

July 08, 2021,

Re: Claim Number: L6YV85 FRE 408 Settlement Communication

Dear Sir or Madam,

Copyrighted work(s) owned by our client, Jeffery R. Werner, were identified on The Mockingbird Foundation, Inc. website(s) (see attached screenshots). Unfortunately, we are unable to find any record of a license for such use. If you have a license, thank you for purchasing it. Please provide us the details at claims@higbeeassociates.com with the claim number (L6YV85) included. Once we receive the license, we will close the claim and apologize for the brief intrusion.

Mr. Werner is a professional photographer who has traveled to over 65 countries during his 35-year long career. His work has been licensed by hundreds of magazines and publications around the world. After conducting a thorough search, neither our client nor his syndication company Incredible Features, Inc., has a record of having issued you a license to use his copyrighted work. The unauthorized use of our client's work deprives them of income and causes them to incur substantial costs in detection and enforcement.

If The Mockingbird Foundation, Inc. does not have a license, we believe the use of the work is a violation of The Copyright Act, Title 17 of the United States Code. My client has no desire to put you through any of the following, but I have an obligation to caution you about the seriousness of the matter. If forced to go to court to resolve the matter, my client will ask for the maximum justifiable damages. My client may also ask the court to order The Mockingbird Foundation, Inc. to pay their attorneys fees and court costs. Copyright lawsuits can result in judgments, wage garnishments and liens on property. In some instances, the business owner can be held individually liable. Please see the enclosed relevant section of the law and sources of additional information.

Jeffery R. Werner would prefer to resolve this matter outside of court and is willing to offer a complete release of all liability associated with this image for \$25000. This offer is made based on the limited information available to Jeffery R. Werner.

If you think this amount is disproportionate to the facts, please provide us with details about how long you used the work, the size of your business, any other ways the work was used, and any other details you deem relevant. Also, provide a counteroffer for us to provide to Jeffery R. Werner. We can be reached by email at claims@higbeeassociates.com or by phone at 800-716-1245. You may also wish to have an attorney contact us.

The overwhelming majority of these types of claims get resolved in a fair and efficient manner. However, without your cooperation, our only option is to litigate the matter, which we frequently do, so please do not make the mistake of ignoring this. If this matter is litigated, the demand amount may likely quadruple or more, and then you may also have to pay attorneys fees. If you have general business liability insurance, you may wish to contact your provider.

If we do not hear from you within 10 days, we will assume that you do not have a license and that you do not want to resolve this matter outside of court.

If you wish to simply resolve this claim without contacting us, you can view details of the claim and make a payment at the URL provided.

Claim number: L6YV85

To resolve this matter efficiently and amicably out of court, please follow these steps:

(1) Within five business days after receipt of this letter, remove all occurrences of the image from your website(s), cease using it in any way, and confirm in writing that you have done so.

AND

(2) Within seven business days after receipt of this letter, return to our firm the attached Release License, along with your payment of **\$25000** made payable to **Higbee & Associates Client Trust Account**. This can be returned to us via US Mail. You can also pay over the phone or online at <http://copyright.higbeeassociates.com/resolution>. Your login is L6YV85. Your password is wghtr8vh. If you choose to make your payment online, you can return the Release License via email to claims@higbeeassociates.com. Please include the case number (L6YV85) in the subject line.

We understand that many companies are experiencing operational and personal challenges during these times. If you need additional time to investigate or resolve this matter, simply call or email us and we will put the claim on hold for 30 days. However, if you would like to save money and time by resolving the matter now, our client will, in effort to prevent the creation of a backlog of work, accept offers below the usual demand amount.

Please feel free to call or email us to discuss this matter, 800-716-1245 or send an email to claims@higbeeassociates.com

Sincerely,

A handwritten signature in blue ink that reads "Mathew K. Higbee". The signature is fluid and cursive, with the first name "Mathew" and last name "Higbee" clearly legible.

Mathew K. Higbee
Attorney at Law

EXHIBIT A



Image Name: IncredibleFeaturescom_26620.jpg

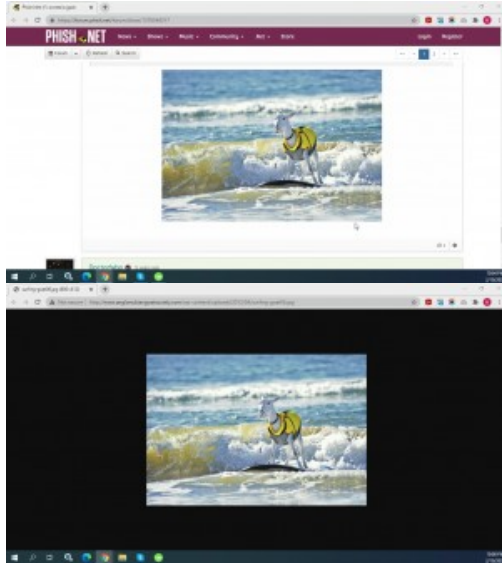
Infringing Webpages:

- <http://forum.phish.net/forum/show/1376544317>

Infringing File Locations:

- <http://www.anglonubiangoatsociety.com/wp-content/uploads/2012/04/surfing-goat06.jpg>

Infringing images and screenshots are shown below. You can receive copies of these images via email by sending a request to infringements@higbeeassociates.com. The email must include the case number (L6YV85) in the subject line.



If you are a non-commercial entity (meaning you do not derive income from the website) or if you do not do business in the US, please let us know as you are probably receiving this letter in error.

DAMAGES UNDER COPYRIGHT LAW - 17 US CODE §504 (In Part)

(a) Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or **(2)** statutory damages, as provided by subsection (c).

(b) Actual Damages and Profits.—

The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages. — **(1)** Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

COSTS & ATTORNEYS FEES UNDER 17 US CODE §505 (In Part)

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

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For more information about copyright law consult an attorney or see:

<https://www.copyright.gov/title17/>

<https://www.copyright.gov/title17/92chap5.html>

This law is being provided as a courtesy. Higbee & Associates is not your attorney.

**SOME CLAIMS MAY ALSO INCLUDE ADDITIONAL LIABILITY FOR
REMOVING OR ALTERING COPYRIGHT MANAGEMENT INFORMATION**

17 US CODE SECTION 1202 (IN PART)

(b) Removal or Alteration of Copyright Management Information.—No person shall, without the authority of the copyright owner or the law—

(1) intentionally remove or alter any copyright management information...

Definition. — As used in this section, the term “copyright management information” means any of the following information....

(1) The title and other information identifying the work, including the information set forth on a notice of copyright. (2) The name of, and other identifying information about, the author of a work. (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.

US CODE SECTION 1203 (IN PART)

(c) Award of Damages. —

(1) In general.—Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either —

(A) the actual damages and any additional profits of the violator, as provided in paragraph

(2), or

(B) statutory damages, as provided in paragraph (3).

...

(3) (B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages **for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.**

For more information about copyright law consult an attorney or see:
<https://www.copyright.gov/title17/92chap12.html#1202>

This law is being provided as a courtesy. Higbee & Associates is not your attorney.

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-803-445

Effective date of
registration:

February 1, 2012

Title

Title of Work: Surfing Goat Pismo

Completion/Publication

Year of Completion: 2011

Date of 1st Publication: January 20, 2012

Nation of 1st Publication: United States

Author

Author: Jeffery R. Werner

Author Created: photograph(s)

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Jeffery R. Werner

4910 1/4 MCCONNELL AVE, LOS ANGELES, CA, 90066

Rights and Permissions

Name: Jeffery R. Werner

Email: photo@ifipphoto.com

Telephone: 310-821-2384

Address: 4910 1/4 MCCONNELL AVE

LOS ANGELES, CA 90066

Certification

Name: Jeffery R. Werner

Date: February 1, 2012



IncredibleFeaturescom_26608



IncredibleFeaturescom_26609



IncredibleFeaturescom_26610



IncredibleFeaturescom_26611



IncredibleFeaturescom_26612



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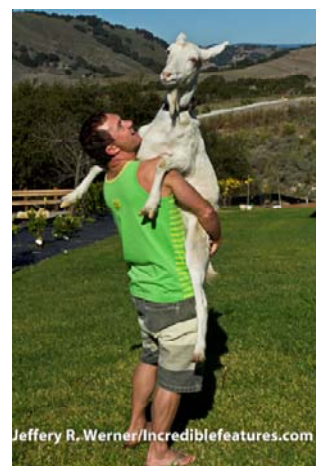
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Mathew Higbee: CA # 241380, MI # P73980, MN # 0388759, NV # 11158, OR # 106514, UT # 11133, WA # 42755, TX # 24076924, IL # 6319929, OH #0094107

Ray Ngo: UT # 11936, NY # 4780706

Melissa Higbee: CA # 247998, AZ # 024644, UT # 11271, FL # 62465, PA # 322114, NJ # 030812012, TN # 034677

Virginia Kostmayer: CO # 45648

Naomi Sarega: CA # 306967, IN # 34182-49

LETTER OF REPRESENTATION POWER OF ATTORNEY

RE: Jeffery Werner and/or Incredible Features, Inc.

To Whom It May Concern:

Please be advised that the Law Firm of Higbee & Associates has been retained by Jeffery Werner and/or Incredible Features, Inc. regarding a copyright infringement matter. As such, we have been appointed as attorney in fact with full power and authority in determining the validity of the above matter and assist in any negotiation, settlement, and payment. We are further authorized to pursue any legal remedies available to our client as a result of this matter. Any attorney, staff member or agent of Higbee & Associates is hereby authorized to discuss any effort to settle and resolve the above matter.

Effective immediately, all communication (mail, phone, electronic or otherwise) regarding the above matter must be forwarded to Higbee & Associates at:

Higbee & Associates
1504 Brookhollow Drive, Suite 112
Santa Ana, CA 92705
(714) 617-8385 Telephone

Sincerely,


Mathew Higbee Ray Ngo Melissa Clark Virginia Kostmayer Naomi Sarega

The undersigned have retained Higbee & Associates and grant full power and authority as described above.

Date: 11/1/2018

Client: Jeffery Werner and/or Incredible Features, Inc.

Signature: 

RELEASE AND SETTLEMENT AGREEMENT

This RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into on July 08, 2021 ("Effective Date") by and between Jeffery R. Werner ("RELEASOR") and The Mockingbird Foundation, Inc. ("RELEASEE") (the "Parties" or individually the "Party").

The Parties agree as follows:

1. The Parties acknowledge and agree that this Agreement is made in resolution to the RELEASEE's alleged unlicensed use of image(s) referenced in the Exhibit(s) below ("Images").
2. RELEASOR hereby represents and warrants that it has the exclusive rights in the settlement and resolution of the claims related to the alleged unlicensed use of the copyrighted Images.
3. In consideration of the release and other consideration granted herein, RELEASEE will pay to RELEASOR the sum of \$25,000.00 by November 11, 2021. Upon Payment in full, RELEASOR will release RELEASEE from all copyright claims arising out of the use of the Images through the Effective Date.
4. Payment shall be made payable to "Higbee & Associates Client Trust Account" and delivered to 1504 Brookhollow Dr., Suite 112, Santa Ana, CA 92705. Payment may also be made online at <http://copyright.higbeeassociates.com/resolution>

ADDITIONAL TERMS AND CONDITIONS

5. Except for the agreements, obligations, and covenants arising under this Agreement, the Parties will release the other party from any and all claims arising from the use of the Images.
6. The Parties acknowledge that all terms of this Agreement are supported by legally sufficient consideration so as to make this Agreement binding and valid.
7. The terms of this Agreement are confidential; provided however, that each Party may disclose the terms of this Agreement, as necessary to enforce its terms, in response to valid legal process or as otherwise required by law, and/or to its financial advisors and/or legal advisors.
8. The Parties warrant that they have read and understand the provisions of this Agreement and have full authority to execute and consummate the transactions contemplated by this Agreement.
9. This Agreement may not be modified or amended except by written agreement, signed by all Parties.
10. This Agreement, along with its terms and conditions will be binding upon and inure to the benefit of each of the Parties and to their heirs, executors, administrators, successors in interest and assigns.
11. The Parties acknowledge that if any provision or application of this Agreement is held invalid or unenforceable then any such provision will be deemed severed from this Agreement and the remaining provisions and applications of this Agreement will not be affected, but will remain valid and enforceable.
12. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles, notwithstanding the fact that one or more counterparts hereof may be executed outside of such state, or one or more of the obligations of the Parties hereunder are to be performed outside of such state. Any suit, action or proceeding to determine, construe or enforce any provision of this Agreement, or the rights of any party hereunder, will be brought in the State of California, and the Parties agree that jurisdiction will lie therein.
13. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement, or to interpret or enforce any

rights under this Agreement, the prevailing party is entitled to recover reasonable costs and attorney's fees from the other party.

14. Payments that are received more than 5 calendar days late will be accessed a \$40 late fee. Additionally, an interest rate based on a 15% annual will be charged on overdue balances after 30 days.

15. This Agreement constitutes and contains the entire agreement between the Parties with respect to the alleged unlicensed use referred to in this Agreement and there are no other agreements, understandings or representations with respect to this subject matter, which are not expressly set forth herein.

16. This Agreement can be signed in counterparts.

Sir or Madam
On Behalf of
RELEASEE(s)The Mockingbird
Foundation, Inc.

Date



Mathew K. Higbee, Esq.
on Behalf of Licensor(s)
Jeffery R. Werner

July 08, 2021

Date

CREDIT CARD PAYMENT AUTHORIZATION FORM

The Law Firm of Higbee & Associates offers interest-free payment plans through our automated billing system. Sign and complete this form to authorize the Law Firm of Higbee & Associates to make the agreed upon credit or debit card or ACH payments. RELEASEE agrees to pay the settlement amount of \$25,000.00 in 1 automatic payment.

By signing this form you give us permission to bill your credit/debit card or bank account for the amount indicated on the dates above plus any additional fees, penalties, or interest charges which have accrued in accordance with the Release and Settlement Agreement ("Settlement Agreement"). This is permission for all transactions related to the Settlement Agreement, and does not provide authorization for any additional unrelated charges.

Please complete the information below:

PAYMENT METHOD (Please Choose One & Provide Requested Information):

CREDIT CARD

Name as it Appears on Card: _____

Credit Card #: _____

Expiration Date: _____ CCV (Security Code): _____

Billing Address: _____

ACH / DIRECT DEPOSIT

Name on the Account: _____

Account Type: ☐ Savings ☐ Checking

Account #: _____

Routing #: _____

Bank Name: _____

I hereby authorize The Law Firm of Higbee and Associates to automatically bill my account on the dates indicated in the payment plan above.

PRINT NAME: _____

TITLE: _____

COMPANY: _____

Signature: _____ Date: _____

I authorize the above named business to charge the credit card indicated in this authorization form according to the terms outlined above. This payment authorization is for the goods/services described above, for the amount indicated above only, and is valid for the specified use only. I certify that I am an authorized user of this credit card and that I will not dispute the payment with my credit card company; so long as the transaction corresponds to the terms indicated in this form.