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2016 JAN 25 AM 9:41

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

1 **Daniel A. Bernath, Plaintiff**  
2 1319 Kingswood Ct  
3 Ft Myers Florida 33919  
4 (239) 288 6034  
5 ussyorktownevs10@yahoo.com

6  
7 Plaintiff *in pro per*

8 **United States District Court**  
9 **Middle District of Florida**  
10 **Ft Myers Division**

2:16-CV-40 -FTM 2/2/16

12 **Daniel A. Bernath,** ) **Case No.**  
13 )  
14 **plaintiff,** ) **Complaint**  
15 )  
16 **vs.** ) **Copyright violation**  
17 )  
18 **youtube llc, Don Shipley,** ) **Trade Disparagement**  
19 **Carol Diane Blazer Shipley,** ) **Jury Trial Demanded,**  
20 )  
21 **defendants.** ) **Injunctive Relief Requested**

22 **COMPLAINT**  
23 **PURSUANT TO FedRCivP 15(a)(b) et seq.**

24 Plaintiff, Daniel A. Bernath alleges:

25



**Nature of the Case**

1. Plaintiff is a professional photographer, his art having been published in a book, newspapers and magazines around the world and on television networks and syndicated programs.

- 1 2. Plaintiff is also a lawyer, representing before the United States Department of  
2 Veterans Affairs and is a member of the US Supreme Court Bar. The Photograph is a  
3 valuable asset for Plaintiff Bernath to familiarize veteran claimants to lawyer  
4 Bernath and his legal services.
- 5 1. Plaintiff is a professional performer; Plaintiff Daniel A. Bernath is a Member of  
6 American Federation of Television and Radio Artists prior to its merger with the  
7 Screen Actors Guild. Actor on "Grimm" on NBC Television Network, Portlandia on  
8 Independent Film Network and character actor as a doctor, lawyer and college  
9 professor in television commercials for various production companies working for  
10 AT & T. Plaintiff Daniel A. Bernath was prime newscaster anchorman on various  
11 television and radio stations in New York City, Los Angeles, Detroit, Milwaukee, etc.
- 12 2. Plaintiff owns or has the exclusive right to Photograph, reproduced herein.
- 13 3. Plaintiff has registered said Photograph with the appropriate United States agency  
14 for copyright protection and Notice to defendants.
- 15 4. Furthermore, Defendants have been notified that said photograph is Plaintiff's  
16 property, is registered as aforesaid and that its use is prohibited.
- 17 5. Defendants and each of them, with full knowledge of the ownership of the  
18 photograph, did willfully and intentionally, as a business pursuit of defendants,  
19 repeatedly published said Photograph in his commercial publication on or or about  
20 November 9, 2015 when Don Shipley and Carol Diane Blazer Shipley was away from  
21 his home on 324 Gallbush Drive, Chesapeake Virginia and before and thereafter.
- 22 6. Defendants have taken the image of plaintiff and have broadcast said image and  
23 voice to approximately 200,000 persons. Defendants have taken the image of  
24 Plaintiff and made wearing apparel with his face and image on said apparel and sold

1 and generated revenue from such misappropriation. Defendants have generated a  
2 controversy between plaintiff and defendants to drive readership to their  
3 publications and thus cause a revenue misappropriation to defendants.

4 7. Don Shipley and Diane Shipley are associated with and publishers on a publication  
5 which hosts child pornography and advocates child pornography; torments veterans  
6 of United States military service to where three veterans have committed suicide  
7 because of defendants' publication's relentless taunting and urging to suicide. Don  
8 Shipley admits to his role in the suicide of veteran Ike Densmore and says that is  
9 "troubling" and "a set-back."

#### 10 **Jurisdiction and Venue**

- 11 8. This is a civil action seeking damages and injunctive relief for copyright  
12 Infringement under the copyright laws of the United States, 17 U.S.C. § 101 *et seq*,
- 13 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (Federal  
14 Question jurisdiction) and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).
- 15 10. This Court has personal jurisdiction over defendants and each of them have done  
16 and continues to do systematic and continuous business in Florida and in this  
17 judicial district having approximately 1,000 contacts with Ft Myers Florida,  
18 including barricading plaintiff in his Ft Myers home for "two days and six hours" as  
19 they admit as well as publishing Photograph in this District and Division and  
20 throughout Florida.
- 21 11. Pursuant to case law, said copyrighted, registered and infringed photograph has the  
22 situs of Ft Myers Florida.
- 23 12. Venue in this District is proper under 28 U.S.C. § 1391(b)-(c), and/or 28 U.S.C. §

1 1400(a). A substantial part of the acts of infringement complained of herein occurs  
2 or has occurred in this District.

3 Plaintiff Further Alleges

4  
5 13. Plaintiff is the owner of the trademark Extreme Seal Experience and Phony Seal of  
6 the Week. Defendants and each of them have used Plaintiffs trademarks and  
7 realized revenue from such use. Defendant's acts of copyright infringement and acts  
8 of affirmative and widespread self promotion of the copies directed to the public at  
9 large have caused Plaintiff to suffer, and to continue to suffer, substantial damage to  
10 his business in the form of diversion of trade, loss of income and profits, and a  
11 dilution of the value of its rights.

12 14. Further, as a direct result of the acts, Defendant has obtained direct and indirect  
13 profits that would not otherwise been realized but for the infringement of Plaintiff's  
14 copyrighted Subject Image (Photograph), video image and audio reproduction and  
15 apparel reproduction. Plaintiff is entitled to disgorgement of Defendant's profits  
16 directly and indirectly attributable to said Defendants' infringement of the  
17 Photograph and other properties.

18

1 First Cause of Action

2 against all Defendants

3 Copyright and Trademark Infringement

4  
5 Second Cause of Action

6 against all Defendants

7 Trade Disparagement

8  
9 **Prayer for Relief**

10 **WHEREFORE, Plaintiffs pray for judgment against Defendants as**  
11 **follows:**

12 a. For entry of judgment against Defendants for all damages to which Plaintiffs  
13 may be entitled, including Defendant's incomes, profits and for damages in an  
14 amount as may be proven at

15 **Alternatively, at Plaintiff's election,** for the maximum statutory damages  
16 amount allowed by law for all individual copyright infringements involved in this  
17 action with respect to any one work, or for such other amount as may be proper  
18 pursuant to 17 U.S.C. § 504(c) *et seq.* of \$150,000;

19 b. For a Temporary and Permanent injunction enjoining Defendant and their  
20 respective officers, agents, servants, employees, attorneys, successors, licensees,  
21 partners, and assigns, and all persons acting in concert or participation with each  
22 or any of them, from (a) directly or indirectly infringing in any manner any of  
23 Plaintiff's respective copyrights, trademarks or other exclusive rights (whether

1 now in existence or hereafter created) and (b) causing, contributing to, enabling,  
2 facilitating, or participating in the infringement of any of Plaintiff's respective  
3 copyrights or other exclusive rights (whether now in existence or hereafter  
4 created), including without limitation, copyrights, trademarks or exclusive rights  
5 under copyright in the Photograph and the use of Plaintiff's trademarks and an  
6 order that defendants cease the use of the words **Extreme Seal Experience**  
7 and **Phony Seal of the Week**;

8 c. For prejudgment and post-judgment interest according to law;

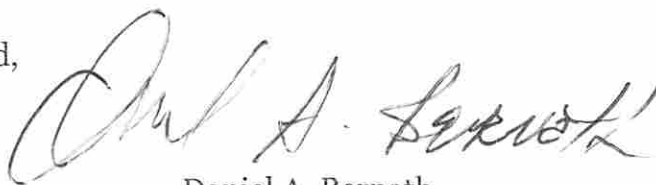
9 d. For Plaintiff's attorneys' fees, and full costs and disbursements in this action;  
10 and

11 e. For such other and further relief as the Court may deem proper and just.

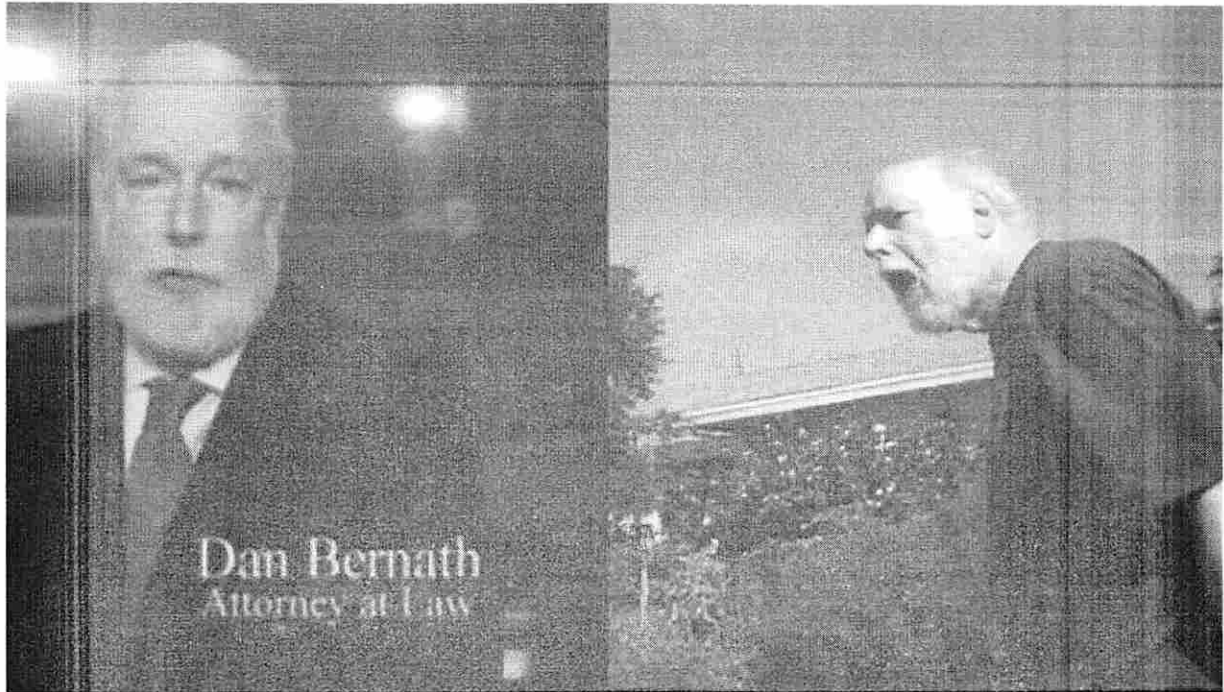
12 **Demand for Jury Trial**

13 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand trial by jury  
14 of all issues triable by right of jury.

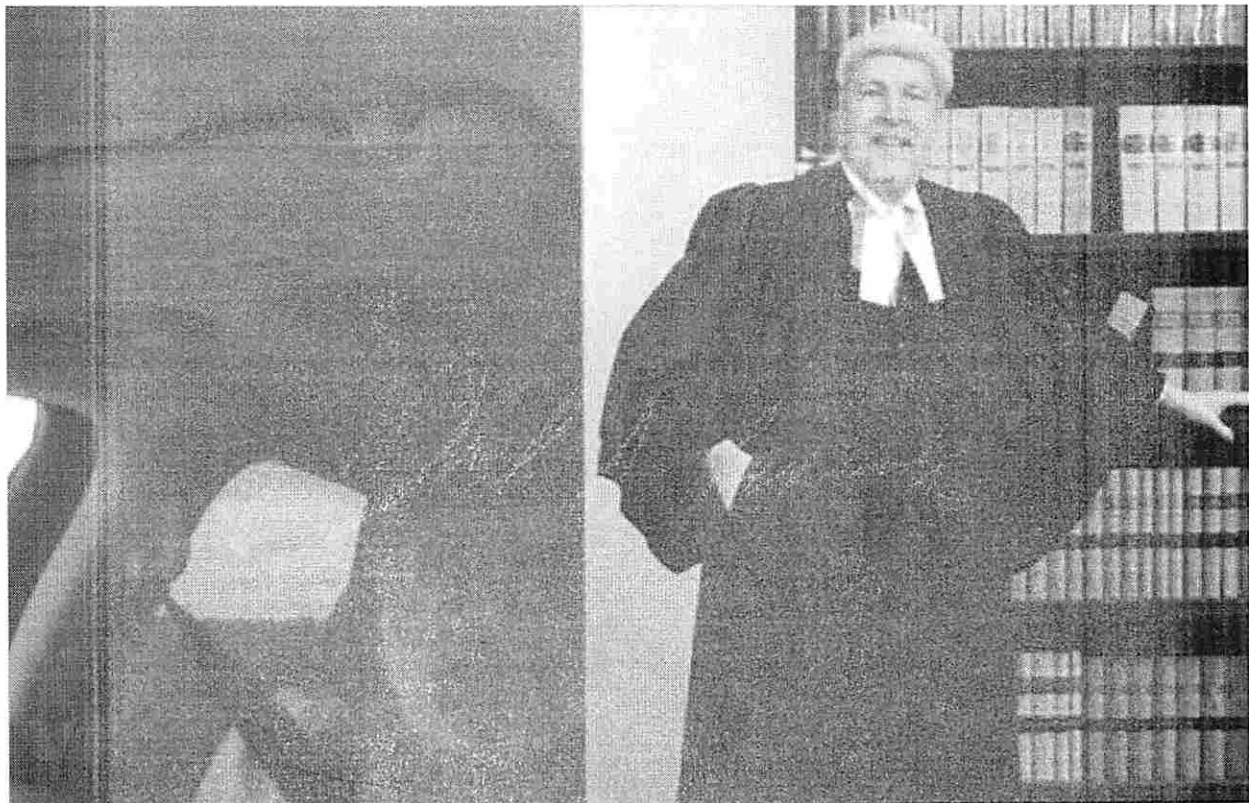
15  
16 Respectfully submitted,



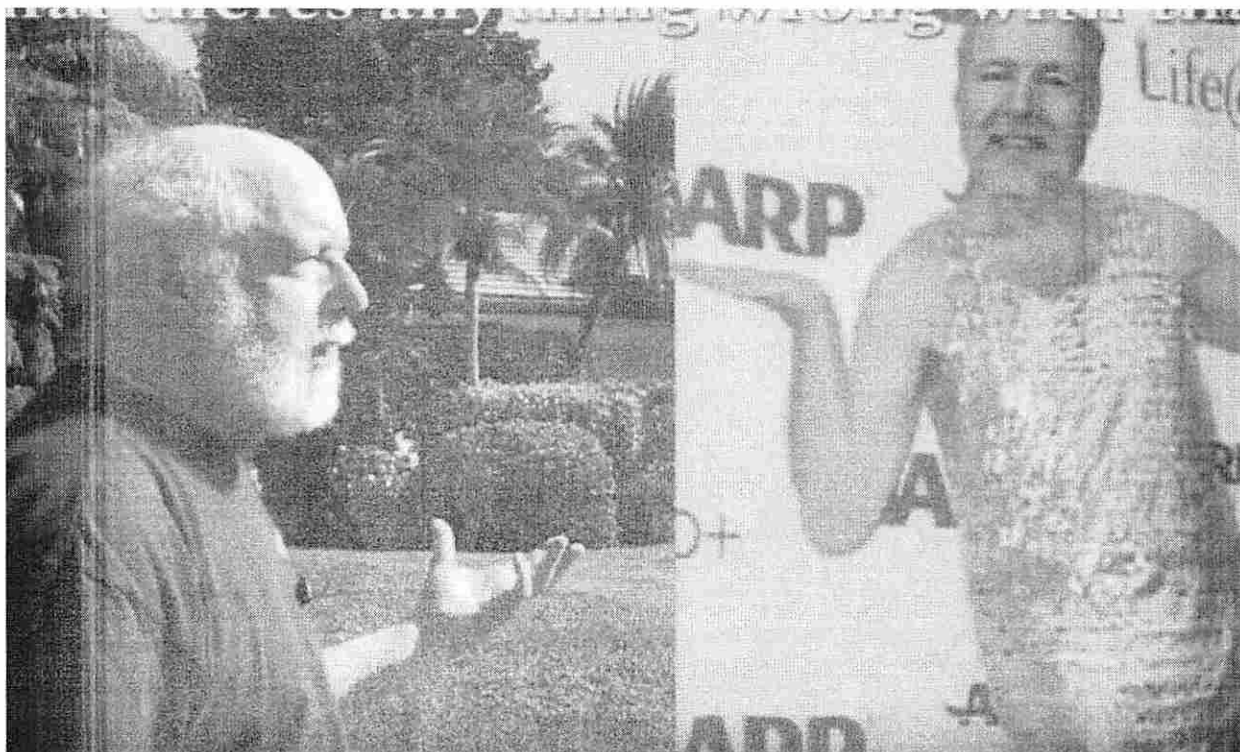
17 Daniel A. Bernath  
18 Plaintiff  
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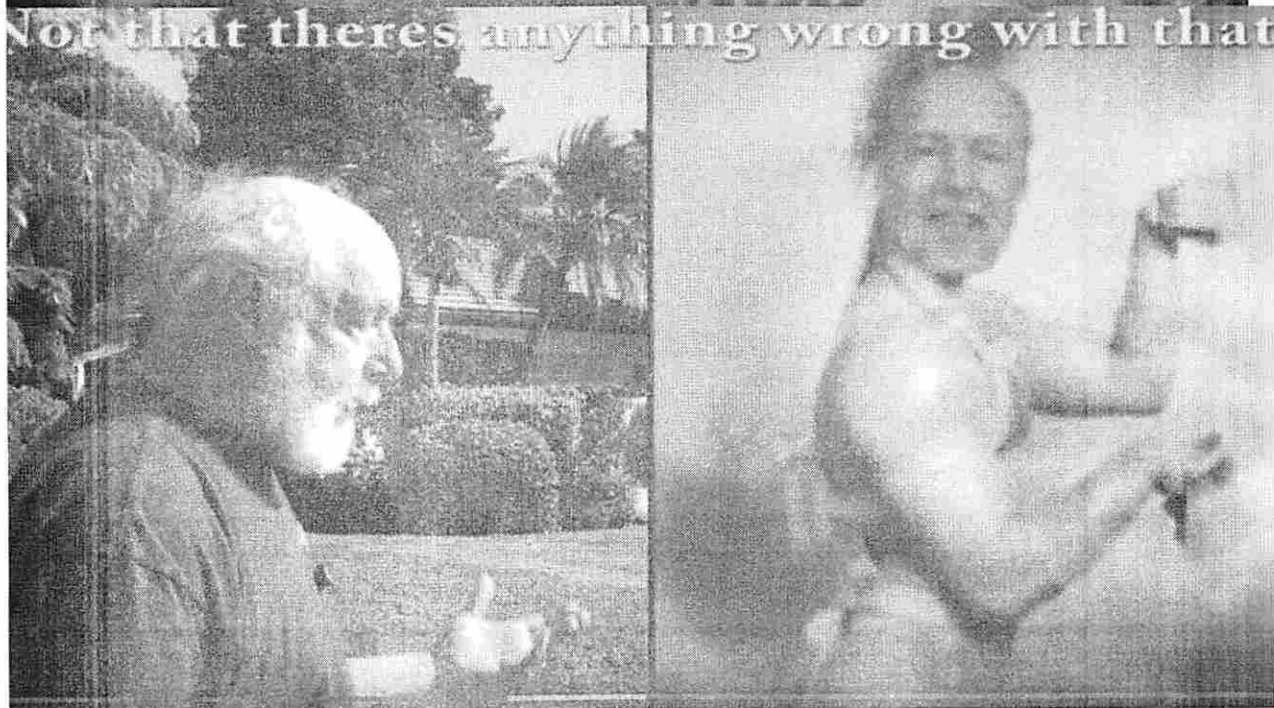
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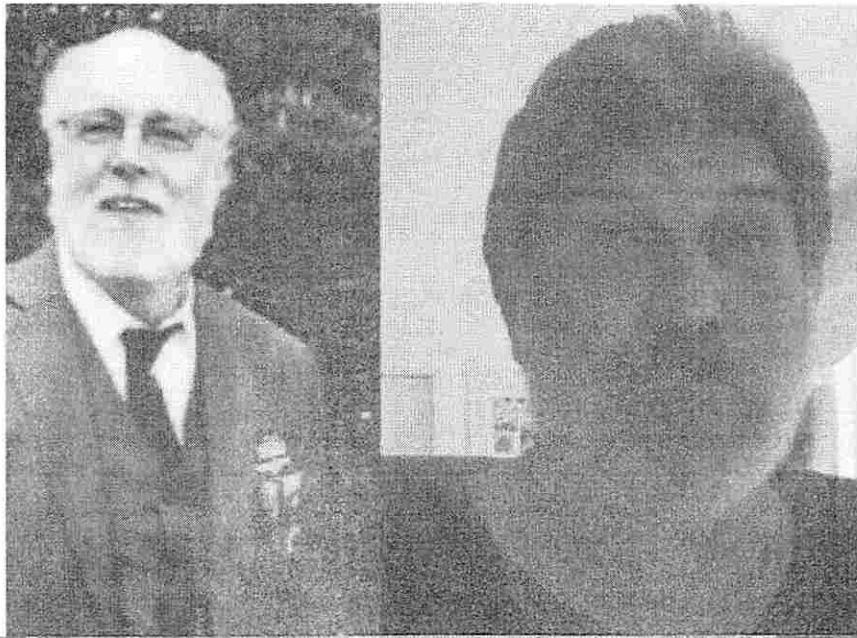


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