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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 SEAN MOORMAN,)	Case No.
12 Plaintiff,)	COMPLAINT FOR COPYRIGHT INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN
13 v.)	
14 SPENCER GIFTS LLC, a Delaware limited liability company,)	DEMAND FOR JURY TRIAL
15 Defendant.)	
16)	

17 Plaintiff Sean Moorman brings this action against defendant Spencer Gifts LLC for
18 injunctive relief and damages under the Copyright and Trademark laws of the United States as follows:

19 **THE PARTIES**

20 1. Plaintiff Sean Moorman ("Plaintiff") is an individual who resides in Little Rock,
21 Arkansas.

22 2. On information and belief, Spencer Gifts LLC ("Defendant") is a limited
23 liability company organized under the laws of the state of Delaware and having its principle place of
24 business at 6826 Black Horse Pike, Egg Harbor Township, New Jersey 08234. With retail stores
25 located in Sacramento and Roseville, California, Defendant conducts substantial business in this
26 District.

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JURISDICTION

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2 3. This is a civil action arising, *inter alia*, under the Copyright and Trademark laws
3 of the United States. This Court has jurisdiction over the subject matter of the First and Second Claims
4 for Relief pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, 28 U.S.C. § 1331, and 28 U.S.C. § 1338.
5 Defendant conducts business in this District, and therefore the Court has personal jurisdiction over
6 Defendant.

VENUE

7
8 4. Venue in this District is proper under 28 U.S.C. § 1400(a) in that Defendant may
9 be found in this District.

ALLEGATIONS COMMON TO BOTH CLAIMS FOR RELIEF

10
11 5. Plaintiff is a nationally recognized and acclaimed professional photographer. He
12 has had a distinguished career in music, commercial, and portrait photography.

13 6. As a music photographer, Plaintiff has been granted all-access and photo passes
14 to photograph musical acts such as Disturbed, Bush, Chevelle, Saliva, Slipknot, Slayer, Frank Black,
15 Emmy Lou Harris, Allison Krauss, Rodney Crowell, Willie Nelson, Jane's Addiction, Damageplan,
16 The Donnas, Queens of the Stone Age, Hed PE, Evanescence, Seether, Shinedown, Sally Taylor, James
17 Brown, Blue October, Paul McCoy, Puddle of Mud, Flyleaf, Linkin Park, Velvet Revolver, Earshot,
18 Theory of a Dead Man, Audio Slave, Eve 6, Trapt, Incubus, Stained, Live, Vince Neil, Our Lady Peace,
19 Poison, Revis, Ringo Starr, and Bonnie Raitt. Plaintiff has also toured with the multi-platinum band
20 Saliva, and produced photographs for a nationally released album from Island Def Jam Music Group.

21 7. Plaintiff has also been a successful commercial photographer. He has shot
22 numerous national, regional, and local advertising campaigns, including for Munro Shoes and Beverly
23 Health Systems. For two years, Plaintiff was the official campaign photographer for Senior U.S.
24 Senator Tim Hutchinson.

25 8. Plaintiff has also worked as a privately commissioned portrait photographer for
26 prominent families in London, Switzerland, Brussels, and Copenhagen.

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1 9. Willie Nelson is one of the most accomplished, famous, and recognizable
2 country music artists of our time. Over the course of his nearly fifty-year career, Mr. Nelson has been a
3 successful vocalist, songwriter, bandleader, and movie actor.

4 10. Over his career, Mr. Nelson has produced at least twenty Number One hits and
5 114 chart singles. He was inducted into the Country Music Hall of Fame in 1993.

6 11. On or about July 26, 2002, Plaintiff was invited on Willie Nelson's tour bus.
7 "Willie Nelson Sending Jim Marshall Regards" (the "copyrighted work") is a photograph that Plaintiff
8 took of Mr. Nelson on that occasion. A true and correct copy of the copyrighted work is attached
9 hereto and marked Exhibit "A."

10 12. Because of the unique and provocative nature of the copyrighted work, Plaintiff
11 is particularly protective of the use of that image.

12 13. The copyrighted work is the subject of United States Copyright Office
13 Certificate of Registration No. VAu737-739, issued to plaintiff on or about March 2, 2007. A true and
14 correct copy of the Certificate of Copyright is attached hereto and marked Exhibit "B."

15 14. Since the creation of the copyrighted work, plaintiff has continued to comply
16 with provisions of the Copyright Act with respect to the copyright.

17 15. Plaintiff continues to be the sole proprietor of all right, title and interest in and to
18 the copyrighted work.

19 16. Plaintiff has never conveyed any right, title or interest in or to the copyrighted
20 work to any other person.

21 17. Plaintiff has never released the copyrighted work into the public domain.

22 18. Plaintiff has learned that Defendant has nevertheless publicly exhibited, offered
23 for sale and sold articles, including t-shirts, that infringe the copyright that Plaintiff owns.

24 19. Defendant's website, accessed on September 21, 2007, offers for sale a t-shirt
25 labeled "Willie Nelson Middle Finger Black T," identified as Item # 00027177. A true and correct
26 copy of that webpage is attached hereto as Exhibit "C."

27 20. The infringing and piratical t-shirt bears an image identical to plaintiff's
28 copyrighted work.

1 21. On information and belief, Defendant also sells the infringing t-shirt at its retail
2 stores all over the country, including in its stores in Roseville and Sacramento, California. On or about
3 September 22, 2007, an infringing t-shirt was purchased at Defendant's store located in Arden Fair
4 Mall in Sacramento, California, within this District.

5 22. On information and belief, Defendant may sell other articles at its retail stores
6 that bear an image identical to plaintiff's copyrighted work.

7 23. Neither Plaintiff, nor anyone authorized by him, has at any time licensed
8 Defendant to reproduce, advertise, distribute, sell, exhibit, or otherwise deal in the copyrighted work,
9 whether on t-shirts or on any other article.

10 **FIRST CLAIM FOR RELIEF**

11 **(Copyright Infringement)**

12 24. Plaintiff incorporates by this reference and realleges each and every allegation
13 set forth in paragraphs 1 through 23 herein.

14 25. By reason of the foregoing, Defendant's conduct has infringed Plaintiff's
15 copyright interest in the copyrighted work.

16 26. The activities of Defendant in intentionally or negligently offering for sale,
17 distributing and/or publicly exhibiting articles that infringe the aforementioned copyright constitute
18 willful acts of infringement.

19 27. This extensive and wide reaching infringement is likely to severely diminish the
20 value of Plaintiff's work by the distribution of inferior copies of a work of art closely associated with
21 Plaintiff. By reason of the foregoing, Plaintiff has and will suffer irreparable damage to his business,
22 reputation, and goodwill.

23 28. Plaintiff is informed and believes, and on that basis alleges, that unless enjoined
24 by this Court, Defendant intends to continue its course of conduct and to wrongfully use, infringe upon,
25 sell and otherwise profit from the copyrighted work. As a direct and proximate result of the acts of
26 Defendant alleged above, Plaintiff has already suffered irreparable damage. Plaintiff has no adequate
27 remedy at law to redress all of the injuries that Defendant has caused and intends to cause by its

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1 conduct. Plaintiff will continue to suffer irreparable damage until Defendant's actions alleged above
2 are enjoined by this Court.

3 **SECOND CLAIM FOR RELIEF**

4 **(False Designation of Origin)**

5 29. Plaintiff incorporates by this reference and realleges each and every allegation
6 set forth in paragraphs 1 through 28.

7 30. Defendant, while doing business in interstate commerce, has intentionally or
8 negligently misrepresented the source of Defendant's products to actual and potential customers of
9 Defendant and to other third parties.

10 31. Defendant's wrongful conduct constitutes a violation of Section 43(a) of the
11 Lanham Act, 15 U.S.C. § 1125(a).

12 32. As a result of the foregoing, Plaintiff has been damaged in an amount which is
13 not precisely ascertainable, but which will be inserted herein by amendment at such time as it is
14 precisely ascertained.

15 33. Plaintiff has no adequate remedy at law for Defendant's wrongful conduct in that
16 (i) if Defendant's wrongful conduct continues, consumers are likely to become further confused as to
17 the source of the copyrighted work, (ii) Defendant's use constitutes an interference with Plaintiff's
18 goodwill and reputation, and (iii) Defendant's conduct, and the resultant damages to Plaintiff, are
19 continuing.

20 34. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief
21 pursuant to 15 U.S.C. § 1116(a).

22 35. Defendant has been guilty of oppression, fraud and malice in doing the things
23 herein, by reason of which Plaintiff is entitled to damages for the sake of example and by way of
24 punishing Defendant.

25 36. Plaintiff is also entitled to recover his attorney's fees and costs of suit pursuant
26 to 15 U.S.C. § 1117(a).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. On the First Claim For Relief, Judgment in Favor of Plaintiff:

1. Preliminarily and permanently enjoining Defendant from engaging in any conduct constituting an infringement of Plaintiff's copyright identified above;
2. Directing the destruction of all goods infringing Plaintiff's copyright in the possession, custody or control of Defendant;
3. Awarding Plaintiff either his actual damages and Defendant's profits from their infringing activities or, at Plaintiff's subsequent election, statutory damages, together with his costs of this action, including his reasonable attorneys' fees; and
4. That Defendant, within thirty days after service of judgment, with notice of entry thereof upon Defendant, be required to file with the Court and serve upon Plaintiff a written report under oath, setting forth in detail the manner in which Defendant has complied with the injunctive relief requested herein.

B. On the Second Claim For Relief, Judgment in Favor of Plaintiff:

1. That Defendant account for and pay over to Plaintiff all damages sustained by them and all profits realized by Defendant by reason of Defendant's unlawful acts alleged herein pursuant to 15 U.S.C. §1117(a) and that Plaintiff be awarded recovery of the full costs of this action against Defendant; and
2. That Plaintiff be awarded three times the amount of his damages or Defendant's profits, whichever is greater, together with a reasonable attorney's fee pursuant to 15 U.S.C. §1117(b).

C. On All Claims For Relief:

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

Dated: September 24, 2007

MENNEMEIER, GLASSMAN & STROUD LLP
ANDREW W. STROUD
STEPHEN LAU

/s/ ANDREW W. STROUD
Andrew W. Stroud
Attorneys for Plaintiff Sean Moorman

DEMAND FOR JURY TRIAL [FRCP Rule 38(b)]

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial herein.

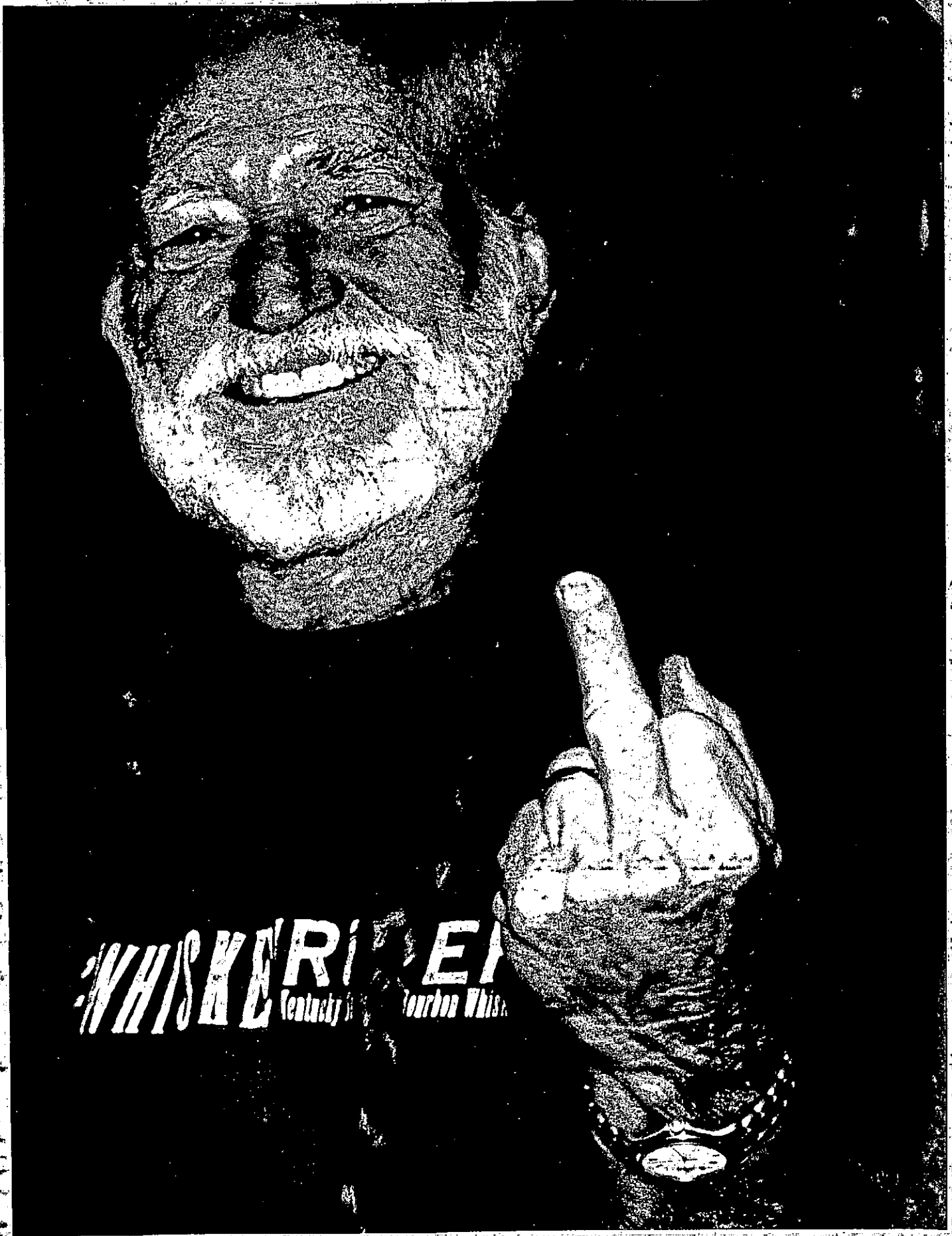
Dated: September 24, 2007

MENNEMEIER, GLASSMAN & STROUD LLP
ANDREW W. STROUD
STEPHEN LAU

/s/ ANDREW W. STROUD
Andrew W. Stroud
Attorneys for Plaintiff Sean Moorman

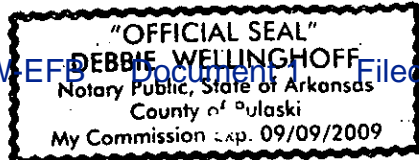
MOORMAN v. SPENCER GIFTS LLC
Complaint for Copyright Infringement and False Designation of Origin

EXHIBIT A



MOORMAN v. SPENCER GIFTS LLC
Complaint for Copyright Infringement and False Designation of Origin

EXHIBIT B



Debbie Wellinghoff
09/24/2007



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA For a Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE
VAU 737-739
3-2-07
Month Day Year

RATE CONTINUATION SHEET.

Title of This Work **WILLIE NELSON SENDS JIM MARSHALL REGARDS PHOTOGRAPH**
NATURE OF THIS WORK **See Instructions**
Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Page

NAME OF AUTHOR **SEAN MOORMAN**
DATES OF BIRTH AND DEATH
Year Born **1964** Year Died

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or Domestic Name of Country **UNITED STATES**
Was This Author's Contribution to the Work Anonymoust? Yes No Pseudonymoust? Yes No

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Name of Author **SEAN MOORMAN** Dates of Birth and Death
Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No
Author's Nationality or Domestic Name of Country **UNITED STATES**
Was This Author's Contribution to the Work Anonymoust? Yes No Pseudonymoust? Yes No

Nature of Authorship Check appropriate box(es). See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Year in Which Creation of This Work Was Completed **2002** Date and Nature of First Publication of This Particular Work
This information must be given in all cases. Complete this information ONLY if this work has been published. Month Day Year

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. **SEAN MOORMAN
3 OAKCLIFF CIRCLE
LITTLE ROCK, AR 72205**

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED
MAR 02 2007
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
MAR 02 2007
FUNDS RECEIVED

Debbie Wellinghoff
"OFFICIAL SEAL"
DEBBIE WELLINGHOFF
Notary Public, State of Arkansas
County of Pulaski
My Commission Exp. 09/09/2009

EXAMINED BY *SPW* FORM VA
CHECKED BY _____
 CORRESPONDENCE
 Yes
FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
 - a. This is the first published edition of a work previously registered in unpublished form.
 - b. This is the first application submitted by this author as copyright claimant.
 - c. This is a changed version of the work, as shown by space 6 on this application.
- If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

6
a
See instructions before completing this space.
b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip ▼

*SEAN MOORMAN
3 OAKCLIFF CIRCLE
LITTLE ROCK, AR 72205*

Area code and daytime telephone number *501 372-5892* Fax number ()
Email *SEAN@SEANMOORMANPHOTO.COM*

7
a
b

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one → author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of _____
Name of author or other copyright claimant, or owner of exclusive right(s) ▼

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

SEAN MOORMAN Date *2-20-07*

Handwritten signature (X) ▼
Sean Moorman

Certificate will be mailed in window envelope to this address:

Name ▼ *SEAN MOORMAN*
Number/Street/Apt. ▼ *3 OAKCLIFF CIRCLE*
City/State/Zip ▼ *LITTLE ROCK AR 72205*

9
• Complete all necessary spaces
• Sign your application in space 8
1. Application form
2. Addressable filing fee in check or money order payable to Registrar of Copyrights
3. Deposit material
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-8000

17 USC § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

MOORMAN v. SPENCER GIFTS LLC
Complaint for Copyright Infringement and False Designation of Origin

EXHIBIT C



SEARCH



hot searches | join the email list | my account
ass kickin' deals | gift cards | 2 items in my shopping cart | checkout

Willie Nelson Middle Finger Black T

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HALLOWEEN
NEEDS!

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GET BOGO
IN
VEGAS



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