

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Ft. Worth Division

ERGUN M. CANER,)
))
Plaintiff,)
))
v.))
))
JONATHAN AUTRY,)
))
Serve:)
Jonathan Autry)
399 Mountain Lake Road)
Lynchburg, VA 24502)
))
and)
))
JASON SMATHERS,)
))
Serve:)
Jason Smathers)
P.O. Box 781)
Topock, AZ 86436)
))
Defendants.)

Case. No. 4:13-cv-494

COMPLAINT

Plaintiff Dr. Ergun M. Caner (“Dr. Caner”), by counsel, alleges as follows for his Complaint against defendants Jonathan Autry (“Autry”) and Jason Smathers (“Smathers”):

Parties

1. Dr. Ergun M. Caner is a resident of Texas and resides in Parker County. Dr. Caner’s place of employment is located at 3001 West Division Street, Arlington, TX 76012.

2. On information and belief, Jonathan Autry is domiciled in Virginia. He resides at 399 Mountain Lake Road in the city of Lynchburg. Autry’s account name is “MosesModel” on YouTube.com.

3. On information and belief, Jason Smathers is domiciled in Arizona. His mailing address is P.O. Box 781 in the city of Topock. Smathers’s account name is “Jsin” on Viddler.com. Upon information and belief, this defendant has been convicted and served time in prison for crimes related to the Internet—namely, the felony theft of hundreds of thousands of email addresses and the subsequent sale of them to a buyer in Las Vegas, NV.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over the claims relating to the Copyright Act (17 U.S.C. §§ 101, 501) pursuant to 28 U.S.C. § 1331 (federal subject matter jurisdiction) and 28 U.S.C. § 1338(a) (“The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights . . .”).

5. This Court has personal jurisdiction over the defendants because the defendants have willfully and purposefully infringed the copyrights of Dr. Caner, who the defendants know to be a Texas resident who resides in the Northern District of Texas.

6. Accordingly, venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400.

Count I—Copyright Infringement Under 17 U.S.C. §§ 106 and 506

7. Dr. Caner realleges paragraphs 1 through 6 as if fully set forth herein.

8. Autry, using the account name “MosesModel,” reproduced, uploaded, and maintained thirty-four of Dr. Caner’s videos to his YouTube.com account.

9. Pursuant to Dr. Caner’s rights as the copyright owner, Dr. Caner filed a takedown notice pursuant to the Digital Millennium Copyright Act (DMCA) with Youtube.com on May 31, 2013 challenging Autry’s use of all thirty-four videos.

10. YouTube.com removed all thirty-four videos from Autry’s account on May 31, 2013 when it received Dr. Caner’s DMCA takedown notice.

11. On or around June 4, 2013, Autry completed a counter-notification form arguing that the videos were wrongfully taken down.

12. On June 4, 2013, YouTube.com sent Dr. Caner the counter-notification stating that Autry was challenging the removal of two of Dr. Caner’s videos and that Dr. Caner’s videos would be reposted to Autry’s account if Dr. Caner did not initiate legal action within ten business days.

13. The first video that Autry has infringed is the video he wrongfully posted to his YouTube account under the title, “*Ergun Caner gives his testimony to US Marines in New River, NC*” [sic].

14. This video is solely the recorded and live footage of Dr. Caner delivering a presentation as a part of a series that Dr. Caner entitled, “*Top Ten Things You Need to Know About Islam.*”

15. Upon an invitation from the United States Marine Corp, Dr. Caner delivered this presentation as a part of a training series on the religion of Islam and was compensated as an independent contractor.

16. Autry did not have any part in the authorship or creation of this video.

17. After Autry was notified that Dr. Caner was asserting his rights as a copyright holder under the DMCA, Autry attempted to circumvent the safeguards of the DMCA by pointing others to an alternate source of the video footage (Defendant Smathers's Viddler and YouTube pages) and encouraging others to copy the videos because Dr. Caner was asserting his copyright ownership.

18. This reproduction, broadcasting, and willful circumvention of the DMCA has directly infringed upon Dr. Caner's copyright to his presentation under 17 U.S.C. §§ 106 and 506.

Count II—Copyright Infringement Under 17 U.S.C. §§ 106 and 506

19. Dr. Caner realleges paragraphs 1 through 6 as if fully set forth herein.

20. The second video that Autry has infringed is the video he entitled "*Ergun Educated in Cairo, Egypt.*"

21. This video includes live portions of recorded footage of Dr. Caner delivering various presentations and sermons.

22. Dr. Caner has not authorized Autry to use any portion of this work.

23. Autry did not have any part in the authorship or creation of this video.

24. This reproduction and broadcasting has directly infringed Dr. Caner's copyright to his presentation under 17 U.S.C. §§ 106 and 506.

Count III—Copyright Infringement Under 17 U.S.C. §§ 106 and 506

25. Dr. Caner realleges paragraphs 1 through 6 as if fully set forth herein.

26. Smathers, using the account name "Jsin," uploaded and maintained two of Dr. Caner's videos to his Viddler.com account.

27. Pursuant to his rights as the copyright owner, Dr. Caner filed a takedown notice with Viddler.com on June 3, 2013 to challenge the first video, and on June 12, 2013 to challenge the second video.

28. Subject to the DMCA, Viddler.com removed both of Smathers's videos from YouTube.com on June 7 and June 13 respectively.

29. On or around June 7 and 13, Smathers completed counter-notification forms claiming copyright ownership in Dr. Caner's videos that were posted to his Viddler.com account.

30. On June 7 and 13, Viddler.com sent Dr. Caner copies of Smathers's counter-notifications stating that Smathers was challenging the removal of both of Dr. Caner's videos and that Dr. Caner's videos would be reposted to Smathers's account if Dr. Caner did not did not initiate legal action within ten business days.

31. The first video that Smathers has infringed is the video "*Ergun Caner trains US Marines (o-club)*" [sic].

32. This video is solely the recorded and live footage of Dr. Caner delivering a presentation as a part of a series that he entitled, "*Top Ten Things You Need to Know About Islam.*"

33. Upon an invitation from the United States Marine Corp, Dr. Caner delivered this presentation as a part of a training series on the religion of Islam and was compensated as an independent contractor.

34. Smathers did not have any part in the authorship or creation of this video.

35. Smathers has infringed Dr. Caner's copyright by reproducing the video, and posting it to his Viddler account in violation of 17 U.S.C. §§ 106 and 506.

36. After Smathers was notified that Dr. Caner was asserting his rights as a copyright holder under the DMCA, Smathers has attempted to circumvent the purpose of the DMCA by reposting the videos to YouTube.com and directing others to watch the video there since it was removed from Viddler.

37. This reproduction and broadcasting has directly infringed Dr. Caner's copyright to his presentation under 17 U.S.C. §§ 106 and 506.

Count IV—Copyright Infringement Under 17 U.S.C. §§ 106 and 506

38. Dr. Caner realleges paragraphs 1 through 6 as if fully set forth herein.

39. The second video that Smathers has infringed is the video "*Ergun Caner trains US Marines (base theater)*" [sic].

40. This video is solely the recorded and live footage of Dr. Caner delivering a presentation as a part of a series that he entitled, "*Top Ten Things You Need to Know About Islam.*"

41. Upon an invitation from the United States Marine Corps, Dr. Caner delivered this presentation as a part of a training series on the religion of Islam and was compensated as an independent contractor.

42. Smathers did not have any part in the authorship or creation of this video.

43. Smathers has infringed Dr. Caner's copyright by reproducing the video, and posting it to his Viddler account in violation of 17 U.S.C. §§ 106 and 506.

44. After Smathers was notified that Dr. Caner was asserting his rights as a copyright holder under the DMCA, Smathers has attempted to circumvent the purpose of the DMCA by reposting this video to YouTube.com and directing others to watch the video there since it was removed from Viddler.

45. This reproduction and broadcasting has directly infringed Dr. Caner's copyright to his presentation under 17 U.S.C. §§ 106 and 506.

Relief Requested

WHEREFORE, Dr. Caner respectfully requests this Court to enter judgment against the defendants as follows:

46. Declaring that Dr. Caner is the copyright owner for the works described above.

47. Granting an injunction—pursuant to Rule 65 of the Federal Rules of Civil Procedure and 17 U.S.C. 502—preliminarily and permanently restraining and enjoining Defendants from:

A. Engaging in any activity that constitutes the reproduction of Dr. Caner's copyrighted work.

B. Engaging in any activity that constitutes the unauthorized broadcasting of Dr. Caner's work via any Internet website service provider or any other means.

48. Awarding Dr. Caner his costs, attorneys fees, investigatory fees, and expenses to the full extent provided by Section 505 of the Copyright Act (17 U.S.C. § 505).

Dr. Ergun Caner

By *David C. Gibbs III*
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N.D. Texas: Pending Admission

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED: (See instructions):
JUDGE
DOCKET NUMBER

DATE
SIGNATURE OF ATTORNEY OF RECORD
Daniel C. Miller III

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE