

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ART DRAUGLIS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
KAPPA MAP GROUP, LLC	§	
	§	
Defendant.	§	CASE NO. 1:14-cv-01043-ABJ
<hr/>		
KAPPA MAP GROUP, LLC	§	
	§	
Counterclaimant,	§	
	§	
v.	§	
	§	
ART DRAUGLIS	§	
	§	
Counter-Defendant.	§	

ANSWER AND COUNTERCLAIMS

Defendant KAPPA MAP GROUP, LLC, (“Kappa”) by and through its counsel of record, respectfully submits its Answer to the Complaint filed by ART DRAUGLIS (“Drauglis”) in the above referenced matter. Defendant denies any averments not expressly admitted and responds to the Complaint as follows:

1. Kappa admits the averments in paragraph 1 of the Complaint.
2. Kappa admits the averments in paragraph 2 of the Complaint.
3. Kappa denies that defendant caused tortious injury in the District of Columbia. Kappa admits the remaining averments in paragraph 3 of the Complaint.

4. Kappa denies that Defendants engaged in infringement in this district.

Kappa admits the remaining the averments in paragraph 4 of the Complaint.

5. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 5 of the Complaint.

6. Kappa admits the averments in paragraph 6 of the Complaint.

7. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 7 of the Complaint.

8. Kappa admits Drauglis posted the photo publicly to Flickr. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 8 of the Complaint.

9. Kappa denies that when Drauglis posted the Work on his Flickr photostream, he indicated that it was protected by copyright. Kappa admits that when Drauglis posted the Work on his Flickr photostream, he indicated that it was licensed pursuant to the Creative Commons Attribution-Share Alike 2.0 ("CC BY-SA-2.0") license.

10. Kappa admits the averments in paragraph 10 of the Complaint.

11. Kappa admits the averments in paragraph 11 of the Complaint.

12. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 12 of the Complaint.

13. Kappa admits the averments in paragraph 13 of the Complaint.

14. Kappa denies the averments in paragraph 14 of the Complaint.

15. Kappa admits that its "ADC Montgomery Co. Maryland Street Atlas" contains a notice of copyright printed on the page behind the inside cover that states "Copyright ©Kappa Map Group, LLC 2012. Portions ©Navteq 2011. All rights reserved." Kappa denies the remaining averments in paragraph 15 of the Complaint.

16. Kappa denies the averments in paragraph 16 of the Complaint.

17. Kappa denies the averments in paragraph 17 of the Complaint.

18. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 18 of the Complaint.

**COUNT I
COPYRIGHT INFRINGEMENT**

19. In response to paragraph 19, Kappa repeats and incorporates by reference its answers to paragraphs 1-18.

20. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 20 of the Complaint.

21. Kappa is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 21 of the Complaint.

22. Kappa admits it made use of the Drauglis Work. Any remaining allegations of paragraph 22 are denied.

23. Kappa denies the averments in paragraph 23 of the Complaint.

24. Kappa denies the averments in paragraph 24 of the Complaint.

**COUNT II
FALSIFICATION OF COPYRIGHT MANAGEMENT INFORMATION**

25. In response to paragraph 26, Kappa repeats and incorporates by reference its answers to paragraphs 1-25.

26. Kappa denies the averments in paragraph 26 of the Complaint.

27. Kappa denies the averments in paragraph 27 of the Complaint.

28. Kappa denies the averments in paragraph 28 of the Complaint.

PRAYER FOR RELIEF

Kappa denies that Plaintiff is entitled to the grounds for relief as enumerated in the Complaint.

JURY DEMAND

Defendant hereby demands a trial by jury for all issues so triable.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's claims are barred, in whole or in part, by the defense of innocent infringement as Kappa believes that the Work was properly licensed for its commercial use and Kappa placed no false copyright information on the Work, and provided attribution to the Work's author.

SECOND DEFENSE

To the extent Plaintiff has brought claims for an award of statutory damages under 17 U.S.C. § 1203(c)(3), Plaintiff's claims are barred, in whole or in part, by the defense of innocent infringement as Kappa believes that the Work is properly licensed for commercial use, Kappa placed no false copyright information on the Work, and Kappa provided proper attribution to the Work's author.

THIRD DEFENSE

At the time Plaintiff filed his claim under 17 U.S.C. § 1202(b), Plaintiff was fully aware that Kappa did not knowingly or intentionally provide false copyright management information ("CMI") in order to enable, facilitate, or conceal infringement or that Kappa provided false copyright management information as to the authorship of plaintiff's Work in violation of 17 U.S.C. § 1202(b).

FOURTH DEFENSE

Drauglis' conduct in knowingly bringing these claims without basis in fact or law has caused and continues to cause Kappa to suffer harm. Accordingly, Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE

Defendant reserves the right to assert additional defenses (or cross-claims or counterclaims) that may be identified during investigation and/or course of discovery.

COUNTERCLAIMS

For its counterclaims against counter-defendant Art Drauglis, counterclaimant, Kappa Group, LLC, alleges as follows:

PARTIES

1. Counterclaimant Kappa Group, LLC, (hereinafter “Kappa”) is a Pennsylvania limited liability company with its principal office at 6198 Butler Pike, Blue Bell, PA 19422, and a registered address of 40 E. Skippack Pike, Fort Washington PA 19034.

2. Plaintiff ART DRAUGLIS (hereinafter "Drauglis") lives and works in Washington, D.C.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this court because this litigation arises under federal law, namely 17 U.S.C. § 501 *et seq.*, the Declaratory Judgment Act, 28 U.S. Code § 2201, and 17 U.S.C. § 1202 *et seq.* The Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question).

4. The Counter-Defendant is subject to personal jurisdiction in this district.

5. Venue is proper under 28 U.S.C. § 1391(b) because the acts giving rise to these claims occurred in this District, and Counterclaimant does business in this District.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

6. On or about April 27, 2008 Drauglis created his photograph at issue in this action entitled "Swain's Lock," referred to herein as the "Work."

7. Upon information and belief, on or about April 27, 2008, Drauglis posted the work publicly to his Flickr® account at the following link:

<http://www.flickr.com/photos/wiredwitch/2455026301/>

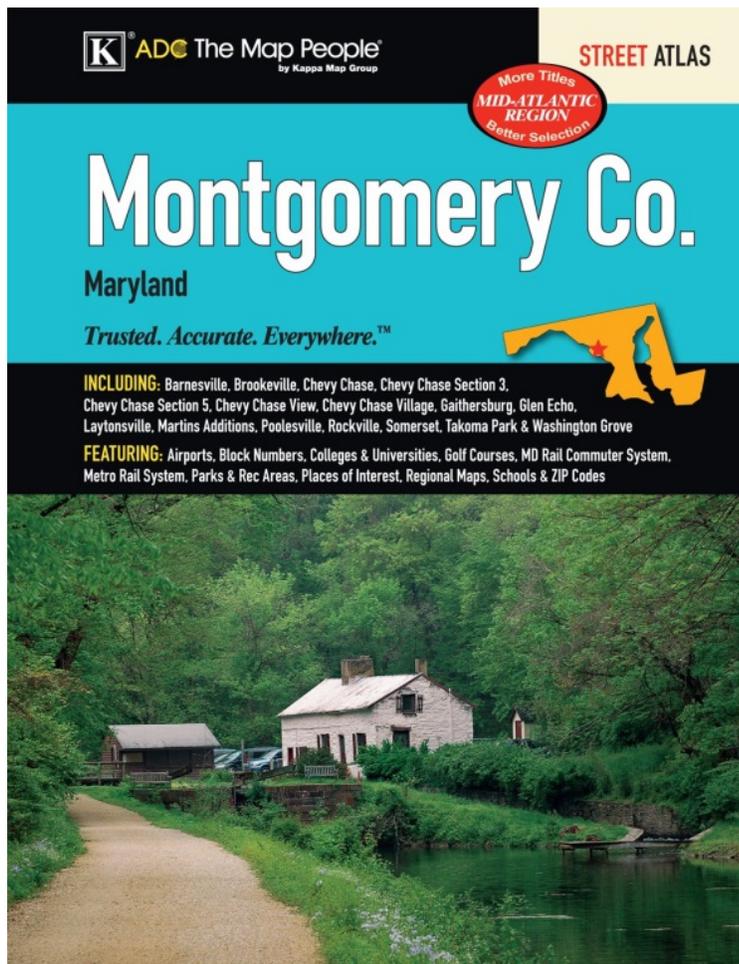
8. Upon information and belief, on or about April 27, 2008, when Drauglis posted the work publicly to his Flickr® account the image contained no watermark or any other copyright management information ("CMI").



9. Upon information and belief, when Drauglis posted the Work publicly to his Flickr® account, Drauglis indicated it was licensed pursuant to the Creative Commons Attribution-ShareAlike 2.0 (“CC BY-SA-2.0”) license.¹ See Exhibit A.

10. Kappa Map downloaded a copy of the Work, which contained no CMI or watermark from Drauglis Flickr account.

11. On or about July, 2012, Defendant Kappa Map published a street map bearing the Work entitled “Montgomery Co. Maryland Street Atlas.”



See Exhibit B.

¹ <https://creativecommons.org/licenses/by-sa/2.0/legalcode>

12. Upon information and belief, Creative Commons Attribution-ShareAlike 2.0 license² allows a user of the work to: “Share - copy and redistribute the material in any medium or format” and “Adapt - remix, transform, and build upon the material for any purpose, even commercially.” See Exhibit C.

13. Kappa used the image in the Kappa Map in good faith based upon the representations that the image was licensed for use in commercial applications.

14. On the back cover of the map, Kappa provided the “Attribution” and “ShareAlike” data for the Work dictated by the CC BY-SA-2.0 license: “**Photo: Swain’s Lock, Montgomery Co., MD; Photographer: Carly Lesser & Art Drauglis, Creative Commons, CC-BY-SA-2.0**” See Exhibit D.

COUNT I

Declaratory Judgment of Non-Infringement of the Asserted Copyright in the Work

15. Kappa realleges the allegations set forth in Paragraphs 1 through 14 of the Counterclaim as though fully set forth herein.

16. As stated in Paragraphs 19-24 of the Complaint, Drauglis has brought a claim for copyright infringement under 17 U.S.C. § 501 *et seq.*

17. An actual case or controversy exists between Drauglis and Kappa as to whether the asserted Work is infringed by Kappa.

² <https://creativecommons.org/licenses/by-sa/2.0/>

18. A judicial declaration is necessary and appropriate so that Kappa may ascertain its rights regarding the asserted copyright in the Work.

19. Kappa's use of the Work in its publication Montgomery Co. Maryland Street Atlas is in accordance with the terms of the Creative Commons Attribution-ShareAlike 2.0 license.

20. Kappa has not infringed and does not infringe, directly or indirectly, the asserted Copyright in the Work.

COUNT II

Declaratory Judgment of Non-Falsification of Copyright Management Information

21. Kappa realleges the allegations set forth in Paragraphs 1 through 20 of the Counterclaim as though fully set forth herein.

22. As stated in Paragraphs 25-28 of the Complaint, Drauglis has brought a claim pursuant to 17 U.S.C. § 1202 *et seq.*

23. Drauglis alleges that Kappa knowingly, and with the intent to enable, conceal or facilitate copyright infringement, provided false copyright management information as to the plaintiff's Work in violation of 17 U.S.C. § 1202(b).

24. An actual case or controversy exists between Drauglis and Kappa as to whether Kappa violated 17 U.S.C. § 1202(b).

25. A judicial declaration is necessary and appropriate so that Kappa may ascertain its rights.

26. Kappa did not knowingly, and with the intent to enable, conceal or facilitate copyright infringement, provide false copyright management information as to the plaintiff's Work.

27. As discussed in Paragraph 14 above, Kappa provided truthful copyright management information as to the plaintiff's Work.

28. With full knowledge and awareness that Kappa did not knowingly and with the intent to enable, conceal or facilitate copyright infringement, provide false copyright management information as to the plaintiff's Work, Drauglis knowingly and intentionally filed a baseless claim against Kappa under 17 U.S.C. § 1202(b).

29. With full knowledge and awareness that Kappa had in fact provided proper copyright management information as to the plaintiff's Work, Drauglis knowingly and intentionally filed a baseless claim against Kappa under 17 U.S.C. § 1202(b).

30. Drauglis's actions as described above have caused and continued to cause Kappa irreparable harm and damage to its reputation and business.

COUNT III

Claim for Costs and Attorneys' Fees

31. Kappa realleges the allegations set forth in Paragraphs 1 through 30 of the Counterclaim as though fully set forth herein.

32. Kappa has engaged the undersigned attorney and has agreed to pay them a reasonable fee.

33. As stated in Paragraphs 25-28 of the Complaint, Drauglis has brought this action pursuant in part to 17 U.S.C. § 1202 *et seq.*

34. Drauglis's knowingly brought his claim against Kappa under 17 U.S.C. § 1202 without any basis in fact or law.

35. Drauglis's conduct in bringing his claim under 17 U.S.C. § 1202 is frivolous and objectively unreasonable.

36. Drauglis's conduct in bringing this claim without basis has caused and continues to cause harm to Kappa.

37. Drauglis is therefore liable for Kappa's full costs and reasonable attorneys' fees as provided in 17 U.S.C. § 1203.

38. An award to Kappa of costs and reasonable attorneys' fees as provided in 17 U.S.C. § 1203 in defending itself against Drauglis's baseless claim would act as effective deterrent against future claims against innocent parties.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to Drauglis's Complaint and asserted its Counterclaims against Drauglis, Kappa prays for judgment as follows:

- A. A judgment dismissing Drauglis Complaint against Kappa with prejudice;
- B. A judgment in favor of Kappa on all of its Counterclaims;
- C. A declaration that Kappa has not infringed the Work;
- D. A declaration that this case is exceptional and an award to Kappa of its costs of litigation, including attorneys' fees and expert witness fees; and
- E. Such other and further relief as this Court may deem just and proper.

Dated: July 14, 2014

Respectfully submitted,

/s/ Esther Yong
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Counsel for Kappa Map Group, LLC

CERTIFICATE OF SERVICE

On this 14th day of July, 2014, I certify that I served a copy of the foregoing Answer and Counterclaims upon Counsel for Plaintiff Art Drauglis via the Court's ECF filing system.

Dated: July 14, 2014

/s/ Esther Yong
Esther Yong