

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DAVID KITTOS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-cv-9818
	)	
DONALD J. TRUMP FOR PRESIDENT, INC.,	)	
DONALD TRUMP, SR., DONALD TRUMP,	)	
JR., MICHAEL PENCE, and DOES 1-10,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff David Kittos (hereinafter “Plaintiff” or “Kittos”), by and through his counsel of record Blaise & Nitschke, P.C., alleges for his Complaint against the Defendants, Donald J. Trump for President, Inc., Donald Trump Sr., Donald Trump Jr., Michael Pence, and Does 1-10 (hereinafter, each a “Defendant” and collectively, the “Defendants”) as follows:

**Nature of the Action**

1. This is a civil action against the Defendants for wrongful acts of copyright infringement (U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*).

**The Parties**

2. Plaintiff is an individual who resides, and at all times relevant to this Complaint did reside, in the United Kingdom.

3. On information and belief, Defendant Donald J. Trump for President, Inc. (“Trump for President, Inc.”) is a Virginia corporation maintaining its principal place of business at 725 Fifth Avenue, New York, NY 10022. On information and belief as informed by online records furnished by the State Corporation Commission of the Commonwealth of Virginia,

Defendant Trump for President, Inc.'s agent CT Corporation System may be served legal process at 4701 Cox Rd., Ste 285, Glen Allen, VA 23060.

4. Defendant Donald Trump Sr. ("Trump Sr.") is an individual who resides, and at all times relevant to this Complaint resided in Manhattan, New York. At all times relevant to this Complaint, Trump Sr. in addition to acting in his individual capacity, was also acting as an agent of Defendant Trump for President, Inc. Plaintiff is informed, believes, and accordingly alleges that Trump Sr. is in some manner liable for Plaintiff's claims and proximately caused Plaintiff's damages.

5. Defendant Donald Trump Jr. ("Trump Jr.") is an individual who resides, and at times relevant to this Complaint resided in Manhattan, New York. At all times relevant to this Complaint, Defendant Trump Jr., in addition to acting in his individual capacity, was also acting as an agent of Defendant Trump for President, Inc. Plaintiff is informed, believes, and accordingly alleges that Trump Jr. is in some manner liable for Plaintiff's claims and proximately caused Plaintiff's damages

6. Defendant Michael Pence ("Pence") is an individual who resides, and at all times relevant to this Complaint resided in Indianapolis, Indiana. At all times relevant to this Complaint, Pence, in addition to acting in his individual capacity, was also acting as an agent of Defendant Trump for President, Inc. Plaintiff is informed, believes, and accordingly alleges that Pence is in some manner liable for Plaintiff's claims and proximately caused Plaintiff's damages

7. On information and belief, one or more of Does 1-10 are the agent(s), affiliate(s), officer(s), director(s), manager(s), principal(s), partner(s), joint venture(s), joint actor(s), alter ego(s), hired contractor(s), website creator(s), website developer(s), content

manager(s), content licensor(s), printer(s), printing house(s), publisher(s), graphic artist(s), and/or employee(s) of Defendant Trump for President, Inc. Plaintiff does not know the true names of Defendant Does 1 through 10, inclusive, and therefore identifies them as defendants herein by those fictitious names. Plaintiff is informed, believes, and accordingly alleges that each of the Does 1 through 10 is in some manner liable for Plaintiff's claims and proximately caused Plaintiff's damages.

8. Each of the Defendants had actual and/or constructive knowledge of the acts of the other Defendants as described herein, and ratified, approved, joined in, acquiesced in, and/or authorized the acts of the other, and/or retained the benefits of said acts.

#### **Jurisdiction and Venue**

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 17 U.S.C. § 501(a), as this action alleges infringement of registered U.S. copyright rights, 17 U.S.C. § 101 *et seq.*

10. This Court has personal jurisdiction over Defendants Trump for President, Inc., Trump Sr., Trump Jr., and Pence because they do business and/or transact business within the State of Illinois. Defendants Trump for President, Inc., Trump Sr., Trump Jr. and Pence have conducted tortious acts of infringement in the Northern District of Illinois, conducted acts directed at this District, and/or transacted or done business within this District.

11. Defendants have social media profiles wherein they have individuals who follow their social media posts (hereinafter "Followers"). Defendants have Followers in Illinois and in the Northern District. Defendants actively sought to campaign in the Northern District of Illinois and have scheduled and promoted rallies in support of the same.

12. On information and belief, each of Does 1-10 does business and/or transacts

business within the State of Illinois and within this District, has conducted tortious acts of infringement in the Northern District of Illinois, and has conducted acts directed at this District.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1), 1391(c)(2), and/or 1400(a) because, among other reasons, at least one Defendant is subject to personal jurisdiction in this District.

### **Facts**

#### **Plaintiff's Iconic Photograph**

14. Plaintiff is a photographer who licenses his photographs to other individuals and organizations. Plaintiff displays his photographs for viewing via his personal webpage account with the image and video hosting website, Flickr located at Uniform Resource Locator (“URL”) [https://www.flickr.com/photos/david\\_kittos/](https://www.flickr.com/photos/david_kittos/).

15. On or about January 15, 2010, Plaintiff created the photographic image titled “White Bowl of Candy,” a (the “Photograph”), a true copy of which is attached hereto and incorporated herein as Exhibit A to this Complaint and available for viewing on-line at:

[https://www.flickr.com/photos/david\\_kittos/4276832395](https://www.flickr.com/photos/david_kittos/4276832395)

16. In the Photograph, Plaintiff artistically experiments with a light tent and off-camera flash, utilizing his skills to capture an image of multi-colored candies inside a white bowl surrounded by an all-white environment. Each piece of candy in the Photograph is randomly placed inside of the bowl, allowing their bright and boastful colors to become the centerpiece of the image. It would be beyond difficult to accurately recreate such a vivid image, given the challenge of replicating the exact lighting and exposure of the image, as well as assembling the arrangement of the candies.

17. The Photograph is an original work of authorship, fixed in a tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either

directly or with the aid of a machine or device. As such, the Photograph is subject matter protectable under the U.S. Copyright Act.

18. The Photograph was posted to Flickr with all rights reserved.

19. The Photograph is registered with the U.S. Copyright Office. The Photograph's copyright registration number is VA0002018955.

**The Defendants' Unauthorized Uses of Plaintiff's Iconic Photograph**

20. On or about September 19, 2016, Defendants used an unauthorized copy of the Photograph in and as part of an online advertisement (the "Advertisement") for the "Trump Pence Make America Great Again" campaign (the "Campaign").

21. As part of the Campaign, Defendant Trump Jr. tweeted the Advertisement over his Twitter account along with the accompanying text: "[i]f I had a bowl of skittles and I told you just three would kill you. Would you take a handful? That's our Syrian refugee problem." A true copy of the Advertisement is attached hereto and incorporated herein as Exhibit B. Defendant Trump Jr. then followed with an additional tweet that stated "This image says it all. Let's end the politically correct agenda that doesn't put America first." A true copy of Defendant Trump Jr.'s tweet is attached hereto and incorporated herein as Exhibit C.

22. The Defendants' unauthorized use of the Photograph in the Advertisement and as part of the Campaign was to influence public opinion of Defendant Trump Sr.'s and Defendant Pence's candidacies as they run for President and Vice President of the United States during the 2016 elections.

23. The unauthorized use of the Photograph is reprehensibly offensive to Plaintiff as he is a refugee of the Republic of Cyprus who was forced to flee his home at

the age of six years old.

24. Plaintiff never authorized Defendant Trump for President, Inc. or the other Defendants to use the Photograph as part of the Advertisement or for any other purpose.

25. On information and belief, the Defendants' selection and use of the Photograph's is deliberate. Defendant Trump for President, Inc. has a history of being accused of using works without the authorization of the copyright owner to promote Defendant Trump Sr.'s candidacy, including, but not limited to being previously sued in 2016 for copyright infringement for the unauthorized use of a photograph of an eagle as part of another campaign advertisement.

26. On information and belief, the Defendants have used or might have used the Photograph in other manners and implementations in connection with the Campaign and promotion of Defendants Trump Sr. and Pence, all without Plaintiff's authorization.

**The Defendants Incite an Epidemic of Third Party Infringement of the Photograph**

27. Presidential campaigns are financed, engineered and executed to induce as many people as possible to nominate and elect its candidate. Especially in the Internet era, viral promotion of candidates is invaluable.

28. Defendants published the Advertisement incorporating the Photograph via Twitter, intending that the individuals accessing Trump Jr.'s Twitter account would re-publish, re-produce, re-transmit, and re-display the Advertisement for subsequent use by others via Twitter and other Internet social media Platforms such as Facebook and Pinterest (collectively, the "Internet Social Media Services") (i.e. "re-tweet" via Twitter, "share" via Facebook, "pin" via Pinterest). The effect of this iterated unauthorized reproduction and redistribution is the rampant viral infringement of Plaintiff's exclusive rights in his Photograph.

29. After Defendant Trump Jr.'s tweet, the Advertisement went viral as thousands of individuals re-published the Advertisement, without Plaintiff's authorization, across the various Internet Social Media Services.

30. The Advertisement gained significant attention throughout the media as the Advertisement is offensive to Plaintiff and controversial amongst members of the public. Multiple media outlets reported that Plaintiff did not authorize Trump Jr. or any other Defendants to use the Photograph.

31. As a result of the attention which the Advertisement received in the media, Defendants knew or should have known that Plaintiff did not authorize or approve of the Photograph's use in the Advertisement and throughout the Campaign.

32. The Advertisement remained on Defendant Trump Jr.'s Twitter account webpage until on or about, September 27, 2016, when Plaintiff's counsel contacted Twitter and demanded the Advertisement be removed.

33. On information and belief, the Photograph would have continued to remain on Trump Jr.'s account had the Advertisement not been removed by Twitter at the demand of Plaintiff's counsel.

34. In fact, CNN Politics reported that "[d]espite widespread condemnation, the campaign [Defendants] stood by the tweet and in a statement called Trump Jr. 'a tremendous asset to the campaign.'" <http://www.cnn.com/2016/09/19/politics/donald-trump-jr-twitter-refugees/>, last accessed October 18, 2016.

35. Defendants knew or should have known that by continuing to allow the Advertisement to remain on Trump Jr.'s Twitter webpage account, other third party individuals would be capable of reproducing, publicly displaying, transmitting, and otherwise

using the Photograph across the various Internet Social Media Services.

36. On information and belief, many thousands of individuals across the United States are now reproducing, publicly displaying, transmitting, and otherwise using the Photograph as part of promoting Trump Sr. and Pence, without Plaintiff's authorization. Such uses occurred nearly daily on national campaign coverage via network and cable television broadcasts and across Internet websites and mobile content, print media and other media.

37. Because Defendants contributed to and induced such third person infringement of the Photograph and knew or should have known that such third persons would use the Photograph without Plaintiff's authorization as the Defendants wanted and encouraged, the Defendants are vicarious liable for contributory infringement of the Photograph.

**FIRST CLAIM FOR RELIEF**  
**Direct Copyright Infringement (As Against All Defendants)**

38. Plaintiff repeats and realleges the allegations set forth in the previous paragraphs of this Complaint as if fully set forth herein.

39. Without the Plaintiff's authorization or consent, the Defendants reproduced, distributed, publicly displayed, created derivative works, transmitted, and otherwise used the Photograph and/or its original elements, including within the Advertisement and throughout the Campaign, all in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.

40. The Defendants knew or should have known that they did not possess any rights whatsoever to use the Photograph within the Advertisement, throughout the Campaign, or otherwise.

41. As a direct and proximate result of the Defendants' copyright infringement, Plaintiff has suffered and continues to suffer injuries and damages. Plaintiff is entitled to actual damages and the Defendants' additional profits, direct or indirect, attributable to the



Defendants' infringement of the Photograph, pursuant to 17 U.S.C. § 504(b).

42. On information and belief, the foregoing acts of infringement by the Defendants are willful, intentional, purposeful, and performed with knowledge that the reproduction, public display, transmission and other uses of the Photograph are and were unauthorized by Plaintiff. Conduct is willful if a copyright infringer knows its conduct infringed copyright or if it acted with reckless disregard for such copyright rights.

**SECOND CLAIM FOR RELIEF**  
**Secondary Copyright Infringement (As Against All Defendants)**

43. Plaintiff repeats and realleges the allegations set forth in the previous paragraphs of this Complaint as if fully set forth herein.

44. The Defendants knowingly induced and encouraged third persons to reproduce, display publicly, transmit, create derivative works based on, and otherwise use the Photograph without the Plaintiff's consent, including, but not limited to, reproducing, displaying publicly and transmitting the Photograph and/or derivatives via Internet Social Media Services, all without Plaintiff's authorization.

45. Defendants had the right and ability to control third person use of the Photograph as Defendants could have prevented the Advertisement from being reproduced, displayed publicly, and transmitted by removing the Advertisement from Trump Jr.'s Twitter account. Because Defendants also benefitted commercially and otherwise from such unauthorized third person uses of the Photograph, the Defendants are liable for vicarious infringement of the Photograph.

46. As a direct and proximate result of the Defendants' copyright infringement, Plaintiff has suffered and continue to suffer injuries and damages. Plaintiff is entitled to actual damages and the Defendants' additional profits, direct or indirect, attributable to the

Defendants' infringement of the Photograph, pursuant to 17 U.S.C. § 504(b).

**Prayer for Relief**

**WHEREFORE**, Plaintiff respectfully requests judgment against the Defendants as follows:

- a. declaring the Defendants jointly and severally liable for direct and indirect infringement of Plaintiff's exclusive copyright rights in and to the Photograph;
- b. enjoining the Defendants from unauthorized reproduction, transmission, distribution, transmission, public display, creation of derivative works, and other uses of the Photograph and/or any of its original elements;
- c. for the Defendants' copyright infringement, awarding Plaintiff monetary damages in an amount equal to his actual damages plus the Defendants' additional profits attributable to such infringement, in an amount to be determined at trial (17 U.S.C. § 504(a)(1));
- d. compelling the Defendants to account to Plaintiff for all profits, income, receipts and other benefits derived by the Defendants from the reproduction, distribution, transmission, public display, promotion, and sale of products, services and media that infringe copyright rights in and to the Photograph (17 U.S.C. §§ 504(a)(1) and 501(b)); and
- e. awarding Plaintiff such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,  
David Kittos

By: s/ Heather L. Blaise  
Heather L. Blaise  
One of his attorneys

Dated: October 18, 2016

Heather L. Blaise, 6298241  
Thomas J. Nitschke, 6225740  
Lana B. Nassar, 6319396  
Dean A. Hopkins II, 6319250  
Blaise & Nitschke, P.C.  
123 N. Wacker St., Suite 250  
Chicago, Illinois 60606  
(O)(312) 448-6602  
(F)(312) 803-1940  
[hblaise@blaisenitschkelaw.com](mailto:hblaise@blaisenitschkelaw.com)