

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-00294

DIANA PEREZ,

Plaintiff,

v.

JDEM PROPERTIES LLC D/B/A CANNABISTRY LABS;
PUFCREATIV LLC; and HER CREATIVE MEDIA, LLC,

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiff Diana Perez (“Plaintiff”), by her attorneys Kushnirsky Gerber PLLC, for her complaint against defendants JDEM Properties LLC D/B/A Cannabistry Labs (“Cannabistry”); PufCreativ LLC (“PufCreativ”); and HER Creative Media, LLC (“HER Creative”) (collectively, “Defendants”), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Defendant Cannabistry is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business at 5550 W. Touhy Avenue, Suite 300, Skokie, IL 60077. Cannabistry does continuous and systematic business in the State of Colorado and sells a significant number of goods to consumers in this District. Cannabistry regularly does or solicits business in Colorado; derives substantial revenue from goods used or services rendered in Colorado; expects or reasonably should expect its infringing conduct to have consequences in Colorado; and derives substantial revenue from interstate commerce.

2. Defendant PufCreativ is a limited liability company organized and existing under the laws of the State of Colorado with a principal place of business at 2322 W. 31st Ave., Denver, CO 80211. PufCreativ regularly does or solicits business in Colorado; derives substantial revenue from goods used or services rendered in Colorado; expects or reasonably should expect its infringing conduct to have consequences in Colorado; and derives substantial revenue from interstate commerce.

3. Defendant HER Creative is a limited liability company organized and existing under the laws of the State of Colorado with a principal place of business at 2590 Walnut St, Denver, CO 80205. HER Creative regularly does or solicits business in Colorado; derives substantial revenue from goods used or services rendered in Colorado; expects or reasonably should expect its infringing conduct to have consequences in Colorado; and derives substantial revenue from interstate commerce.

4. Plaintiff Diana Perez is an individual that was residing in Miami, Florida. Ms. Perez created the mural at issue in the River North Art (“RINO”) District of Denver, Colorado. She is the sole owner of the copyright in this mural and has satisfied the requirements of 17 U.S.C. § 411(a) prior to filing this Complaint.

5. This is an action for copyright infringement under the Copyright Act. The Court has subject matter jurisdiction pursuant to 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

6. The Court has personal jurisdiction over Defendants because this action stems from Defendants’ business activities within the State of Colorado and tortious acts causing injury within the State of Colorado.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400 because Defendants do business and are subject to personal jurisdiction in the State of Colorado; and because a substantial part of the events or omissions giving rise to the claims occurred in the State of Colorado.

FACTUAL BACKGROUND

I. Plaintiff's Original Mural

8. Ms. Perez created the mural at issue, entitled *Besties* (the “Mural”), in the River North Art District of Denver, Colorado, as shown below.



9. Created in September 2019 during the 2019 Crush Walls Arts Festival, the Mural is one of the most prominent new additions to Denver street art culture. The Mural has become a street art destination in Denver and is frequently photographed.

II. Defendants’ Willful Infringement and Unlawful Conduct

10. HER Creative and PufCreativ promote and advertise their clients and clients’ products and services through social media promotions and other means. HER Creative in particular focuses almost entirely on social media advertising.

11. As part of an advertising campaign for Cannabistry and its “The Root of It All” cannabis-infused essential oil products, HER Creative and PufCreativ launched a social media advertising campaign that incorporated murals from Denver’s RINO Art District, a growing street art center. At least two social media advertisements (the “Infringing Advertisements”) intentionally included the Mural as a central component. Copies of the Infringing Advertisements are shown below.





12. The Mural is the main creative element in the Infringing Advertisements and was intentionally chosen as such. Defendants were aware that the Mural was created as part of the Crush Walls Arts Festival and Plaintiff's distinctive tag signature is prominently displayed on the Mural.

13. The accompanying descriptions for both Infringing Advertisements reference The Crush Walls in the RINO Art District and use street art hashtags.

14. Without seeking or obtaining any permission or authorization from Ms. Perez, Defendants used the Mural in the Infringing Advertisements. Had Defendants made even a cursory inquiry with Crush Walls, they would have learned that Ms. Perez created the Mural and that they needed a license to use the Mural for commercial purposes.

15. Ms. Perez has been significantly damaged by these unlawful uses of the Mural and has been forced to file this action in order to protect her rights and livelihood.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT - 17 U.S.C. § 501, et seq.
(Against Cannabistry)

16. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 15 above, and incorporates them herein by this reference.

17. Plaintiff is the respective legal owner of all right, title, and interest in the Mural, including the copyright in the work.

18. Cannabistry has copied, reproduced, distributed, adapted, and/or publicly displayed elements of the Mural without the consent, permission, or authority of Plaintiff.

19. Cannabistry's conduct constitutes infringement of Plaintiff's copyright and exclusive rights in violation of sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106, 501.

20. Cannabistry's acts of infringement have been willful, intentional, purposeful, and in reckless disregard of and with indifference to the rights of Plaintiff.

21. Plaintiff has and will continue to suffer damages as a result of the infringement.

22. Cannabistry has unlawfully profited as a result of the infringement.

23. Plaintiff is entitled to her actual damages and Cannabistry's profits related to the infringement, pursuant to 17 U.S.C. § 504.

24. Alternatively, Plaintiff is entitled to statutory damages in an amount up to \$150,000, pursuant to 17 U.S.C. § 504.

SECOND CLAIM FOR RELIEF
CONTRIBUTORY COPYRIGHT INFRINGEMENT - 17 U.S.C. § 501, et seq.
(Against HER Creative and PufCreativ)

25. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 24 above, and incorporates them herein by this reference.

26. HER Creative and PufCreativ knew the Mural was created by an individual who had not licensed the Mural to Defendants nor had given Defendants any permission to use the Mural.

27. HER Creative and PufCreativ photographed the Mural and used photographs of the Mural in the Infringing Advertisements for Cannabistry.

28. In doing so, HER Creative and PufCreativ induced, caused, and materially contributed to the infringing conduct of Cannabistry. HER Creative and PufCreativ have thereby contributorily infringed Plaintiff's copyright in the Mural.

29. As a result of HER Creative and PufCreativ's acts of copyright infringement alleged herein, Plaintiff has suffered and will continue to suffer damages.

30. As a result of their infringement of Plaintiff's copyright as alleged herein, HER Creative and PufCreativ are liable to Plaintiff for the actual damages incurred by Plaintiff as a result of the infringement, and for any profits of Defendants directly or indirectly attributable to such infringement.

31. Alternatively, Plaintiff is entitled to statutory damages in an amount up to \$150,000, pursuant to 17 U.S.C. § 504.

WHEREFORE, Plaintiff demands judgment as follows:

1. Awarding Plaintiff her actual damages in connection with Defendants' willful copyright infringement;

2. Awarding Plaintiff all of Defendant's combined disgorged worldwide profits resulting from Defendants' unlawful uses of the Mural;
3. Awarding Plaintiff statutory damages, attorneys' fees, and costs under the Copyright Act;
4. Awarding Plaintiff interest, including prejudgment interest, on the foregoing sums;
5. Granting an injunction that permanently restrains and enjoins Defendants from copying, reproducing, distributing, adapting, and/or publicly displaying the Infringing Advertisements or any unlawful copy of the Mural; and
6. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action of all issues so triable.

Dated: New York, New York
February 4, 2020

Respectfully Submitted,

KUSHNIRSKY GERBER PLLC



By: _____

Andrew Gerber

andrew@kgfirm.com

27 Union Square West, Suite 301

New York, NY 10003

(212) 882-1320

Attorneys for Plaintiff Diana Perez