

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Case No. 4:22-cv-290

PREPARED FOOD PHOTOS, INC. f/k/a
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

RR USA INVESTMENTS LLC,
d/b/a DON JAVIER MEAT MARKET &
TAQUERÍA,

Defendant.

COMPLAINT

Plaintiff Prepared Food Photos, Inc. f/k/a Adlife Marketing & Communications Co., Inc. (“Plaintiff”) sues defendant RR USA Investments LLC, d/b/a Don Javier Meat Market & Taquería (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Palm Beach County, Florida.
2. Defendant is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business located at 13526 Tidwell Road, Ste 500, Houston, Texas 77044-1552. Defendant’s Agent for Service of Process is Javier H. Valdivieso-Perry, 3611 Barton Lane, Sugar Land, Texas 77479.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§

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1331 and 1338(a).

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because it is a citizen and resident of Texas and because it maintained sufficient minimum contacts with Texas such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

6. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “It is well established that, for purposes of Section 1400(a), a defendant ‘may be found’ in any district in which it is subject to personal jurisdiction.” Isbell v. DM Records, Inc., No. 3:02-CV-1408-G, 2004 U.S. Dist. LEXIS 10394, at *41 (N.D. Tex. June 4, 2004) (“Because the court has determined that it has personal jurisdiction over DM, DM ‘may be found’ in this district and venue is therefore proper.”).

FACTS

I. Plaintiff’s Business

7. Plaintiff is in the business of licensing high-end, professional photographs for the food industry.

8. Through its commercial website (www.preparedfoodphotos.com), Plaintiff offers a monthly subscription service which provides access to/license of tens of thousands of professional images.

9. As of the date of this pleading, Plaintiff charges its clients (generally, grocery stores, restaurant chains, food service companies, etc.) a monthly fee of \$999.00 for access to its library of professional photographs.

10. Plaintiff does not license individual photographs or otherwise make individual photographs available for purchase. Plaintiff’s business model relies on its recurring monthly subscription service such that Plaintiff can continue to maintain its impressive portfolio.

11. Plaintiff owns each of the photographs available for license on its website and serves as the licensing agent with respect to licensing such photographs for limited use by Plaintiff’s customers. To that end, Plaintiff’s standard terms include a limited, non-transferable license for use of any photograph by the customer only. Plaintiff’s license terms make clear that all copyright ownership remains with Plaintiff and that its customers are not permitted to transfer, assign, or sub-license any of Plaintiff’s photographs to another person/entity.

II. The Work at Issue in this Lawsuit

12. In 1997, a professional photographer created a photograph titled “RawChickenTender005_ADL” (the “Work”). A copy of the Work is exhibited below.



13. The Work was registered by Plaintiff (pursuant to a work-for-hire agreement with the author that transferred all rights and title in the photograph to Plaintiff) with the Register of

Copyrights on January 23, 2017 and was assigned Registration No. VA 2-046-891. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as

Exhibit “A.”

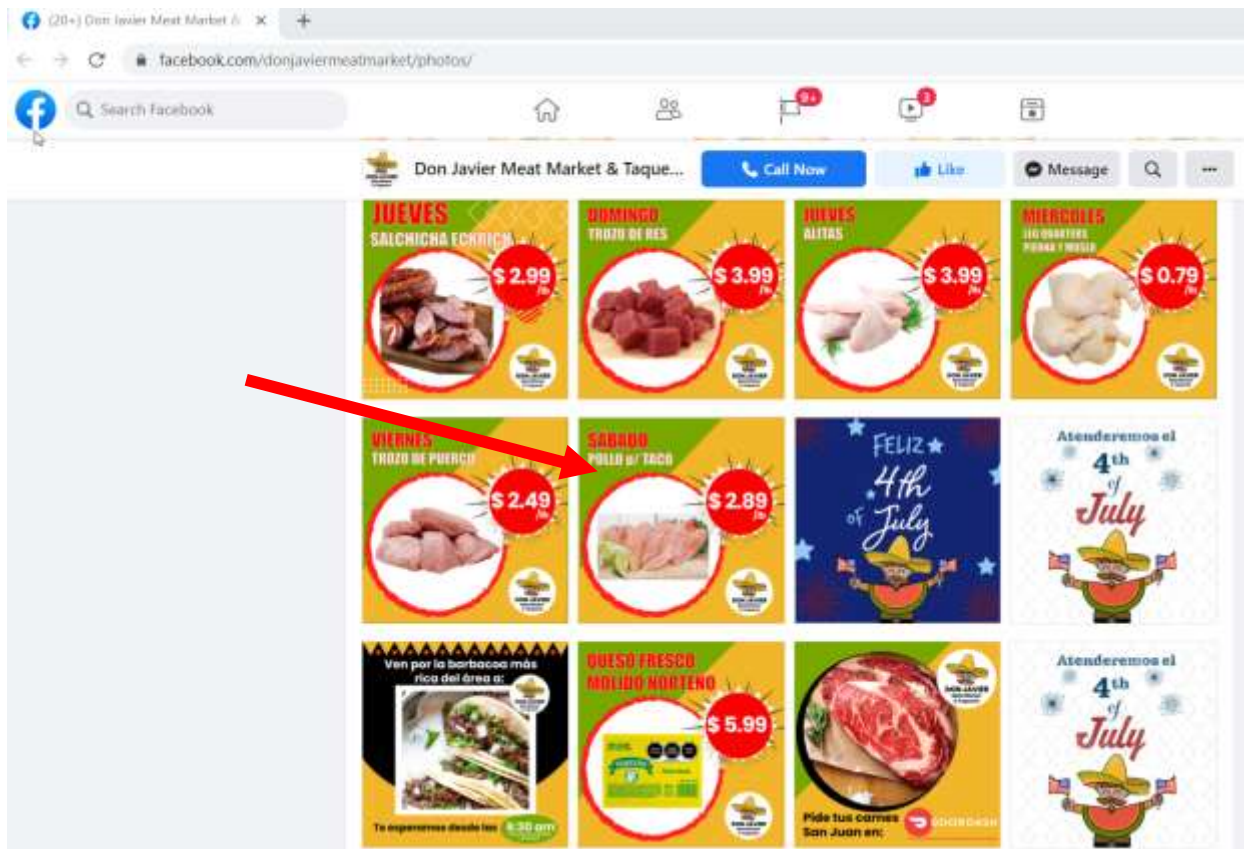
14. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

III. Defendant’s Unlawful Activities

15. Defendant owns and operates meat market, grocery store, and taqueria in Houston, Texas.

16. Defendant advertises/markets its business primarily through its aforementioned website (<https://donjaviermeatmarket.com/>), social media (e.g. https://www.facebook.com/donjaviermeatmarket/?ref=page_internal), and other forms of advertising.

17. On a date after Plaintiff’s above-referenced copyright registration of the Work, Defendant published the Work on its Facebook page (<https://www.facebook.com/donjaviermeatmarket/photos/>) in connection with the sale of “Chicken Tenders”:



18. A true and correct copy of screenshots of Defendant’s website, displaying the copyrighted Work, is attached hereto as **Exhibit “B.”**

19. The foregoing display of the Work on Defendant’s website was accessible and was in fact accessed from persons in the State of Florida.

20. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its Facebook page/advertising or for any other purpose – even though the Work that was copied is clearly professional stock photography that would put Defendant on notice that the Work was not intended for public use.

21. Defendant utilized the Work for commercial use – namely, in connection with the marketing of Defendant’s business and sale of chicken tenders.

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