

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.:

KRISTINA HILL,  
BRIAN EDWARDS, and  
THOMAS PRIVITERE,

Plaintiffs,

v.

PUBLIC ADVOCATE OF THE UNITED STATES,

Defendant.

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COMPLAINT

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Plaintiffs KRISTINA HILL, BRIAN EDWARDS, and THOMAS PRIVITERE, through their undersigned counsel, bring this action against Defendant PUBLIC ADVOCATE OF THE UNITED STATES ("PAUS"), a non-governmental organization. By this Complaint, Plaintiffs seek declaratory relief, compensatory damages,

2. Hill is a professional photographer. She began working as a freelance editorial photographer eight years ago for newspapers and magazines, and for the past four years has made her living as a professional wedding photographer.

3. Hill made the following photograph, which became one of the couple's favorite photos (the "Photograph"):



4. Defendant Public Advocate of the United States is an organization which encourages discrimination against lesbian, gay, bisexual and transgender ("LGBT") people.

5. Earlier this spring, PAUS sent the following mailer to recipients in Colorado (the "White Mailer"):



6. The White Mailer refers to Republican then-State Senator Dean White, of Colorado's 8th District, who has supported a bill that would have granted same-sex couples the right to enter into civil unions. At the time, Sen. White was engaged in a primary race against another Republican for her Senate seat.

7. The reverse side of the White Mailer identifies the sender as "Public Advocate of the United States, 5613 Leesburg Pike, Suite 17, Falls Church, VA 22041, PublicAdvocateUSA.org".

8. Prior to Plaintiffs' discovery of the unlawful facts described in this Complaint, the White Mailer was prominently featured and displayed in a *Denver Post* article entitled, "Ugly

campaign fliers hit in northwestern Colorado state Senate race,” which appeared in print and online.

9. PAUS sent another mailer to Colorado residents, also using Hill’s photo of Edwards and Privitere, this one referring to Jeffrey Hare, then a Republican candidate for Colorado House District 48 (the “Hare Mailer”):



10. As with the White Mailer, the back of the Hare Mailer stated that it had been sent by Defendant PAUS and included PAUS’s address and website url.

11. Defendant’s use of the Photograph in the White Mailer and the Hare Mailer was not authorized by any Plaintiff, not by Edwards and Privitere, the couple whose likenesses are used, and not by Kristina Hill, the photographer who created the Photograph and who owns a registered copyright in it. The mailers also did not provide a photo credit to Hill.

12. The use of Edwards and Privitere's likenesses individually or as a couple, and the use of the copyrighted Photograph in the Mailers was wholly gratuitous. Defendant used the Photograph as a generic stock photo representing marriage by same-sex couples or of two men kissing. But stock photos representing these concepts are readily available for licensing from stock photo agencies and other rights holders. The Defendant used the Photograph instead of licensing one from a stock photo house because he did not wish to pay the customary price.

13. Defendant's actions constitute unlawful infringement of Hill's copyrighted photograph and unlawful appropriation of Edwards and Privitere's personalities and likenesses.

#### JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over Hill's copyright claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), and the remaining claims under 28 U.S.C. § 1367(a).

15. The Court has jurisdiction to declare the rights of the parties and to award any further necessary and proper relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

17. Personal jurisdiction over Defendant exists because Defendant intentionally targeted the acts at issue in this case at Colorado.

#### PARTIES

18. Plaintiff Kristina Hill is a professional photographer who lives and works in Brooklyn, New York, and is the sole proprietor of Kristina Hill Photography.

19. Plaintiffs Brian Edwards and Tom Prior are residents of Montclair, New Jersey, who married in a ceremony in Connecticut in 2010.

20. On information and belief, Defendant Public Advocate of the United States is a Washington, D.C. corporation with its principal place of business in Falls Church, Virginia. PAUS is a 501(c)(4) organization which, according to its website, offers strong and vocal opposition to “the furtherance of so-called ‘Gay

information about their ceremony, anecdotes ~~to~~ describe their planning process, and photos to commemorate their engagement. Their blog was ~~an~~ easy and meaningful way to share details of their engagement and upcoming wedding ~~celebration~~ with their friends and family who lived around the country – in Rochester, San ~~Diego~~, North Carolina, and elsewhere.

25. In May of 2010, Privitere and Edwards hire

30. Privitere and Edwards wanted to share



images I had taken during their engagement were said to be stolen, digitally manipulated and reproduced in a campaign targeting a senator to vote in support of a bill allowing same-sex couples to form civil unions. When I heard this, a range of emotions flooded through me. When I actually saw the image, my heart dropped. . . . It hurts me as a photographer to know that these images will be cherished. That they will hang on walls, be passed around at gatherings, put in albums, and that someday maybe children and grandchildren will display these moments in their own homes. To see an image, taken with the intent of being used in the way it was used is heart-breaking for me.”

36. On information and belief, the White Mailer was prepared, reproduced, and distributed by Defendant.

37. On information and belief, the Hall Mailer was prepared, reproduced, and distributed by Defendant.

38. Defendant did not secure, or attempt to secure, Plaintiff Edwards or Plaintiff Privitere’s permission to use or manipulate their likenesses or images.

39. Defendant did not secure, or attempt to secure, authorization from Plaintiff Hill to use or manipulate her copyrighted photograph.

40. Prior to bringing this lawsuit, Plaintiffs attempted to receive assurance from Defendant that it would cease and desist from the unauthorized use of the Photograph and of Plaintiffs Edwards and Privitere’s likenesses. See Letter from Christine Sun to Eugene Delgaudio, dated July 11, 2012, attached hereto as Exhibit A. As of the filing of this Complaint, Plaintiffs have received no reply to their letter.

COUNT I: COPYRIGHT INFRINGEMENT  
(Plaintiff Hill Against Defendant)

41. Plaintiff Hill re-alleges and incorporates by reference all of the preceding paragraphs in this Complaint.

42. Plaintiff Kristina Hill holds a valid copyright in the Photograph. Hill's copyright in the Photograph has been duly and lawfully registered with the United States Copyright Office under Registration Number VA 1-827-483.

43. Hill has not granted Defendant a license to use the Photograph.

44. Defendant infringed Hill's exclusive right granted by 17 U.S.C. § 106(1) by reproducing the Photograph in copies.

45. Defendant infringed Hill's exclusive right set granted by 17 U.S.C. § 106(2) by preparing a derivative work based upon the Photograph.

46. Defendant infringed Hill's exclusive right set granted by 17 U.S.C. § 106(3) by distributing copies of the Photograph to the public, ~~un~~distributed, through the mails.

47. As a result of Defendant's infringement, Hill has suffered actual damages, in the form, for example, of lost license fees.

48. Accordingly, Hill is entitled to declaratory relief, actual damages, and infringer's profits.

COUNT II: APPROPRIATION OF PERSONALITY OR LIKENESS  
(State Law Tort Claim by Plaintiffs Brian Edwards and Tom Privitere Against Defendant)

49. Plaintiffs Edwards and Privitere re-allege and incorporate by reference all of the preceding paragraphs in this Complaint.

50. The message promoted in Defendant's Mail – that Edwards and Privitere, or any other same-sex couple for that matter, do not constitute a family – is entirely antithetical to Edwards and Privitere's core beliefs and sense of self.

51. Edwards and Privitere were and are distressed about the likelihood that their images were seen by gay and lesbian youth in Colorado who would feel ashamed of their sexual orientation because of the Mailers.

52. Edwards and Privitere were and are distressed by the prospect that parents of gay and lesbian children in Colorado may have received one of the Mailers and, upon reading it, think less of their own children and of same-sex couples generally.

53. Edwards and Privitere were and are outraged that their likenesses have been used to promote an agenda which directly harms families like theirs.

54. Edwards and Privitere have been targeted with hate messages by people who have seen their likenesses on Defendant's Mailers. People have posted on the internet that Edwards and Privitere deserve to go to hell, that they deserve to be killed, and that any children they may have would be better off dead.

55. Edwards and Privitere have feared for their safety as a direct and proximate result of Defendant's actions.

56.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray for the following relief:

- A. The entry of declaratory judgment that Defendant unlawfully infringed Plaintiff Hill's copyright;
- B. That Defendant be found to have willfully infringed Hill's rights in the Photograph under 17 U.S.C. § 501;
- C. That Defendant be directed to pay to Hill money damages and profits in accordance with 17 U.S.C. § 504;
- D. The entry of declaratory judgment that Defendant's actions against Plaintiffs Privitere and Edwards were unlawful;
- E. That Edwards and Privitere be awarded compensatory damages in an amount to be determined at trial to compensate them for dignitary, reputational, proprietary, and mental harms that they have suffered as a result of PAUS's conduct alleged herein;
- F. That Defendant pay Plaintiffs' reasonable attorneys' fees, costs, and expenses incurred in connection with this action;
- G. That Plaintiffs be awarded prejudgment interest on any monetary award made part of the judgment against Defendant; and
- H. That Plaintiffs be awarded such additional and further relief as the Court deems just and proper.

DATED: September 26, 2012

Respectfully submitted,

s/ Christine P. Sun .

Christine P. Sun

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# EXHIBIT A

July 11, 2012

Eugene Delgaudio  
Public Advocate of the United States  
5613 Leesburg Pike, Suite 17  
Falls Church, VA 22041

*via email and first class mail*

Dear Mr. Delgaudio,

We write on behalf of Tom Privitere and Brian Edwards, and Kristina Hill. Brian and Tom are the gay couple in the photo that “Public Advocate of the United States” (“Public Advocate”) misappropriated for use in anti-gay political attack mailers in Colorado, and Kristina is the photographer who took the photo and owns the copyright of that image. The purposes of this letter are to: 1) inform you that Tom, Brian, and Kristina have retained us to investigate their legal claims against you and Public Advocate; and 2) demand that you, “Public Advocate,” or anyone acting on your or Public Advocate’s behalf **immediately** cease and desist any further unauthorized use of Brian and Tom’s images and likenesses, and any further unauthorized use of Kristina’s copyrighted photos or other intellectual property.

It appears from your public statements that you knowingly and willfully misappropriated Tom and Brian’s images and Kristina’s copyrighted photo for use in your homophobic mailers against Colorado state senators. As you are certainly aware, Brian and Tom are not public figures. That photo was a deeply personal representation of their love and commitment to one another and the obstacles they overcame to share their lives together. The use of that photo of their wedding engagement and their images to attack gay couples and their relationships as not promoting “family values” was unfair, unjustifiable, and demeaning of Tom and Brian’s human dignity.

Unfortunately, this is not the first time that “Public Advocate” has unfairly attacked and grossly demeaned the lesbian, gay, bisexual, and transgender (LGBT) community. For years, “Public Advocate” has spread lies and vitriol about LGBT people to raise funds, impede progress toward greater equality, and to deny LGBT people basic dignity and respect. From the many regrettable examples that could be listed, “Public Advocate” has throughout the years:

- blamed “the homosexual agenda” for enhanced-passenger-search procedures at airports so that gay people can feel others up;
- compared marriage equality to bestiality through production of a “Man-Donkey Mock Wedding Ceremony

- defamed gay people as pedophiles and rapists to be feared, in reference, for example, to permitting gay scout masters, which is “the same as being an accessory to the rape of hundreds of boys”;
- demonized gay people and those suffering from AIDS as “prey[ing] on children to replenish the ‘Homosexual Community’”;
- provoked readers through a fundraising letter to “imagine a world where the police allow homosexual adults to rape young boys in the streets”;
- promoted harmful, discredited conversion therapy as necessary and effective to rescue gay people from their orientation; and
- mischaracterized national legislation to address an epidemic of anti-LGBT harassment at schools as “requir[ing] schools to teach appalling homosexual acts...force private and even religious schools to teach a pro-homosexual agenda...ram through their entire perverted vision for a homosexual America....create a new America based on sexual promiscuity.”

Because of these misrepresentations and numerous others, the Southern Poverty Law Center has previously designated “Public Advocate” as a hate group.

Please confirm by Monday, July 23, 2012 that you have ceased the unauthorized use of Tom and Brian’s images