

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

vs.

NATIONAL GEOGRAPHIC
SOCIETY, a District of Columbia
corporation, NATIONAL GEOGRAPHIC
ENTERPRISES, INC., a corporation,
and MINDSCAPE, INC., a
California corporation,

Defendants.

**PLAINTIFF'S ANSWERS TO
NATIONAL GEOGRAPHIC SOCIETY'S
FIRST SET OF INTERROGATORIES**

Jerry Greenberg and Idaz Greenberg hereby answer National Geographic Society's first set of interrogatories to plaintiff as follows:

INTERROGATORIES

GENERAL OBJECTION

The plaintiffs object to all of the interrogatories to the extent that they seek information pertaining to any claims other than those set forth in Count I and Count II of the Amended Complaint. The parties have agreed that discovery as to the remaining counts is postponed until

the court rules on the pending motions for summary judgment, with the exception that the plaintiffs have sought court approval to engage in discovery pursuant to Rule 56 (f) before responding to the defendants' argument in their summary judgment motion as to Count V. The answers provided below, therefore, are relevant to Counts I and II only.

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Fed. R. Civ. P. 7(a) filed in this action, or any fact underlying the subject matter of this action.

Answer: The plaintiffs object to the interrogatory to the extent that some information needed to formulate an answer may become known to the Greenbergs in the course of discovery that is presently in its early stages. Notwithstanding the objection, and without waiving it, the plaintiffs respond as follows on the basis of their current knowledge.

Jerry Greenberg
6840 S. W. 92nd Street
Miami, Florida

Idaz Greenberg
6840 S. W. 92nd Street
Miami, Florida

Suzanne Dupre
address unknown

G. R. Calcott
Chief Financial Officer
Educational Insights, Inc.
16941 Keegan Avenue
Carson, CA

Suzanne Ross McDowell, Esq.

National Geographic Society
1145 17th Street, N.W.
Washington, D.C.

Rock C. Wheeler
Audio-Visual Coordinator
National Geographic Society
1145 17th Street, N.W.
Washington, D.C.

2. Please state the specific nature and substance of the knowledge that you believe the person(s) identified in your response to Interrogatory No. 1 may have.

ANSWER: Jerry Greenberg: all allegations in Counts I and II.

Idaz Greenberg: all allegations in Counts I and II.

Suzanne Dupre: the assignment alleged in paragraph 15 of the Amended Complaint.

G. R. Calcott: allegations in paragraphs 17, 19, and 20 of the Amended Complaint.

Suzanne McDowell: all allegations in Counts I and II.

Rock Wheeler: all allegations in Count II.

3. Please identify all images which have been published in National Geographic Magazine as to which the plaintiffs claim to have an interest, and provide the number of the copyright registration for each such image.

ANSWER: All such images are identified, along with copyright registration numbers, in the attachments to the Affidavit of Jerry Greenberg which is Exhibit B to Plaintiffs' Memorandum in Response to Defendants' Motion to Dismiss Count II

and to Dismiss or for Summary Judgment on Counts III-V of Plaintiffs' Amended Complaint.

4. Please state each item of damages that you claim, whether as an affirmative claim or as a setoff, and include in your answer: the count or defense to which the item of damages relates; the category into which each item of damages falls, i.e. general damages, special or consequential damages (such as lost profits), interest, and any other relevant categories; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

ANSWER: The plaintiffs object to the interrogatory to the extent that some information needed to formulate an answer may become known to the Greenbergs in the course of discovery that is presently in its early stages. Notwithstanding the objection, and without waiving it, the plaintiffs respond as follows on the basis of their current knowledge. The Amended Complaint seeks statutory damages for Counts I and II, including damages for willful conduct, for the reason that actual damages in the circumstances are difficult of proof.

As to Count I, the plaintiffs expect on the basis of present knowledge to seek statutory damages of \$35,000. The amount is inclusive of damages for willful infringement. The plaintiffs are unable to provide a computation or mathematical basis for the overall amount, or a computation or mathematical basis for separating damages for willful infringement from other damages. The infringement is ongoing.

As to Count II, the plaintiffs expect on the basis of present knowledge to seek statutory damages of \$3,000. The amount is inclusive of damages for willful infringement. The plaintiffs are unable to provide a computation or mathematical basis for the overall amount, or a computation or mathematical basis for separating damages for willful infringement from other damages.

The plaintiffs further object to the interrogatory to the extent that it seeks a "factual" basis for non-quantifiable damages, the subject matter of which is more appropriately suited to deposition testimony. Notwithstanding the objection, and without waiving it, the plaintiffs contend that the damage amounts are reasonable

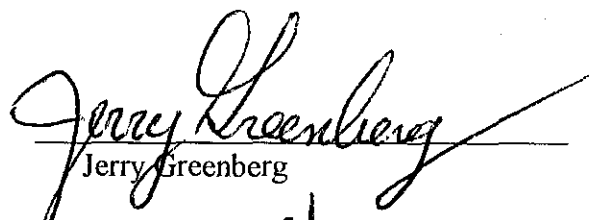
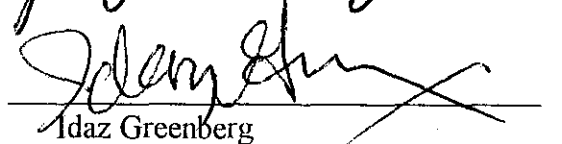
compensation that rewards their initiative in seeking enforcement of their copyrights, that will deter the defendants and others from similar infringements, and that redresses the unauthorized use of their copyrighted materials. The plaintiffs contend that the infringements were willful for a number of reasons, including the Society's long experience with its own copyrights, its indifference to the infringements after being alerted to them, its longtime retention of materials owned by Mr. Greenberg without his consent, and its repeated use of the Greenbergs' materials for profit-making purposes and otherwise without their consent.

5. Please identify each document pertaining to each item of damages stated in your response to Interrogatory No. 6 above.

ANSWER: The documents that have been otherwise provided to the defendants, or that will be produced to the defendants in response to their request for production of documents, are responsive to the interrogatory. The plaintiffs object to having to separately "identify" each such document as burdensome and unnecessary.

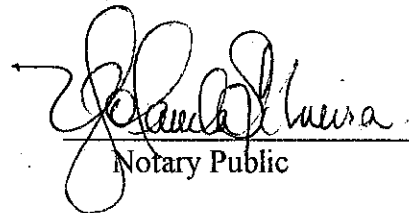
6. Please identify each document (including pertinent insurance agreements) pertaining to any fact alleged in any pleading (as defined in Fed. R. Civ. P. 7(a)) filed in this action.

ANSWER: The documents that have been otherwise provided to the defendants, or that will be produced to the defendants in response to their request for production of documents, are responsive to the interrogatory. The plaintiffs object to having to separately "identify" each such document as burdensome and unnecessary.


Jerry Greenberg

Idaz Greenberg

STATE OF FLORIDA)
) ss:
COUNTY OF DADE)

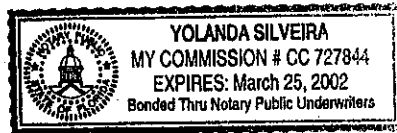
BEFORE ME, the undersigned authority, this day personally appeared
Jerry Greenberg, who, after being first duly sworn, deposes and says that he/she is
the person who answered the foregoing interrogatories and that he/she duly acknowledged and
swore before me that all of said Interrogatories were answered truthfully and completely to the
best of his/her knowledge and ability.



Notary Public

Sworn to and subscribed before
me this 1st day of May, 1998.

My commission expires:

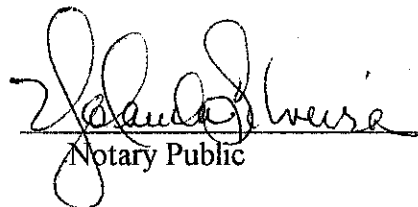


Personally Known _____ OR Produced Identification

Type of Identification Produced: Drivers License.

STATE OF FLORIDA)
) ss:
COUNTY OF DADE)

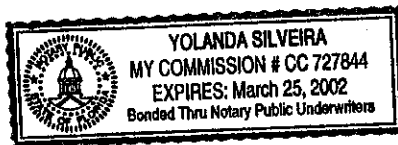
BEFORE ME, the undersigned authority, this day personally appeared Ida-z Greenberg, who, after being first duly sworn, deposes and says that he/she is the person who answered the foregoing interrogatories and that he/she duly acknowledged and swore before me that all of said Interrogatories were answered truthfully and completely to the best of his/her knowledge and ability.



Notary Public

Sworn to and subscribed before me this 1st day of MAY, 1998.

My commission expires:



Personally Known _____ OR Produced Identification ✓

Type of Identification Produced: Drivers License