

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GETTY IMAGES (US) INC.,

Plaintiff,

-against-

ANSWER

Case No.: 09cv01895(DAB)

ADVERNET, INC.,
f/k/a VR MARKETING, INC.,

Defendant.

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The defendant, ADVERNET, INC by and through its attorneys, Sandback, Birnbaum & Michelen, as and for its Answer to the Complaint of plaintiff in this action, respectfully sets forth and alleges as follows, upon information and belief, based upon the files maintained in our office:

1. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the plaintiff's complaint.
2. Admits the allegations contained in paragraph 2 of the plaintiff's complaint.
3. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the plaintiff's complaint, and respectfully refers all matters of law to the Court.
4. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of the plaintiff's complaint, and respectfully refers all matters of law to the Court.
5. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the plaintiff's complaint.

6. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the plaintiff's complaint.

7. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the plaintiff's complaint.

8. Denies that defendant specifically markets its services to individuals in New York and specifically within this district and refers the court to the plain language of its website in response to the remainder of paragraph 8 of plaintiff's complaint.

9. Denies the allegations in paragraph 9 and refers the court to the plain language of the alleged settlement and release agreement.

10. Denies the allegations contained in paragraph 10 of plaintiff's complaint to the extent that it alleges that Advernet obtained images exclusively licensed to Getty Images and that said use was unauthorized and violated the rights of Getty Images and the alleged authors of those images. Denies knowledge and information to form a belief as to the truth or falsity of the remainder of the paragraph relating to when Getty Images discovered the alleged use.

11. Denies the allegations contained in paragraph 11 of plaintiff's complaint to the extent that it alleges that Advernet obtained images exclusively licensed to Getty Images and that said use was unauthorized and violated the rights of Getty Images and the alleged authors of those images. Denies knowledge and information to form a belief as to the truth or falsity of the remainder of the paragraph relating to when Getty Images discovered the alleged use.

12. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the plaintiff's complaint, and respectfully refers the court to the plain language of any allegedly filed copyright registrations.

13. Denies the allegations in paragraph 13 of the plaintiff's complaint.

14. Denies that the use of the images was unauthorized and refers the court to the plain language of its website in response to the remainder of paragraph 14 of plaintiff's complaint.

15. Denies the allegations in paragraph 15 of the plaintiff's complaint.

16. Repeats and realleges the responses and denials set forth in paragraphs 1-15 of this answer in response to paragraph 16 of the plaintiff's complaint.

17. Denies that Getty Images is the exclusive licensee of the images that are the subject of this action, and respectfully refers the court to the plain language of any allegedly filed copyright registrations.

18. Denies the allegations in paragraph 18 of the plaintiff's complaint.

19. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the plaintiff's complaint, and respectfully refers all matters of law to the Court.

20. Denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the plaintiff's complaint, and respectfully refers all matters of law to the Court and denies any allegations of willful infringement.

21. Denies the allegations in paragraph 21 of the plaintiff's complaint.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

While the allegation of unauthorized use is denied,
any unauthorized use was inadvertent and innocent
and did not constitute willful infringement

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

Some of the plaintiff's claims are barred
by the applicable statute of limitation

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

While the allegation of unauthorized use is denied,
any unauthorized use was de minimus and
should not result in a damages award

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

While the allegation of unauthorized use is denied,
any unauthorized use occurred prior to
any registration of the images so that
plaintiff may only seek actual damages

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

The images may have been available
through means other than plaintiff's website

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

The plaintiff's claims for relief
are barred under the doctrine of laches

WHEREFORE defendant demands judgment in its favor, dismissal of the complaint, interest, costs and disbursements and such other and further relief as the court deems just and proper.

Dated: July 6, 2009

Respectfully submitted,

SANDBACK, BIRNBAUM & MICHELEN

Oscar Michelen

BY: Oscar Michelen (OM 5199)
Attorneys for Defendant
Two Pennsylvania Plaza
Suite 1996
New York, NY 10121
(212)517-3200 fax: (212)279-3509
Email: omichelen@sbrmlegal.com

TO: Satterlee Stephens Burke & Burke
Attorneys for Plaintiff
230 Park Avenue
New York, NY 10169
(212)818-9200
