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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

EQUINE LEGAL SOLUTIONS, PC,)	
)	Case No. 3:22-cv-269
Plaintiff)	
)	
v.)	COMPLAINT
)	
THIS OLD HORSE, INC.; NANCY)	For Copyright Infringement, Breach
TURNER; JOTFORM INC. and)	of Contract and Conversion
GOOGLE LLC,)	
)	
Defendants)	

COMES NOW, Plaintiff Equine Legal Solutions, PC (“Plaintiff”) and hereby alleges as follows against Defendants This Old Horse, Inc. (“Defendant TOH”), a Minnesota nonprofit corporation; Nancy Turner (“Defendant Turner”); Jotform Inc., a California corporation (“Defendant Jotform”); and Google LLC, a Delaware limited liability company (“Defendant Google”) (collectively, “Defendants”).

NATURE OF THE ACTION

1.

This action arises out of Defendants’ use, copying, dissemination, and infringement of

Plaintiff's copyrighted legal forms. Plaintiff sells licenses to access and use Plaintiff's copyrighted legal forms on Plaintiff's website, subject to a license agreement ("License Agreement").

JURISDICTION

2.

Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over claims brought under the Copyright Act, 17 U.S.C. § 101, *et seq.* ("Copyright Act").

3.

Pursuant to 28 U.S.C. § 1332(a)(1), this Court has original jurisdiction over claims where the matter in controversy exceeds \$75,000 and is between citizens of different states.

VENUE

4.

Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in this Court. As described herein, all Defendants knowingly directed their conduct at the state of Oregon with the knowledge their conduct would cause injury to Plaintiff in the state of Oregon. In addition, as described herein, certain Defendants agreed to the terms of the License Agreement, which specifies the state of Oregon as the proper venue for any legal actions relating to it, and Defendants Jotform and Google do business in the state of Oregon.

PARTIES

5.

Plaintiff is an Oregon professional corporation providing equine-related legal services to clients in Oregon, California, New York and Washington.

6.

Plaintiff is informed and believes Defendant TOH is a Minnesota nonprofit corporation domiciled in Minnesota.

7.

Plaintiff is informed and believes Defendant Turner is a natural person resident in Minnesota

8.

Plaintiff is informed and believes Defendant Jotform is a California corporation with its principal place of business in California. Plaintiff is informed and believes Defendant Jotform does business in Oregon and has numerous customers resident in Oregon.

9.

Plaintiff is informed and believes Defendant Google is a Delaware limited liability company with its principal place of business in California. Plaintiff is informed and believes Defendant Google does business in Oregon and has numerous customers resident in Oregon.

FACTUAL ALLEGATIONS

10.

Plaintiff's employee has developed a variety of copyrighted legal forms for equine transactions based upon her decades of experience both as an attorney and an equestrian. On Plaintiff's website, persons wishing to use such forms can download them for a fee after agreeing to enter into the License Agreement. The License Agreement is also posted on Plaintiff's website.

11.

The License Agreement specifically prohibits Plaintiff's customers from editing Plaintiff's forms or otherwise creating derivative works from Plaintiff's forms. The License Agreement also specifically prohibits Plaintiff's customers from reselling Plaintiff's forms and from posting Plaintiff's forms on the Internet.

12.

From time to time, Plaintiff conducts Internet searches to identify documents that infringe upon Plaintiff's copyrighted forms. Because Plaintiff uses unique language in its forms, Plaintiff can easily identify infringing documents by searching for specific language.

13.

Plaintiff is informed and believes at all relevant times, Defendant Turner acted as an employee or agent of Defendant TOH.

14.

On June 18, 2013, Defendant Turner visited Plaintiff's website, purchased Plaintiff's Equine Boarding Forms Package, Riding Instruction Agreement Package and Equine Donation Agreement, and downloaded each of them. Such purchase was subject to the License Agreement, which specifies Oregon as the proper venue for all legal actions brought in connection with the License Agreement.

15.

Plaintiff is informed and believes at some point on or after June 18, 2013, Defendants Turner and TOH used Plaintiff's Equine Boarding Agreement to create a horse boarding agreement ("Infringing Document #1"). Infringing Document #1 contains multiple paragraphs

nearly identical to sections of Plaintiff's Equine Boarding Agreement.

16.

According to Defendant Jotform's website, "Jotform is a full-featured online form builder that makes it easy to create robust forms and collect important data." Plaintiff is informed and believes at some point on or after June 18, 2013, Defendants Turner and TOH purchased a subscription to Defendant Jotform's service and used it to create an online fillable horse boarding agreement form ("Infringing Document #2") from Infringing Document #1.

17.

Plaintiff is informed and believes at some point on or after June 18, 2013, Defendants Turner and TOH used Plaintiff's Equine Donation Agreement to create an equine donation agreement ("Infringing Document #3"). Infringing Document #3 contains multiple paragraphs nearly identical to sections of Plaintiff's Equine Donation Agreement.

18.

Plaintiff is informed and believes at some point on or after June 18, 2013, Defendants Turner and TOH used Defendant Jotform's service to create an online fillable equine donation agreement form ("Infringing Document #4") from Infringing Document #3.

19.

On June 4, 2021, Plaintiff conducted an Internet search for language unique to Plaintiff's forms. Such search led Plaintiff to discover Infringing Document #2, which was posted at the following URL: <https://form.jotform.us/90626893672166>.

20.

On November 18, 2021, Plaintiff conducted an Internet search for language unique to

Plaintiff's forms. Such search led Plaintiff to discover Infringing Document #4, which was posted at the following URL: <https://form.jotform.us/81040370399152>.

21.

Plaintiff is informed and believes that at all relevant times, Defendant Jotform owned and controlled the domain form.jotform.us ("Jotform Website"). Plaintiff is informed and believes that at all relevant times, Defendant Jotform received compensation from Defendant TOH in connection with the presence of Infringing Documents #2 and 4 on the Jotform Website.

22.

Plaintiff is informed and believes that at all relevant times, Defendant Google was the ISP hosting the Jotform Website and received compensation from Defendant Jotform in exchange for hosting the Jotform Website.

23.

On November 19, 2021, Plaintiff submitted a Digital Millennium Copyright Act ("DMCA") compliant takedown notice via email to Defendant Google with respect to Infringing Document #4. Defendant Google replied and requested that Plaintiff identify the infringing content. On November 23, 2021, Plaintiff emailed Defendant Google a screen shot of Infringing Document #4 highlighted to identify the infringing content. Plaintiff received no further response from Defendant Google, so Plaintiff sent a follow up email on December 8, 2021. Defendant Google did not respond, so on December 28, 2021, Plaintiff submitted a second takedown notice via Defendant Google's online DMCA report form. On January 3, 2022, Defendant Google emailed Plaintiff and requested that Plaintiff identify the infringing content. Plaintiff replied with a copy of Plaintiff's Equine Donation Agreement and a screen shot of

Infringing Document #4 highlighted to identify the infringing content. Plaintiff received no further response from Defendant Google.

24.

On November 23, 2021, Plaintiff submitted a takedown notice for Infringing Document #2 via Defendant Google's online DMCA form. Plaintiff received a reply from Defendant Google requesting that Plaintiff contact the website owner first and then contact Defendant Google again if Plaintiff still needed assistance. On November 29, 2021, Plaintiff replied to Defendant Google and stated that Plaintiff needed assistance. Plaintiff sent Defendant Google follow up emails on December 8, 2021 and December 13, 2021. Plaintiff received no further response from Defendant Google. Accordingly, on December 28, 2021, Plaintiff submitted a second DMCA takedown notice via Defendant Google's online report form. On January 3, 2021, Defendant Google emailed Plaintiff and requested that Plaintiff identify the infringing content. Plaintiff replied on January 3, 2021 with a copy of Plaintiff's Equine Boarding Contract and a screen shot of Infringing Document #4 highlighted to identify the infringing content. Plaintiff received no further response from Defendant Google.

25.

On December 15, 2021, Plaintiff submitted a DMCA compliant takedown notice via email to Defendant TOH with respect to Infringing Documents #2 and 4. Plaintiff did not receive any response, so Plaintiff sent a second DMCA notice to Defendant TOH on January 4, 2022. Plaintiff did not receive any response from Defendant TOH.

26.

On December 15, 2021, Plaintiff submitted takedown notices for Infringing Documents

#2 and 4 via Defendant Jotform's online DMCA form. Plaintiff received no response to the takedown notice for Infringing Document #2. In response to the takedown notice for Infringing Document #4, Plaintiff received an email from Defendant Jotform stating, "We haven't understand that what and were we infringing. Mentioned URL 'https://form.jotform.us/90626893672166' is not created by me Or my organization. Kindly check and confirm it." Plaintiff replied with a screen shot of Infringing Document #4 highlighted to show the infringing content. On December 21, 2021, Defendant Jotform replied, stating, "I understand of this matter, but the form is not created by me or my organization so how can i remove text from this page. Please tell us where you find this form." On December 22, 2021, Plaintiff replied, stating, "The infringing material is being hosted by JotForm at the following URL: <https://form.jotform.us/90626893672166>." Defendant Jotform replied, "I understand, please confirm that who is created this form because I swear and confirm, this form is not created by me Or my organization." Plaintiff responded, "The form was created by one of your customers, ThisOldHorse.org. We have contacted them – no response. JotForm should be able to take down this page, as it is hosted by JotForm." Plaintiff received no further response from Defendant Jotform.

27.

As of the date of this filing, Infringing Documents #2 and 4 are still posted on the Jotform Website.

28.

Plaintiff is informed and believes Defendants Turner and TOH have used, and continue to use, Infringing Documents #1-4 in their business operations. Further, Plaintiff is informed and

believes Defendants Turner and TOH distributed copies of Infringing Documents #1-4 to an unknown number of additional parties. In addition, Plaintiff is informed and believes that during the time periods Infringing Documents #2 and 4 have been posted to the Jotform Website, an unknown number of parties accessed Infringing Documents #2 and 4. Plaintiff is informed and believes an unknown number of parties who came into possession of Infringing Documents #1-4, have further disseminated them, made derivative works from them, and profited by using them in their business operations.

FIRST CLAIM FOR RELIEF

Copyright Infringement Against All Defendants

29.

Plaintiff incorporates by reference and realleges the preceding paragraphs.

30.

Plaintiff has complied in all respects with the Copyright Act, and all other laws governing copyright.

31.

Plaintiff is entitled to copyright protection for Plaintiff's Equine Boarding Forms Package, which includes, *inter alia*, Plaintiff's Equine Boarding Agreement, Adult Visitor Release, Youth Visitor Release, Adult Haul-in Release and Youth Haul-in Release. The Register of Copyrights has issued the following Certificates of Registration for material contained in the current version of Plaintiff's Equine Boarding Forms Package: TX0007188695, TX0007188703, TX0007188711, TX0007189931, TX0007189934, TX0007394787, TX0007394795 and TX0008398596.

32.

Plaintiff is entitled to copyright protection for Plaintiff's Equine Donation Agreement. The Register of Copyrights has issued the following Certificate of Registration for Plaintiff's Equine Donation Agreement: TX0007394786.

33.

Plaintiff has placed copyright notices on its License Agreement and on all copies of its legal forms it has produced and licensed, including Plaintiff's Equine Boarding Forms Package and its component forms, and Plaintiff's Equine Donation Agreement (collectively, the "Infringed Documents"). Any copies of the Infringed Documents published by Plaintiff or under Plaintiff's authority or license have been published in strict conformity with the Copyright Act and all other laws governing copyright.

34.

Plaintiff is the copyright claimant of the original copyright, assignee of the copyright owner, or the owner of exclusive rights under the Copyright Act, in the Infringed Documents. Since the development of the Infringed Documents, Plaintiff has been, and still is, the sole proprietor of all of its rights, title and interest in and to the Infringed Documents.

35.

Plaintiff is informed and believes by means of the actions complained of herein, Defendants have infringed and will continue to infringe Plaintiff's copyright in and relating to the Infringed Documents, by copying, publicly displaying, distributing, and/or placing into the market documents or portions thereof which were copied from the Infringed Documents.

36.

Plaintiff is informed and believes Defendants have infringed Plaintiff's copyright knowingly, deliberately, and willfully, and without Plaintiff's consent.

37.

Plaintiff has not authorized any of the Defendants, by license or otherwise, to copy, reproduce, display, distribute or sell copies of the Infringed Documents, except for personal and non-commercial use pursuant to the License Agreement.

38.

As a direct and proximate result of Defendants' infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendants' profits pursuant to 17 U.S.C. § 504(b) for each infringement. Alternatively, Plaintiff is entitled to the maximum statutory damages in the amount of \$150,000, or for such other amounts as may be proper under 17 U.S.C. §504(c). Plaintiff is further entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. §505.

39.

Defendants' conduct, as described herein, is causing, and unless enjoined by this Court, will continue to cause, Plaintiff great and irreparable injury that cannot be fully compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §502, Plaintiff is entitled to preliminary and permanent injunctions prohibiting further infringement of Plaintiff's copyright.

SECOND CLAIM FOR RELIEF

Breach of Contract against Defendants Turner and TOH

40.

Plaintiff incorporates by reference and realleges the preceding paragraphs.

41.

The License Agreement is a valid contract between Defendant Turner and Plaintiff. Defendant Turner entered into the License Agreement in her capacity as an agent of Defendant TOH, and therefore Defendant TOH is bound by the terms of the License Agreement.

42.

Plaintiff performed all of its obligations pursuant to the License Agreement, or was excused from doing so.

43.

Defendants Turner and TOH breached the License Agreement by taking the actions described herein.

44.

As a proximate result of Defendant Turner's and Defendant TOH's actions, Plaintiff has suffered damages in an amount to be proven at trial.

45.

Pursuant to the License Agreement, Plaintiff is entitled to recovery of its attorneys' fees and costs in this action.

THIRD CLAIM FOR RELIEF

Conversion Against the Defendants Turner and TOH

46.

Plaintiff incorporates by reference and realleges the preceding paragraphs.

47.

Plaintiff owns the Equine Boarding Forms Package and the Equine Donation Agreement.

48.

Defendant Turner and Defendant TOH intentionally converted a portion of the Equine Boarding Forms Package and a portion of the Equine Donation Agreement to commercial use for Defendant Turner's and Defendant TOH's benefit.

49.

As a direct result of Defendant Turner's and Defendant TOH's actions, Plaintiff has suffered damages in an amount to be proven at trial.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment as follows:

By Plaintiff against All Defendants

1. For an order preliminarily and permanently enjoining Defendants and all persons acting in concert with them, including their agents, employees, successors and assigns, from (a) accessing, using, copying, publishing, disclosing, transferring, selling or otherwise distributing or disseminating, directly or indirectly, any of Plaintiff's copyrighted material, and any product incorporating or derived from all or part of Plaintiff's copyrighted material;

and (b) committing any other act that infringes upon Plaintiff's copyrights.

2. For an order requiring Defendants to account and pay over to Plaintiff all sales, profits and advantages derived by them from the causes of action described in this Complaint.
3. An award of actual damages in an amount to be proven at trial;
4. For statutory damages as provided by applicable law;
5. For an award of attorneys' fees and costs; and
6. For such other and further relief as the Court shall deem equitable.

DATED February 17, 2022

/s/ Rachel E. Kosmal McCart

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