Defendant Shin Sung Souvenir Co. is a souvenir importer, exporter, manufacturer, and retailer with its headquarters located at 101 R Street, S.W., Washington, D.C. 20024-3418.

4. Upon information and belief, Defendant P&D Souvenir is a souvenir retailer with its headquarters located at 520 10th Street, N.W., Washington, D.C. 20004-1413.

5. Upon information and belief, Defendant Penguin Marketing Group is a firm specializing in advertising, management consulting, and non-durable goods with its headquarters located at 2800 Dorr Avenue, Fairfax, Virginia 22031-1512, and whose goods are widely sold and distributed to entities throughout the District of Columbia.

6. Upon information and belief, Defendant Oscar Mayers is a souvenir retailer with a residence at 3332 10th Place, S.E., Washington, D.C. 20032, and who operates a sales booth located on the National Mall east of the Lincoln Memorial on 23rd Street, N.W. at Constitution Avenue, Washington, D.C. 20002.

7. Upon information and belief, Defendants Oscar and Yelca Tovar are souvenir retailers with a residence at 5507 Heming Ave. Springfield, Virginia 22151, and who operate a portable sales booth often located at 21st Street and Constitution Avenue, N.W., Washington, D.C. 20001.

8. Upon information and belief, Defendant Guest Services, Inc. is a private hospitality company with its headquarters located at 3055 Prosperity Avenue, Fairfax,

Virginia, 22031, and which operates several gift shops located in Washington, D.C., including one on Lincoln Memorial Circle, 23rd Street, N.W., Washington, D.C. 20242.

9. The names of the five John Doe Defendants are presently unknown but intended to indicate additional sellers, importers, distributors, and manufacturers of goods which infringe upon the copyright to “The Vietnam Women’s Memorial.” Plaintiff will amend the Complaint to identify the John Does as their identities become known to it.

JURISDICTION AND VENUE

10. This Court has jurisdiction over these claims under 28 U.S.C. § 1331, in that they arise under the laws and treaties of the United States; and under 28 U.S.C. § 1338(a), in that they arise under the copyright laws of the United States, as amended, 17 U.S.C. §§ 101, *et seq.*

11. Venue is proper in this district under 28 U.S.C. § 1391, in that a substantial part of the events or omissions giving rise to the claim occurred in this district, Plaintiff was harmed in this district, and Defendants have sufficient contacts in this district; and under 28 U.S.C. § 1400, in that this action arises under the Copyright Act and Defendants reside or may be found in this district.

FACTS COMMON TO ALL COUNTS

12. The Vietnam Women’s Memorial Foundation was incorporated in 1984 with the mission to “promote the healing of Vietnam women veterans through the placement of the Vietnam Women’s Memorial (the “Memorial”) on the grounds of the Vietnam Veterans Memorial in Washington, D.C.; to identify the military and civilian women who served during the Vietnam War; to educate the public about their role; and to facilitate research on the physiological, psychological, and sociological issues correlated to their

service.” Its efforts have proven essential to providing a “healing place and a healing process” for the women who served during Vietnam—an otherwise marginalized and oft-forgotten group. The VWMF seeks to honor and aid these women who, more often than not, were the last person dying soldiers saw before passing on.

13. The movement to establish a monument to these brave women began in 1983 with the personal efforts of VWMF’s Chair and Founder, Diane Carlson Evans, herself a former army nurse. It culminated ten years later, on November 11, 1993, with the dedication of the Vietnam Women’s Memorial on the grounds of the Vietnam Veterans Memorial in Washington, D.C.

14. The original work of art that serves as the centerpiece of the Memorial is a bronze sculpture created by Glenna Goodacre, of Santa Fe, New Mexico (the “Sculpture”). Ms. Goodacre’s unique “sculpture in the round” design, depicting three women and a wounded soldier, was chosen by VWMF’s Board of Directors after an extensive nationwide design competition. The piece has been widely praised for its beauty and ability to reflect the strength, dignity, courage, and compassion of the women who served in Vietnam.

15. On January 10, 1992, Glenna Goodacre, Ltd. registered its copyright in the Sculpture with the U.S. Copyright Office and was issued Registration No. VAu-220-480.

16. On August 27, 1993, Glenna Goodacre, Ltd. executed an agreement to transfer copyright and ownership rights in the sculptural work to the Vietnam Women’s Memorial Project, Inc. (VWMF’s prior name). The Assignment of Copyright was recorded with the U.S. Copyright Office on October 26, 1993. Copies of the Certificate of Registration and the Assignment of Copyright are annexed hereto as Exhibit A.

17. The Memorial serves as the focal point of VWMF's organizational identity and ongoing marketing campaign. Revenue from merchandise sales is essential to VWMF's ability to fulfill its mission and provide essential aid to the women who served in Vietnam. From its website at www.vietnamwomensmemorial.org, VWMF sells a variety of goods emblazoned with the Memorial's image. These include apparel, books, videos, mugs, posters, pins, memorial coins, note cards with envelopes, and bookmarks along with two official replicas of the Sculpture and its maquette. The products are also available through an authorized group of retailers and distributors including, but not limited to, the U.S. Army Medical Department Museum Foundation's ("AMEDD") gift shop and website at www.ameddgiftshop.com.

18. VWMF routinely grants permission to reproduce images of the Memorial at nominal or no cost, except in cases where commercial sales are involved. In such cases, a licensing fee or other royalty arrangement may be required. VWMF clearly posts its ownership of the Memorial's copyright on its website along with the restrictions and penalties inherent in use of a reproduction of the Memorial's image in violation of U.S. copyright law.

19. Among the merchandise sold by VWMF is a 7" high x 10" wide cast resin replica ("the Replica") of the Vietnam Women's Memorial with bronze patina mounted on a wood base. This Replica is manufactured by Vanmark, a division of the Van group, and sold at both authorized websites as well as through several authorized merchandisers. The Replica is sold for \$50.00 plus \$13.95 shipping and handling by the VWMF. A photograph of the official Replica is annexed hereto as Exhibit B.

20. On information and belief, the Defendant Sunbeam Trading, Inc. imports and sells unauthorized replica sculptures of the Vietnam Women's Memorial on 1327 4th Street N.E., Washington, D.C. 20002-7001, along with an assortment of unauthorized merchandise bearing the Memorial's image, including but not limited to postcards and photographs.

21. On information and belief, the Defendant Shin Sung Souvenir Co. imports and sells unauthorized replica sculptures of the Vietnam Women's Memorial on 101 R Street, S.W., Washington, D.C. 20024-3418, along with an assortment of unauthorized merchandise bearing the Memorial's image, including but not limited to postcards it produces.

22. On information and belief, the Defendant P&D Souvenir sells unauthorized replica sculptures of the Vietnam Women's Memorial on 520 10th Street, N.W., Washington, D.C. 20004-1413, along with an assortment of unauthorized merchandise bearing the Memorial's image, including but not limited to postcards and photographs.

23. On information and belief, Defendant Oscar Mayers sells unauthorized replica sculptures of the Vietnam Women's Memorial from his sales booth "POW-OUT POST" on the National Mall east of the Lincoln Memorial on 23rd Street, N.W. at Constitution Avenue, Washington, D.C. 20002, along with an assortment of unauthorized merchandise bearing the Memorial's image, including but not limited to postcards and refrigerator magnets.

24. On information and belief, Defendants Oscar and Yelca Tovar sell unauthorized replica sculptures of the Vietnam Women's Memorial on 21st Street and Constitution Avenue, N.W., Washington, D.C., 20551, along with an assortment of unauthorized

merchandise bearing the Memorial's image, including but not limited to postcards and refrigerator magnets.

25. On information and belief, Defendant Guest Services, Inc. sells unauthorized replica sculptures of the Vietnam Women's Memorial at its gift shop on Lincoln Memorial Circle, 23rd Street, N.W., Washington, D.C. 20242, along with an assortment of unauthorized merchandise bearing the Memorial's image, including but not limited to refrigerator magnets and posters.

26. On information and belief, the Defendant Penguin Marketing has produced and sold unauthorized merchandise bearing the Memorial's image, including but not limited to refrigerator magnets.

FIRST CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Sunbeam Trading, Inc.

27. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

28. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

29. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

30. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

31. Defendant Sunbeam Trading, Inc. copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms, including, but not limited to, unauthorized replica sculptures, postcards, and photographs.

32. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

33. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

34. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

SECOND CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Shin Sung Souvenir Co.

35. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

36. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

37. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

38. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

39. Defendant Shin Sung Souvenir Co. copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms, including, but not limited to, unauthorized replica sculptures and postcards.

40. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

41. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

42. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

THIRD CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against P&D Souvenir

43. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

44. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

45. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

46. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

47. Defendant P&D Souvenir copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms, including, but not limited to, unauthorized replica sculptures, postcards, and photographs.

48. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

49. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

50. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

FOURTH CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Oscar Mayers

51. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

52. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

53. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

54. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

55. Defendant Oscar Mayers copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms,

including, but not limited to, unauthorized replica sculptures, postcards, and refrigerator magnets.

56. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

57. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

58. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

FIFTH CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Oscar and Yelca Tovar

59. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

60. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

61. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

62. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

63. Defendants Oscar and Yelca Tovar copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms,

including, but not limited to, unauthorized replica sculptures, postcards, and refrigerator magnets.

64. Defendants' willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

65. Plaintiff has been irreparably damaged by Defendants' acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

66. Defendants profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

SIXTH CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Guest Services, Inc.

67. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

68. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

69. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

70. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

71. Defendant Guest Services, Inc. copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms,

including, but not limited to, unauthorized replica sculptures, refrigerator magnets, and posters.

72. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

73. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial.

74. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

SEVENTH CAUSE OF ACTION --COPYRIGHT INFRINGEMENT

As Against Penguin Marketing Group

75. Plaintiff hereby repeats and realleges, as if fully set forth herein, the allegations of paragraphs 1 through 26 inclusive of this Complaint.

76. Plaintiff VWMF's "The Vietnam Women's Memorial" is an "original work of authorship," pursuant to 17 U.S.C. § 102(a)(5). The Memorial was created by Glenna Goodacre, who assigned the copyright to Plaintiff VWMF. The copyright in the Memorial is valid and subsisting.

77. Plaintiff is the sole proprietor of all rights, title, and interest in and to the copyright in the Memorial, pursuant to 17 U.S.C. § 113(a).

78. Due to the visible public display of the Vietnam Women's Memorial on the National Mall in Washington, D.C., Defendants had access to Plaintiff's sculpture.

79. Defendant Penguin Marketing Group copied and distributed without authorization or permission Plaintiff VWMF's "The Vietnam Women's Memorial" in various forms, including, but not limited to, refrigerator magnets.

80. Defendant's willful and unauthorized copying and distribution of Plaintiff's original work infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501(a).

81. Plaintiff has been irreparably damaged by Defendant's acts of copyright infringement and has suffered damages in an amount that will be determined at trial. Defendant profited from its infringement of Plaintiff's copyright in amounts that will be determined at trial.

PRAYER FOR RELIEF

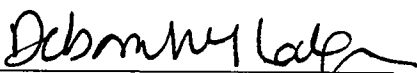
WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court enter judgment against Defendants and that the following relief be granted:

1. A declaratory judgment that Defendants have infringed Plaintiff's copyrights in violation of 17 U.S.C. § 501;
2. An Order preliminarily and permanently enjoining Defendants, their officers, directors, agents, representatives, and all those acting in concert with them, from manufacturing or distributing infringing products bearing the image or likeness of Plaintiff's "The Vietnam Women's Memorial," pursuant to its authority under 17 U.S.C. § 502(a);
3. An Order that any and all products, replicas, sculptures, prints, t-shirts, mugs, postcards, designs, and/or any other items in Defendants' possession or under their control that were made or used in violation of Plaintiff's exclusive rights, along with articles by means of which such items may be reproduced, be strictly accounted for and impounded while this action is pending and destroyed following this Court's final judgment or decree, in accordance with 17 U.S.C. § 503;

4. An Order that the Defendants pay (a) Plaintiff VWMF's actual damages arising from Defendants' acts of copyright infringement, in the amount proven at trial, and any additional profits and reasonable royalties attributable to Defendants' copyright infringement, pursuant to 17 U.S.C. § 504(b), and that the Court be provided a complete and accurate accounting thereof; or (b) statutory damages between \$750.00 and \$30,000.00, pursuant to 17 U.S.C. § 504(c)(1).
5. A finding that because Defendants infringed upon Plaintiff's copyright willfully, statutory damages should be increased above the aforementioned \$30,000.00 limit to an award not to exceed \$150,000.00, pursuant to 17 U.S.C. § 504(c)(2).
6. An Order that Plaintiff recover full costs and attorney's fees incurred in connection with this action, pursuant to 17 U.S.C. § 505.
7. Grant Plaintiff such other relief appearing just and proper to this Court.

December 29, 2005.

Respectfully submitted,

By: 
Deborah M. Lodge, D.C. Bar # 393942
Kirsten B. Wegner, D.C. Bar # 485172
PATTON BOGGS, LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6000

Attorneys for Plaintiff
Vietnam Women's Memorial Foundation

JURY DEMAND

Plaintiff VWMF hereby demands a jury trial on all issues so triable.

December 29, 2005.

Respectfully submitted,

By: Deborah M Lodge MFL
Deborah M. Lodge, D.C. Bar # 393942
Kirsten B. Wegner, D.C. Bar # 485172
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