

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WALTER L. LOWE, JR.,

Plaintiff,

V.

WARNER MEDIA LLC, WARNER BROS. ENTERTAINMENT INC., WB STUDIO ENTERPRISES, INC., WARNER BROS. ANIMATION, HOME BOX OFFICE, INC., REDBOX AUTOMATED RETAIL LLC, AMAZON.COM, INC., WALMART, INC., and BEST BUY CO., INC.,

Defendants.

Civil Action No.: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

This is a civil action for damages and injunctive relief in which it is alleged Defendants Warner Media LLC, Warner Bros. Entertainment Inc., WB Studio Enterprises, Inc., Warner Bros. Animation (altogether, “Warner Bros.” or the “Warner Bros. Defendants”), Home Box Office, Inc., Redbox Automated Retail LLC, Amazon.com, Inc., Walmart, Inc., and Best Buy Co. Inc., have committed, and continue to commit, copyright infringement in violation of the Copyright Act (17 U.S.C. § 101 *et. seq.*) in connection with their unauthorized exploitation of a motion picture entitled *Space Jam*, which is derived from Plaintiff’s copyrighted work, “The Devil and Doodazle Dakins” (the “Story” or “Work”). This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 17 U.S.C. § 501(b). Plaintiff states and alleges, on personal knowledge as to himself and information and belief as to others, as follows:

INTRODUCTION

1. Plaintiff Walter L. Lowe, Jr. (“Lowe”) is the author and copyright holder of “The Devil and Doodazzle Dakins”, a fictional short story that was published in *Playboy* magazine April

of 1984. On April 17, 1989, Lowe received a copyright registration for “The Devil and Doodazzle Dakins”. The copyright registration number is V2453P022. Attached as Exhibit 1 is a true and correct copy of “The Devil and Doodazzle Dakins” (the “Story” or “Work”).

2. Lowe is a native Chicagoan who had a 21-year career in newspaper and magazine journalism that began in 1971 at the Chicago Sun-Times. He is among the first full-time African American reporters at the Chicago-Sun Times and he is the first African American editor to join *Playboy*.

3. Lowe received his Master’s Degree in Marriage and Family Therapy (“MFT”) from Purdue Calumet University, after his career in journalism, and his Ph.D. in MFT from Purdue University, West Lafayette. The Purdue MFT graduate program was considered the best in the country—the “Harvard” of MFT programs. At the time of his graduation, Lowe was the only African American male to graduate from the Purdue MFT program in its more than 50-year history. Lowe received his Ph.D. when he was 60, before taking his professorship at Antioch University New England. He is passionate about social justice causes, and writing (both fiction and essays) is one of Dr. Lowe’s favorite hobbies.

4. Lowe spent significant time with James Baldwin on the Atlanta Child Murders, which culminated in “The Evidence of Things Not Seen”, an essay that was written by Baldwin and edited by Lowe and that won *Playboy*’s award for the Best Essay of the Year. Lowe is also the winner of *Playboy*’s Article of the Year Award for his 1980 article, “Bad Dreams in the Future Tense”. His work made him a presence in African American artistic and social justice circles. That work included interviews with the literary and civil rights giants in African American history, including Alex Haley (author of *Roots*), two-time Pulitzer Prize winning playwright August Wilson, Chicago’s first Black Mayor, Harold Washington, and Ralph Ellison, author of the

National Book Award winning novel, *Invisible Man*. He also brought international attention to the work of Ernie Barnes, who is today one of the most famous and recognized African American visual artists of the 20th century.

5. At Lowe's insistence, *Playboy* commissioned Ernie Barnes to illustrate the Story as well as two other of Lowe's short stories published in *Playboy* ("Galahad", 1978, "An Ounce of Luck", 1989). Mr. Barnes was the first African American illustrator used by *Playboy*. Mr. Barnes, whose achievements include being named the Official Artist of the 1984 Olympics, later thanked Lowe for bringing him on at *Playboy*—acknowledging the exposure to being chosen as the "first Sport Artist of the Year" ((<http://www.asama.org/awards-of-sport/medallion-series/sport-artist-of-the-year/ernie-barnes/>)).

6. Lowe's short stories (including the Story) were the first submissions from an African American author that *Playboy* elected to publish, and he may be the only African American author who had 4 stories selected for publication by *Playboy*.

7. The Story describes a "cosmic duel of good [as represented by angels] and evil [as represented by demons, including Lucifer]." But rather than traditional elements of combat and the associated horrors, a game of "astral basketball" is used to decide the fate of mankind. On information and belief, the Story reflects the first instance where a basketball game is used to decide the fate of mankind's soul.

8. The games use "a luminous transparent sphere" as the ball, and the face of the person whose fate is to be decided by a given shot would be reflected in the sphere, and the astral players absorbed the skills of human basketball players.

9. The Story goes on to describe "a tall, lanky, dark-brown figure wearing the colors of the Chicago Bulls." This player, a young African American athlete named Danny Doodazzle

Dakins, is able to dribble down-court “through a full-court press applied by the Boston Celtics”, weaving “through the defenders with a nifty combination of dribbling techniques. Then, as he approached the basket, he soared into the air like a black falcon, arms outspread, the ball held firmly in his right hand”, and sinking the shot after drawing an “ill-timed leap” from the defender. By the end of the Bulls v. Celtics game, Dakins had scored 48 points and won the game, including a shot where he “leap[ed] over [Larry] Bird’s outstretched arms, dumping the shot and Bird in one motion.” His game-winning shot at the buzzer “left Celtics forward Larry Bird sprawled on the floor.”

10. With the benefit of hindsight, it is easy to think Doodazzle Dakins was based on Michael Jordan—one of the most dominant players in the history of the National Basketball Association. But that association would be an invention. The Story was published April of 1984, approximately 2 months before Jordan was drafted by the Bulls. The Dakins character could not have been based on Mr. Jordan. It is a work of pure fiction, and the description of him—along with the rest of the Story—reflect an original Work.

11. As told in the Story, the devils (and Lucifer in particular) wanted Dakins’ basketball playing abilities. Dakins, on the other hand, wanted to save the soul of a character under Lucifer’s control. To settle this dispute, Dakins challenged Lucifer to a basketball game and Lucifer accepted. If Lucifer won, Dakins’ soul would have headed for hell, and Lucifer would absorb Dakins’ basketball abilities; if Dakins won, he would have saved the soul of Yvonne Brown, who was under Lucifer’s control. Nothing in the Story compelled Dakins to risk his soul for another. But under Lowe’s direction, Dakins chose to put himself on the line for the greater good.

12. Lowe is a Native Chicagoan. Many of the references he makes in the Story (Soul Queen restaurant, Belmont towers, and the Chicago Bulls) have personal significance to him as an

African American man that was born and raised in Chicago. His Story, which incorporated his personal background, and the illustration by Mr. Barnes made the Story a significant work for the Black arts community, especially in the Chicago and Los Angeles areas (Barnes' home).

13. After the publication of the Story Messrs. Timothy Harris ("Harris") and Herschel Weingrod ("Weingrod") approached Lowe to option the movie rights for the Story. They reached Lowe on a weekend evening, by phone, at his home.

14. Both Harris and Weingrod were on the initial call. They introduced themselves as the writers for the movie *Trading Places* and expressed interest in optioning the Story for a screenplay. In particular, Harris and Weingrod explained that Eddie Murphy, the star in *Trading Places*, was interested in making another movie and they thought the Story would be a good fit.

15. Harris and Weingrod twice optioned the movie rights for the Story. Each option period was for 6 months, and Lowe was paid approximately \$3,000 for each option.

16. Harris and Weingrod later explained that Eddie Murphy decided to make a movie called *Beverly Hills Cop*, and was not presently available to take on the Story as another project. After the options expired, Lowe did not hear from Harris or Weingrod again.

17. One or more of the Warner Defendants later made, released and distributed *Space Jam*, a movie starring Michael Jordan and characters from Looney Tunes. Defendants have profited and continue to profit from the copyright infringement of the Story.

18. The screenplay for *Space Jam* was written, among others, by Harris and Weingrod.

19. As in the Story, *Space Jam* focuses on a battle between the forces of good (Looney Tunes) and evil (the Monstars); and as in the Story, that battle is resolved over a game of basketball.

20. In both the Story and *Space Jam*, a luminous/glowing basketball is used. The glow represents the soul of basketball players in the Story, and the powers of basketball players in *Space*

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