

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HERITAGE CAPITAL CORPORATION, §
HERITAGE AUCTIONEERS & §
GALLERIES, INC., HERITAGE §
NUMISMATIC AUCTIONS, INC., §
HERITAGE AUCTIONS, INC., HERITAGE §
VINTAGE SPORTS AUCTIONS, INC., §
CURRENCY AUCTIONS OF AMERICA, §
INC., and HERITAGE COLLECTIBLES, §
INC., §

Plaintiffs, §

vs. §

No. 3:16-cv-03404-D

CHRISTIE’S, INC. and COLLECTRIUM, §
INC., §

Defendant. §

DEFENDANTS’ ANSWER

Defendants Christie’s, Inc. (“Christie’s”) and Collectrium, Inc. (“Collectrium,” with Christie’s, collectively “Defendants”), by and through their counsel hereby answer the Complaint filed by Plaintiffs Heritage Capital Corporation, Heritage Auctioneers & Galleries, Inc. Heritage Numismatic Auctions, Inc., Heritage Auctions Inc. Heritage Vintage Sports Auctions, Inc., Currency Auctions of America Inc., and Heritage Collectibles, Inc. (collectively “Plaintiffs”) with each numbered paragraph corresponding to the similarly numbered paragraph in the Complaint as set forth below. Unless expressly admitted, all allegations in the Complaint are hereby denied.

INTRODUCTORY STATEMENT

1. Defendants admit only that Christie’s sent an email to its subscribers announcing the beta version of the Collectrium Auctions database and that the quoted portions of the email were taken out of context. Defendants deny the remaining allegations of this paragraph.

2. Denied.
3. Denied.
4. Defendants admit only that Plaintiffs seek injunctive relief and damages in this lawsuit and otherwise deny the allegations and deny that Plaintiffs are entitled to injunctive relief or damages.

PARTIES

5. Defendants lack sufficient information to admit or deny the allegations in this paragraph.
6. Defendants admit that Christie's is a New York corporation with a principal office at the address stated and that Christie's operates an auction business. It is unclear what Plaintiffs are referring to as the "largest auction house" so Defendants lack sufficient information to admit or deny the remaining allegations.
7. Defendants admit that Collectrium is a Delaware corporation that was incorporated in 2009. The remaining allegations of this paragraph are denied.

JURISDICTION AND VENUE

8. This Court's jurisdiction in this case is subject to the arbitration provision in the Website Use Agreement and the Federal Arbitration Act. Therefore Defendants filed a Motion to Compel Arbitration under Section 4 of the FAA on January 12, 2017. *See* D.I. 17.
9. Defendants do not contest personal jurisdiction in this district in this case. The remaining allegations of this paragraph are denied.
10. Defendants contest this district court as proper venue for this dispute because the Complaint lists causes of action based on HA.com's Website Use Agreement, which includes a mandatory arbitration provision that all claims arising out of the use of the HA.com website and the

Website Use Agreement must be brought in arbitration. Under 9 U.S.C. § 1 *et seq.* (“FAA”) the proper jurisdiction and venue for this case is in arbitration, therefore Defendants filed a Motion to Compel Arbitration under Section 4 of the FAA on January 12, 2017. *See* D.I. 17.

FACTS COMMON TO THE COUNTS

11. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

12. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

13. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

14. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

15. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

16. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

17. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

18. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

19. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

20. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

21. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

22. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

23. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

24. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

25. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

26. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

27. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

28. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

29. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

30. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

31. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

32. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

33. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

34. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

35. Denied.

36. Defendants admit that Collectrium offers an inventory management service as described in this paragraph but denies the remaining allegations of this paragraph.

37. Defendants admit only that Collectrium offers services specialized to provide real time market data and advisory services to collectors, dealers and other industry specialists. Defendants deny that any of Collectrium's services can be characterized as a "trojan horse" designed to confuse its customers or divert sales to Christies. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph.

38. Defendant Collectrium admits only that it advertises its database, which is accessible through a subscription-basis. The remaining allegations are denied.

39. Defendants admit only that Collectrium promotes its website in its advertising. Defendants lack sufficient information to admit or deny the remaining allegations.

40. Admitted.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Defendants deny that they have stolen anything from Heritage. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

46. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

47. Denied.

48. Defendants admit only that the Collectrium database offers functional tools that allow users to search for and analyze “similar” auction items. Defendants deny the remaining allegations in this paragraph.

49. Defendants deny that that have appropriated Heritage’s images and content. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph.

50. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

57. Defendants deny that they have claimed that they created everything contained on Collectrium’s site. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph.

58. Defendants admit only that the Collectrium database is currently in its beta testing phase and that the final version has not yet been released. Defendants deny that Defendants have stolen anything from Plaintiffs. Defendants lack sufficient information to admit or deny the remaining allegations in this paragraph.

59. Denied.

COUNT I
COPYRIGHT INFRINGEMENT

60. Defendants incorporate the responses to Paragraphs 1-59, as if fully set forth herein.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

COUNT II
VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

67. Defendants incorporate the responses to Paragraphs 1-66, as if fully set forth herein.

68. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

COUNT III
VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT (“CFAA”)

76. Defendants incorporate the responses to Paragraphs 1-75, as if fully set forth herein.

77. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

COUNT IV
HARMFUL ACCESS BY COMPUTER

85. Defendants incorporate the responses to Paragraphs 1-84, as if fully set forth herein.

86. Defendants lack sufficient information to admit or deny the allegations in this paragraph.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

COUNT V
TRESPASS

94. Defendants incorporate the responses to Paragraphs 1-94, as if fully set forth herein.

95. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

COUNT VI
UNFAIR COMPETITION

101. Defendants incorporate the responses to Paragraphs 1-100, as if fully set forth herein.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

COUNT VII
CIVIL CONSPIRACY

108. Defendants incorporate the responses to Paragraphs 1-107, as if fully set forth herein.

109. Denied.

110. Denied.

111. Denied.

COUNT VIII
BREACH OF CONTRACT

112. Defendants incorporate the responses to Paragraphs 1-111, as if fully set forth herein.

113. Denied.

114. Defendants admit that the quoted text appears to be from a document that can be found on HA.com through extensive searching; however, Plaintiffs did not attach the purported Website Use Agreement to their Complaint, so Defendants lack information regarding whether this is the same document to which Plaintiffs' Complaint refers.

115. It is unclear if by "used the HA.com website" Plaintiffs mean something other than merely accessing the website, and therefore Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

JURY DEMAND

120. No response to this paragraph is required.

AFFIRMATIVE AND OTHER DEFENSES

121. In asserting the following affirmative and other defenses to Plaintiffs' claims, Defendants do not accept any burden of proof they would not otherwise bear with respect thereto. Defendants reserve the right to supplement, amend or delete any or all of the following affirmative or other defenses prior to any trial of this action.

FIRST DEFENSE

122. Plaintiffs fail to state a claim upon which relief can be granted at least because Plaintiffs have failed to establish that the alleged copied content has been registered as a prerequisite pursuant to 17 U.S.C. § 411.

SECOND DEFENSE

123. Plaintiffs fail to demonstrate standing based on ownership of valid copyright registrations for the allegedly-infringed works.

THIRD DEFENSE

124. Plaintiffs are barred in whole or in part under 17 U.S.C. § 412 from claiming statutory damages or attorney's fees under the Copyright Act in that any alleged acts of infringement occurred before first registration of the Plaintiffs' alleged work.

FOURTH DEFENSE

125. Plaintiffs' copyright-infringement claims are barred in whole or in part because Defendants allegedly used material that is not eligible for protection under the Copyright Act.

FIFTH DEFENSE

126. Plaintiffs' copyright-infringement claims are barred in whole or in part by the doctrine of fair use.

SIXTH DEFENSE

127. Plaintiffs' copyright-infringement claims are barred in whole or in part by the doctrine of scènes à faire and/or the merger doctrine.

SEVENTH DEFENSE

128. Plaintiffs' claims are barred in whole or in part by the doctrines of laches, acquiescence, equitable estoppel and unclean hands, at least because of Plaintiffs' delay in enforcing its alleged rights, its acquiescence and equitable estoppel through affirmative actions taken on its website to permit copying, and its own actions that are common within industry practice.

EIGHTH DEFENSE

129. Plaintiffs have waived their claims by failing to timely assert them pursuant to the Website Use Agreement.

NINTH DEFENSE

130. Plaintiffs' claims are barred in whole or in part by implied licenses granted or authorized to be granted by Plaintiffs based on affirmative actions taken by Plaintiffs on their website to expressly permit copying.

TENTH DEFENSE

131. The state law claims of Harmful Access by Computer, Trespass, Unfair Competition, Civil Conspiracy and Breach of Contract are preempted by the federal Copyright Act. 17 U.S.C. § 301.

132. Defendants reserve all defenses at law or equity that may now exist or in the future become known to Defendants through discovery or further factual investigation.

Dated: February 2, 2017

Respectfully Submitted,

ANDREWS KURTH KENYON LLP

/s/ Benjamin J. Setnick
Benjamin J. Setnick
Texas State Bar No. 24058820
Email: bensetnick@andrewskurth.com
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: 214-659-4400

Erik C. Kane (admitted *pro hac vice*)
Email: EKane@kenyon.com
1350 I Street, NW, Suite 1100
Washington, DC 20005
Telephone: 202-662-3039

ATTORNEYS FOR DEFENDANTS

Of counsel:

Jessica Cohen-Nowak
Email: JCohenNowak@kenyon.com
One Broadway
New York, NY 10004
Telephone: 212-908-6419

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served on all counsel of record via the Court's electronic filing system on February 2, 2017.

/s/Benjamin J. Setnick