

Given
Copyright
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1 A & R LAW GROUP, LLP
2 RANDY C. WOOLFORD (Bar No. 231324)
3 WILLIAM K. BARTELS (Bar No. 229799)
4 randy@a-rlawgroup.com
5 428 Main Street, Suite 209
6 Huntington Beach, CA 92648
7 Telephone: (714) 924-5384
8 Facsimile: (714) 901-2529

9 Attorneys for Plaintiff,
10 RONNIE ADAMS

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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY: [Signature]

FILED

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 CV08-03897 SJO PJWx

15 RONNIE ADAMS, an individual;

CASE NO.:

16 Plaintiff,

COMPLAINT FOR:

17 v.

1. COPYRIGHT INFRINGEMENT 17
U.S.C. § 501 *et seq.*;

18 PARAMOUNT PICTURES
19 CORPORATION, a California
20 corporation; MARVEL
21 ENTERTAINMENT, INC., a
22 Delaware corporation; MARVEL
23 ENTERPRISES, INC., a Delaware
24 corporation; MARVEL STUDIOS,
25 INC., a Delaware corporation;
26 MARVEL PUBLISHING, INC.,
27 d/b/a/ MARVEL COMICS, a
28 Delaware corporation; and DOES
1 through 10, inclusive,

2. COMMON LAW CONVERSION;

3. VIOLATION OF § 43(a) OF THE
LANHAM ACT;

4. UNFAIR COMPETITION, CAL. BUS.
& PROF. CODE § 17200;

5. COMMON LAW UNFAIR
COMPETITION; AND

6. UNJUST ENRICHMENT

Defendants.

DEMAND FOR JURY TRIAL

Plaintiff, Ronnie Adams, for his complaint alleges as follows:

①
1/8
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1 place of business in New York, New York. Adams is further informed and
2 believes, and based thereon alleges, that Marvel Entertainment conducts
3 business throughout the United States, including in this Judicial District.

4 6. Adams is informed and believes, and based thereon alleges, that
5 defendant Marvel Enterprises, Inc. (“Marvel Enterprises”) is a corporation
6 organized and existing under the laws of the State of Delaware with its principal
7 place of business in New York, New York. Adams is further informed and
8 believes, and based thereon alleges, that Marvel Enterprises conducts business
9 throughout the United States, including in this Judicial District.

10 7. Adams is informed and believes, and based thereon alleges, that
11 defendant Marvel Studios, Inc. (“Marvel Studios”) is a corporation organized
12 and existing under the laws of the State of Delaware, with its principal place of
13 business in Beverly Hills, California. Adams is further informed and believes,
14 and based thereon alleges, that Marvel Studios conducts business throughout
15 the United States, including in this Judicial District.

16 8. Adams is informed and believes, and based thereon alleges, that
17 defendant Marvel Publishing, Inc. is a corporation organized and existing under
18 the laws of the State of Delaware, with its principal place of business in New
19 York, New York. Adams is further informed and believes, and based thereon
20 alleges, that Marvel Publishing also does business as Marvel Comics. Adams is
21 informed and believes, and based thereon alleges that Marvel Comics conducts
22 business throughout the United States, including in this Judicial District.

23 9. Adams is informed and believes, and based thereon alleges, that
24 defendant Paramount Pictures Corporation (“Paramount”) is a corporation
25 organized and existing under the laws of the State of California, with its
26 principal place of business in Los Angeles, California. Adams is further
27 informed and believes, and based thereon alleges, that Paramount conducts
28 business throughout the United States, including in this Judicial District.

1 10. Adams is unaware of the true names and capacities of the defendants
2 sued herein as Does 1 through 10, inclusive, and therefore sues these defendants
3 by fictitious names. Adams will seek leave of the Court to amend this
4 Complaint to allege their true names and capacities when ascertained.

5 11. Adams is informed and believes, and based thereon alleges, that each
6 fictitiously named defendant is responsible in some way for the alteration, use,
7 distribution, and/or exhibition of the infringing photograph at issue in this
8 Complaint, and is liable to Adams therefore. Marvel Entertainment, Inc.;
9 Marvel Enterprises, Inc.; Marvel Studios, Inc.; Marvel Publishing, Inc. d/b/a
10 Marvel Comics; Paramount Pictures Corporation, and Does 1 through 10 are
11 sometimes referred to collectively herein as "Defendants."

12 12. Adams is informed and believes, and based thereon alleges, that at all
13 times relevant herein, each of the Defendants was the agent, servant, or
14 employee of each other Defendant, and at all times relevant herein was acting in
15 whole or at least in part within the scope of such agency. As such, each and
16 every Defendant herein is equally responsible in whole or in part for each and
17 every act alleged herein.

18
19 **Statement of Facts**

20 13. At all times mentioned herein, Defendants were engaged in the business
21 of producing, filming, editing, and distributing a motion picture entitled "Iron
22 Man" for public display. Defendants were at all times responsible for the
23 immediate decisions and actions which led to the copyright infringement and
24 conversion of Adams' photograph.

25 14. At all times mentioned herein, Plaintiff has worked as a "freelance"
26 photographer who specializes in taking pictures related to the entertainment
27 industry. Plaintiff is sometimes referred to as paparazzi.
28

1 15. On or about May 3, 2007, Plaintiff was at the location where the Iron
2 Man movie was being filmed. At all times, Plaintiff remained in a public
3 location (to wit, a public parking structure) and did not trespass upon any
4 private property.

5 16. Plaintiff watched as the Defendants filmed portions of the movie which
6 would become Iron Man.

7 17. Plaintiff took approximately 30 to 40 photographs of the character "Iron
8 Man" as Defendants were filming.

9 18. Plaintiff was never told to move by any of the Defendants, their security
10 staff, or the local sheriff/police department.

11 19. On or about May 3, 2007, Plaintiff contacted a friend who runs an
12 entertainment website on the World Wide Web (hereinafter "Web Site").

13 20. Plaintiff informed his friend that he could post Plaintiff's pictures of the
14 Iron Man filming on the Web Site. Plaintiff was not compensated in any way
15 for the use of the photographs. Moreover, Plaintiff did not sign any writing, nor
16 draft any email which transferred the rights to his photograph to his friend, the
17 Web Site, or any of their affiliates. Additionally, Plaintiff was not an employee
18 of his friend, the Web Site, or any of their affiliates.

19 21. On or about May 5, 2007, Plaintiff posted 7 to 10 of the photographs
20 taken at the scene of the Iron Man movie onto the Web Site. The posted
21 photographs depicted the Iron Man character in his full red and gold suit,
22 walking just behind a chain-link fence.

23 22. Prior to posting the photographs on the Web Site, Plaintiff superimposed
24 a conspicuous watermark on the photographs in an effort to prevent unlawful
25 use of the photographs. That watermark was posted on the upper right of each
26 of the photographs.

27 23. On the same day as the photographs were posted the Web Site, the
28 operator of the Web Site received a call from Defendant Paramount Pictures.

1 Defendant Paramount Pictures informed him that they were aware that the
2 photographs had been posted but, at that time, they declined to take any further
3 action, citing a legal inability to do so.

4 24. Approximately two days after the photographs were posted on the Web
5 Site, attorneys from Defendant Paramount Pictures contacted the Web Site
6 hosting company. Defendant Paramount Pictures instructed the Web Site
7 hosting company to shut down the Web Site due to the fact that it had posted
8 the photographs of the Iron Man character in costume.

9 25. As a result, the Web Site was shut down for over 16 hours, despite the
10 fact that there was no underlying legal justification.

11 26. After the Web Site was restored, Plaintiff and the Web Site operator
12 contacted Paramount Pictures to discuss the reasoning for shutting down the
13 Web Site. At that time, Defendant Paramount Pictures stated that the Web Site
14 was shut down for the unauthorized use of the photographs of the Iron Man
15 character in costume. Defendant Paramount Pictures also stated that the shut
16 down was not appropriate and indicated that they would be willing to
17 compensate both Plaintiff and the Web Site for the damages incurred as a result
18 of the shut down.

19 27. In the following weeks, Plaintiff and the Web Site operator attempted to
20 negotiate a settlement with Defendant Paramount Pictures to compensate them
21 for the 16 hour Web Site shut down. No such settlement was ever
22 accomplished.

23 28. Prior to the release of the Iron Man movie in May 2008, Plaintiff learned
24 that Defendants had used one of his photographs of the Iron Man character
25 (hereinafter "Picture") in a scene in which the lead character is reading a
26 newspaper. On the cover of that newspaper was and is Plaintiff's Picture.
27 Immediately above the Picture is a headline which reads, "Who is this Iron
28 Man."

1 29. Upon closer examination of the Picture used in the movie Iron Man,
2 Plaintiff discovered that the watermark which he had superimposed in the upper
3 right corner of the Picture had been removed.

4 30. To Plaintiff's knowledge, the only copy of the Picture ever published
5 prior to Defendants' infringement was the one published on the Web Site.
6 Therefore, Plaintiff is informed and believes, and based thereon alleges that
7 Defendants had to procure the copy of the Picture from the Web Site due to the
8 fact that no other copy of the Picture was published or released, either to the
9 public or in private.

10 31. Plaintiff retained all rights to the Picture and did not sell or license any
11 publishing rights to any entity.

12 32. Defendants used the Picture, without obtaining Plaintiff's permission or
13 otherwise compensating Plaintiff. Defendants also knowingly, willfully and
14 maliciously removed the distinct watermark Plaintiff superimposed upon the
15 upper right portion of the Picture.

16 33. Plaintiff subsequently learned that the scene which included his Picture
17 was used in movie trailers and in the Electronic Press Kits which were
18 distributed to numerous entertainment publications throughout the United States
19 and Europe.

20 34. The Electronic Press Kits distributed prior to the release of the Iron Man
21 movie contained only 29 pictures from the entire movie; one of which
22 contained Plaintiff's Picture. Additionally, Electronic Press Kits contain
23 electronic forms of all the pictures and provide the press and other media outlets
24 with the permission to replicate those pictures in their various publications.
25 Consequently, Defendants authorized any party receiving an Iron Man
26 Electronic Press Kit to republish Plaintiff's Picture.

27 35. In flagrant violation of Plaintiff's rights, as well as complete disregard for
28 well-established procedures for obtaining "clearances" and providing attribution

1 credit for making use in motion pictures of the intellectual property rights of
2 others, Defendants infringed upon Plaintiff's copyrights in the Iron Man
3 Picture.

4 36. Without providing Plaintiff with attribution credits or compensation,
5 Defendants have prominently used Plaintiff's Picture in a pivotal scene.
6 Specifically, the Picture appears on the newspaper that the lead character is
7 reading when he decides to call himself "Iron Man" for the first time

8 37. Moreover, Plaintiff's Picture was prominently used in the majority of the
9 marketing materials which were promulgated prior to the release of the Iron
10 Man movie.

11 38. Plaintiff is informed and believes, and based thereon alleges that
12 Defendants had full knowledge that the Picture did not belong to them and
13 further that it belonged to Plaintiff.

14 39. Defendants took willful and malicious course of action by removing the
15 watermark on the Picture before inserting it into the newspaper held by the lead
16 character of the Iron Man movie.

17 40. The entire budget for the Iron Man movie was approximately \$220
18 million, which includes approximately \$75 million for marketing.

19 41. As of this writing, the Iron Man movie has grossed in excess of \$500
20 million in world-wide release. As evidenced by the use of the Picture in a
21 pivotal scene in the movie; the use of the Picture in numerous theatrical,
22 television and Internet trailers; and the placement of the Picture in the
23 Electronic Press Kits, a portion of the profits of this movie are attributable to
24 the copyrighted Picture.

25 ///

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28 ///

FIRST CLAIM FOR RELIEF
(For Copyright Infringement)
(Against All Defendants)

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4 42.Plaintiff re-alleges and incorporates by reference paragraphs 1 - 41,
5 inclusive, as though they were fully set forth herein.

6 43.Adams is the original creator of the Picture, which is the subject matter of
7 this litigation,

8 44.Adams has complied in all respects, with the copyright laws of the
9 United States and all other laws thereof governing copyrights, and secured the
10 exclusive rights and privileges in and to the Picture at issue. Adams has been
11 and still is the proprietor of all rights, title, and interest in and to the above
12 copyright.

13 45.Defendants had access to Adams' Picture as the Picture was posted on an
14 entertainment web site on the World Wide Web prior to the release of the Iron
15 Man movie.

16 46.Defendants knowingly and willfully copied Adams' Picture and took the
17 further step of removing the watermark placed on the Picture by Adams.

18 47.Neither Defendants, nor any of its parent companies, partners,
19 subsidiaries, or licensees obtained authorization or permission from Adams to
20 copy the Picture or remove the watermark from the Picture and are engaging in
21 unlawful copyright infringement.

22 48.Defendants and/or its parent companies, partners, subsidiaries, or
23 licensees knowingly and willfully removed the watermark placed on the Picture
24 by Adams to protect its unauthorized use and then reproduced, distributed,
25 exploited, and displayed unauthorized copies of the Picture by using the Picture
26 in the motion picture Iron Man, in the Iron Man movie trailer which was
27 broadcast world wide, and in the Press Kits which were distributed worldwide.
28

1 All of this was done without Adams' permission, thereby infringing on Adams'
2 copyright.

3 49. Defendants continue to knowingly and willfully infringe on Adams'
4 copyright by unlicensed reproduction, distribution, exploitation, and display of
5 unauthorized copies of the Picture for its own commercial and financial benefit.

6 50. Defendants knowingly and willfully engaged in unlawful copyright
7 infringement and acquiesced to the acts of its executives, officers, directors,
8 employees, and/or agents, including, but not limited to, Jon Favreau, and
9 unjustly benefited from its unlawful infringing activities through receipt of
10 substantial revenues and profits generated from the reproduction, distribution
11 and display of unauthorized copies of the Picture.

12 51. Defendants have failed to compensate Adams for their infringing
13 activities including the reproduction, distribution, exploitation, and display of
14 unauthorized copies of the Picture.

15 52. As a direct and proximate result of Defendants' copyright infringement
16 as alleged above, Adams has suffered and will continue to suffer injury and
17 damage in an amount to be determined at trial. Furthermore, Adams is
18 informed and believes, and based thereon alleges, that Defendants have
19 received or will receive profits, gains, or other benefits from their infringing
20 activities, all of which should be disgorged to Adams.

21 53. Adams has and will incur attorneys' fees in pursuing this action, which
22 Adams is entitled to recover from Defendants, pursuant to 17 U.S.C. § 505.

23
24 **SECOND CLAIM FOR RELIEF**

25 **(For Common Law Conversion)**

26 **(Against All Defendants)**

27 54. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 53,
28 inclusive, as though they were fully set forth herein.

1 55. At all times herein mentioned, Adams was, and still is, the owner of the
2 Picture that he took of the character Iron Man.

3 56. By the acts alleged herein, Defendants have engaged in conversion of the
4 property of Adams including, without limitation, converting for their own use
5 and commercial gain materials incorporating copies of all or portions of
6 Adams' Picture.

7 57. As a direct and proximate result of Defendants' conduct alleged herein,
8 Adams has been damaged and will continue to be damaged. Adams is entitled
9 to profits and damages arising from Defendants' wrongful conduct.

10 58. Adams is informed and believes, and based thereon alleges, that
11 Defendants' conduct was willful, wanton, malicious and in conscious disregard
12 of Adams' rights, thereby justifying an award of punitive and/or exemplary
13 damages in an amount according to proof at trial.

14
15 **THIRD CLAIM FOR RELIEF**
16 **(Violation of Section 43(a) of the Lanham Act)**
17 **(Against All Defendants)**

18 59. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 58,
19 inclusive, as though they were fully set forth herein.

20 60. Defendants' acts as alleged herein violate section 43(a) of the Lanham
21 Act, 15 U.S.C. § 1125(a). Defendants' violations include, but are not limited to,
22 the producing, distributing, exhibiting, and otherwise exploiting Adams'
23 Picture, Defendants have created confusion in the industry and have falsely
24 created the impression in the minds of the public that Adams approved or
25 authorized Defendants' use of the Picture.

26 61. As a direct and proximate result of Defendants' wrongful conduct,
27 Adams has been damaged and will continue to be damaged and is entitled to
28 recover Defendants' wrongfully obtained profits and Adams' actual damages.

1 62.Adams is entitled to an injunction prohibiting Defendants, and each of
2 them, from continuing the practices alleged herein, and Plaintiff is entitled to
3 restitution of all amounts acquired by Defendants by means of such wrongful
4 acts.

5
6 **FOURTH CLAIM FOR RELIEF**
7 **(Unfair Competition, Violation of CA Bus. & Prof. Code §17200 et seq.)**
8 **(Against All Defendants)**

9 63.Plaintiff re-alleges and incorporates by reference paragraphs 1 - 62,
10 inclusive, as though they were fully set forth herein.

11 64.Defendants' acts as alleged herein constitute unlawful, unfair, and/or
12 fraudulent business practices pursuant to California Business and professions
13 Code §17200.

14 65.Adams has been damaged and will continue to be damaged by
15 Defendants' unlawful, unfair and/or fraudulent business practices alleged
16 herein.

17 66.Adams is entitled to an injunction prohibiting Defendants, and each of
18 them, from continuing the practices alleged herein, and Plaintiff is entitled to
19 restitution of all amounts acquired by Defendants by means of such wrongful
20 acts.

21
22 **FIFTH CLAIM FOR RELIEF**
23 **(Common Law Unfair Competition)**
24 **(Against All Defendants)**

25 67.Plaintiff re-alleges and incorporates by reference paragraphs 1 - 66,
26 inclusive, as though they were fully set forth herein.

27 68.By their conduct as alleged above, Defendants have violated and
28 infringed Adams' common law rights in his photograph of the Iron Man

1 character and have otherwise competed unfairly with Adams in violation of the
2 common law of the state of California.

3 69. Adams is entitled to an injunction prohibiting Defendants from
4 continuing the practices alleged herein.

5 70. As a direct and proximate result of Defendants' conduct, Adams has
6 suffered and is entitled to monetary damages in an amount to be proven at trial.

7 71. By their conduct as described above, Defendants have engaged in
8 outrageous and despicable conduct and have acted with ill will, malice and
9 oppression toward Adams and in conscious disregard of Adams' rights, thereby
10 justifying an award of punitive and/or exemplary damages in an amount
11 according to proof at trial.

12
13 **SIXTH CLAIM FOR RELIEF**

14 **(Unjust Enrichment)**

15 **(Against All Defendants)**

16 72. Plaintiff re-alleges and incorporates by reference paragraphs 1 - 71,
17 inclusive, as though they were fully set forth herein.

18 73. Plaintiff is informed and believes and thereon alleges that when
19 Defendants copied the PICTURE from the Web Site and then demanded the
20 removal of the PICTURE from the Web Site, Defendants acted for the express
21 purpose of taking the fruits of Plaintiff's efforts, time and skill without
22 compensating Plaintiff. These acts were done with full knowledge of Plaintiff's
23 economic and ownership rights and entitlements to the PICTURE. Defendants
24 sought to, and did, usurp Plaintiff's PICTURE in order to retain the benefits.

25 74. By their conduct as alleged above, Defendants have unjustly retained a
26 benefit to the detriment of Plaintiff, and such benefit violates fundamental
27 principles of justice, equity, and good conscience.

28

1 75. Accordingly, Plaintiff is entitled to an order requiring Defendants to
2 disgorge any and all ill-gotten gains to Plaintiff.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Adams prays judgment on his complaint as follows:

6 1. For an order that, by the acts complained herein, Defendants have
7 infringed Plaintiff's copyright rights, in violation of 17 U.S.C. § 501 *et seq.*

8 2. For an order that, by the acts complained herein, Defendants have
9 engaged in unfair competition against Plaintiff, in violation of § 43(a) of the
10 Lanham Act.

11 3. For an order that, by the acts complained herein, Defendants have
12 engaged in unfair competition against Plaintiff, in violation of Cal. Bus. And
13 Prof. Code § 17200.

14 4. For an order that, by the acts complained herein, Defendants have
15 engaged in common law unfair competition against Plaintiff.

16 5. For an order that, by the acts complained of herein, Defendants have
17 unlawfully converted Plaintiff's property.

18 6. For preliminary injunctive relief, restraining and enjoining Defendants
19 and their officers, directors, agents, servants, employees, representatives,
20 partners, subsidiaries, and attorneys, and all other persons or entities acting in
21 concert or participation with them or at their direction from;

22 a. Distributing, reproducing, displaying, exhibiting, and otherwise
23 exploiting the Picture in any DVD version of the motion picture
24 Iron Man;

25 b. Distributing, reproducing, displaying, exhibiting and otherwise
26 exploiting the Picture in any video game version of the motion
27 picture Iron Man; and
28

1 c. Distributing, reproducing, displaying, exhibiting and otherwise
2 exploiting the Picture in any advertisement in any form for the
3 motion Picture Iron Man.

4 7. For an order awarding Plaintiff general and/or special damages, in an
5 amount to be fixed by the Court in accordance with proof, including enhanced
6 exemplary and/or punitive damages, as appropriate, as well as all of
7 Defendants' profits or gains of any kind from its acts of copyright infringement,
8 unfair competition, and conversion, and further for an order that such acts by
9 Defendants were willful and wanton.

10 8. For an order requiring Defendants to disgorge any and all gains or
11 benefits conferred upon Defendants as a result of their violations of law.

12 9. For an order awarding Plaintiff his costs and attorneys fees incurred in
13 prosecuting this action,

14 10. For an order awarding Plaintiff pre-judgment interest.

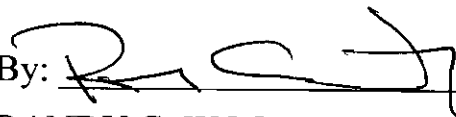
15 11. For such other and further relief as the Court may deem just and proper.

16 **JURY DEMAND**

17 Plaintiff hereby demands a trial by jury on all issues so triable before this
18 Court.

19 Dated: June 12, 2008

A & R LAW GROUP, LLP

20
21 By: 

22 RANDY C. WOOLFORD
23 Ca. Bar No. 231324
24 428 Main Street, Ste. 209
25 Huntington Beach, CA 92648
26 Telephone: (714) 924-5384
27 Facsimile: (714) 901-2529
28 E-mail: randy@a-rlawgroup.com
COUNSEL FOR PLAINTIFF,
RONNIE ADAMS