

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FAMEFLYNET, INC.,

Plaintiff,

16 Civ. 7645

-against-

OPINION

THE SHOSHANNA COLLECTION, LLC
AND SHOSHANNA GROUP, INC.,

Defendants.
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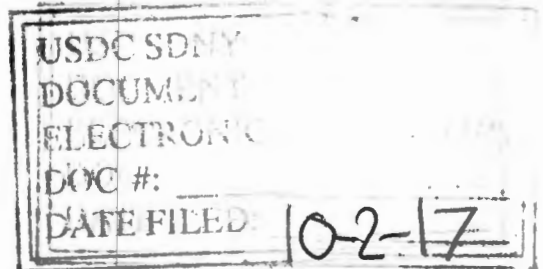
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Sweet, D.J.

Plaintiff FameFlynet, Inc. ("FFN" or the "Plaintiff"), a photojournalism corporation, has moved pursuant to Federal Rule of Civil Procedure 56 for summary judgment against defendants Shoshanna Collection ("Shoshanna Collection") and Shoshanna Group, Inc. ("Shoshanna Group") (collectively the "Defendants"), alleging direct copyright infringement in violation of 17 U.S.C. § 106. The Defendants have cross-moved for summary judgment under the same Rule to dismiss the Plaintiff's complaint (the "Complaint") for copyright infringement. Based on the facts and conclusions set forth below, the summary judgment motion of the Plaintiff is granted and the cross-motion of the Defendants is denied.

I. Prior Proceedings

Plaintiff filed a complaint on September 29, 2016 against the Defendants, alleging claims of direct and vicarious copyright infringement in violation of 17 U.S.C. § 106.¹ On June 29, 2017, Plaintiff moved for summary judgment, and Defendants timely cross-moved for summary judgment on July 14, 2017

¹Although the Plaintiff alleged vicarious copyright infringement in the Complaint, it only submitted briefs in support of the direct infringement claim, so the Court considers only that claim on this motion.

pursuant to this Court's Order extending the deadline to file motions until August 4, 2017. The instant motions were heard and marked fully submitted on August 16, 2017.

II. The Facts

The facts have been set forth in Plaintiff's Statement of Undisputed Facts ("SUF") per Local Civil Rule 56.1(a) and Defendants' Local Rule 56.1 Responsive Statement of Material Facts and are not in dispute except as noted below.

The Plaintiff is FameFlynet, Inc., a California-based photojournalism corporation that provides entertainment-related goods and services. FFN owns the rights to a multitude of photographs, primarily featuring celebrities, which it licenses to online and print publications for profit. Plaintiff's primary assets are its library and archive of celebrity photographs. Defendants Shoshanna Collection and Shoshanna Group are a New York-based retail company and the website operator of www.shoshanna.com (the "Website"), respectively.

At issue here are two photographs, allegedly owned by the Plaintiff, of the celebrity Emmy Rossum taken at the Chateau Marmont Hotel in Hollywood, California on July 16, 2015

(collectively the "Rossum Photos" or the "Photos"). The Plaintiff asserts that it registered the Rossum Photos with the United States Copyright Office (the "USCO") on September 24, 2015, under Application No. 1-2734759362, and that the USCO approved the registration (the "Registration") that day. While the Defendants do not deny that the Plaintiff successfully registered some photographs with the USCO, Defendants dispute that the deposit copy of materials submitted to the USCO contained the Rossum Photos.

The Rossum Photos were first published on or about July 16, 2015 by E! Entertainment Online ("E! Entertainment"), which paid FFN a license fee of \$75 for the Photos. On October 7, 2015, FFN observed the Rossum Photos on Defendants' Website at the following URLs: <https://www.shoshanna.com/shop/world-of/cat/celebrities/> and <https://www.shoshanna.com/shop/world-of/cat/press/>. The parties do not dispute that an employee of one of the Defendants saved and uploaded the Rossum Photos to the Website, that Defendants had complete control over the Website, and that they actively reviewed and monitored the content posted on the Website.

III. The Applicable Standard

Summary judgment is appropriate only where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The relevant inquiry on application for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. A court is not charged with weighing the evidence and determining its truth, but with determining whether there is a genuine issue for trial. *Westinghouse Elec. Corp. v. N.Y.C. Transit Auth.*, 735 F. Supp. 1205, 1212 (S.D.N.Y. 1990) (quoting *Anderson*, 477 U.S. at 249). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine issue of material fact*." *Anderson*, 477 U.S. at 247-48 (emphasis in original).

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