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11 *Attorneys for Plaintiff DRK Photo*

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**

14
15 DRK PHOTO, a sole proprietorship

16 Plaintiff,

17 v.

18 THE MCGRAW-HILL COMPANIES, INC.

19 Defendant.

No.

COMPLAINT

(jury trial demanded)

20
21
22 Plaintiff DRK Photo (“DRK”) for its Complaint against Defendant The McGraw-
23 Hill Companies, Inc. (“McGraw-Hill”) alleges:

24
25 **STATEMENT OF ACTION**

26 1. This is an action for copyright infringement brought by Plaintiff DRK, the holder

1 of all copyrights to certain photographs originally licensed for limited use by Defendant
2 McGraw-Hill, against Defendant for uses of Plaintiff's photographs without its authority
3 or permission.

4 **PARTIES**

5 2. Plaintiff DRK Photo is a Sedona, Arizona stock photography agency engaged in
6 licensing photographic images to publishers, including McGraw-Hill. DRK Photo is a
7 sole proprietorship owned and operated since 1981 by Daniel R. Krasemann, a United
8 States citizen and a resident of Sedona, Arizona.

9 3. Defendant McGraw-Hill is Delaware corporation and publisher of educational
10 textbooks, with its primary office in New York. McGraw-Hill sells and distributes
11 textbooks via its employees and agents in Arizona and throughout the United States,
12 including the publications in suit and ancillary materials, in which Plaintiff's photographs
13 are unlawfully reproduced. At all times pertinent to the allegations herein, McGraw-Hill
14 acted through its various imprints and divisions.

15 **JURISDICTION AND VENUE**

16 4. This is an action for injunctive relief, statutory damages, monetary damages, and
17 interest under the copyright laws of the United States.

18 5. This Court has jurisdiction over the subject matter of this action pursuant to 28
19 U.S.C. §§ 1331 (federal question) and 1338 (copyright).

20 6. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(a) and (b) and
21 28 U.S.C. §§ 1400(a).

22 **FACTS COMMON TO ALL COUNTS**

23 7. Plaintiff DRK is the owner and exclusive copyright holder of the attached
24 photographic images ("Photographs"), depicted in Exhibit A, whose registration status
25 with the United States Copyright Office is set forth therein.

26 8. Between 1992 and 2009, DRK sold McGraw-Hill limited licenses to use copies of
the Photographs in numerous educational publications. The permissions DRK granted

1 McGraw-Hill were expressly limited by number of copies, distribution area, language,
2 duration, and media as set forth in Exhibit A. Typical licenses are attached as Exhibit B.

3 9. DRK granted the limited use licenses in response to McGraw-Hill's
4 representations to DRK that the use of the Photographs would not exceed the limitations
5 contained in its license requests.

6 10. DRK relied on the truthfulness of the express limitations contained in the license
7 requests in establishing its license fees.

8 11. Upon information and belief, McGraw-Hill exceeded the permitted uses under the
9 terms of the limited licenses listed in Exhibit A.

10 12. Upon information and belief, McGraw-Hill used the Photographs without any
11 permission in publications not yet identified.

12 13. When McGraw-Hill copied and distributed the Photographs without authorization,
13 McGraw-Hill had a duty in equity and good conscience to disclose those uses to DRK.
14 This is especially so because McGraw-Hill knew precisely when its uses of the
15 Photographs exceeded the applicable license limitations, but DRK had no such
16 knowledge nor any reason to assume McGraw-Hill was being deceitful in the uses it was
17 making of the Photographs.

18 14. McGraw-Hill's concealment was effective and worked as intended. For years,
19 McGraw-Hill's infringements were concealed.

20 15. In 2010, McGraw-Hill admitted to DRK that it had exceeded the print run
21 limitations in at least 52 DRK's licenses (*see* Exhibit C and Exhibit D¹ hereto) and that it
22 should have requested and paid for permission to print more copies than it actually
23 obtained. These specific print-run issues were resolved in early 2011, with payment to
24 DRK of \$818,689.71 (*see* Exhibit E). DRK brings no claims against McGraw-Hill for
25 exceeding the print run limits in those licenses. This suit is limited to overprinting of

26 _____
¹ DRK does not concede the print runs McGraw-Hill disclosed are accurate, and reserves the right to verify through discovery.

1 DRK invoices for which no print runs, or inaccurate print runs, were disclosed by
2 McGraw-Hill, uses by McGraw-Hill beyond other license parameters (size, number of
3 uses within a publication, distribution area, electronic use, duration, and language uses),
4 and wholly unlicensed uses.

5 **COUNT I**

6 **COPYRIGHT INFRINGEMENT AGAINST MCGRAW-HILL**

7 16. Plaintiff incorporates herein by this reference each and every allegation contained
8 in each paragraph above.

9 17. The foregoing acts of McGraw-Hill constitute infringements of Plaintiff's
10 copyrights in the Photographs in violation of 17 U.S.C. § 501 *et seq.*

11 18. Plaintiff suffered damages as a result of McGraw-Hill's unauthorized use of the
12 Photographs.

13 **WHEREFORE**, Plaintiff requests the following:

14 1. A preliminary and permanent injunction against Defendant and anyone working in
15 concert with it from copying, displaying, distributing, selling or offering to sell Plaintiff's
16 Photographs described in this Complaint and Plaintiff's photographs not included in suit.

17 2. As permitted under 17 U.S.C. § 503, impoundment of all copies of Plaintiff's
18 Photographs used in violation of Plaintiff's exclusive copyrights as well as all related
19 records and documents and, at final judgment, destruction or other reasonable disposition
20 of the unlawfully used Photographs, including digital files and any other means by which
21 they could be used again by Defendant without Plaintiff's authorization.

22 3. Actual damages and all profits derived from the unauthorized use of Plaintiff's
23 Photographs or, where applicable and at Plaintiff's election, statutory damages.

24 4. Reasonable attorney's fees.

25 5. Court costs, expert witness fees, interest and all other amounts authorized under
26 law.

6. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all issues permitted by law.

DATED: April 15, 2011

Plaintiff DRK Photo,
by its attorneys,

s/ Maurice Harmon

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