
No. 16-345

**United States Court of Appeals
for the West Ames Circuit**

MICHAEL GARY SCOTT,

Plaintiff – Appellant,

v.

SCRANTON GREETING CARDS CO.,

Defendant – Appellee.

On Appeal from the United States District Court
for the District of West Ames
Civil Action No. 16-cv-3388

JOINT APPENDIX

By Jason Harrow, HLS '11

In the United States Court of Appeals for the
West Ames Circuit

Michael G. Scott v. Scranton Greeting Cards, Co.,
No. 16-345

CONTENTS

| | |
|--|----|
| Order of the Court of Appeals (September 14, 2016) | 1 |
| Notice of Appeal (August 13, 2016) | 2 |
| Judgment (August 12, 2016) | 3 |
| Order and Opinion (August 12, 2016) | 4 |
| Notice of Motion to Dismiss (June 24, 2016)..... | 18 |
| Complaint (June 2, 2016)..... | 20 |
| Exhibit A (article of December 2, 2015) | 30 |
| Exhibit B (greeting card) | 33 |

In the United States Court of Appeals for the
West Ames Circuit

Michael G. Scott v. Scranton Greeting Cards, Co.,
No. 16-345

ORDER

Plaintiff-Appellant's Motion for Appointment of Counsel is
GRANTED. New counsel shall enter an appearance in due course and shall
brief and argue the following issues:

1. Whether Count I was properly dismissed because Plaintiff does
not own any copyrightable interest in the interview responses published in
the *Scranton Daily Eagle*.

2. Whether Count II was properly dismissed because Defendant
has a First Amendment right to use the image, words, and likeness of
Plaintiff on the greeting card at issue.

By: /s/ Oscar Nuñez
Clerk of Court

Dated: September 14, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF WEST AMES

| | | |
|------------------------------|---|-------------------------|
| Michael G. Scott, | : | |
| | : | No. 16-cv-3388 |
| Plaintiff, | : | |
| | : | NOTICE OF APPEAL |
| - against - | : | |
| | : | |
| Scranton Greeting Cards Co., | : | |
| | : | |
| Defendant. | : | |

Plaintiff Michael Gary Scott hereby appeals the Order and Judgment, both dated August 12, 2016.

Dated: West Ames City, West Ames
August 13, 2016

Respectfully submitted,
HOWARD AND KAPOOR LLP

By: /s/ Kelly Kapoor
Kelly Kapoor

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UNITED STATES DISTRICT COURT
DISTRICT OF WEST AMES

| | | |
|------------------------------|---|-----------------|
| Michael G. Scott, | : | |
| | : | No. 16-cv-3388 |
| Plaintiff, | : | |
| | : | JUDGMENT |
| v. | : | |
| Scranton Greeting Cards Co., | : | |
| | : | |
| Defendant. | : | |

Pursuant to this Court’s Order of August 12, 2016:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that
defendant shall have judgment in its favor;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
action is dismissed with prejudice.

/s/ Andrew Bernard
Andrew Bernard
Judge of the United States District
Court for the District of West Ames

August 12, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF WEST AMES

| | | |
|------------------------------|---|--------------------------|
| Michael G. Scott, | x | |
| | : | No. 16-cv-3388 |
| Plaintiff, | : | |
| | : | ORDER AND OPINION |
| v. | : | |
| Scranton Greeting Cards Co., | : | |
| | : | |
| Defendant. | : | |

Before THE HONORABLE ANDREW BERNARD:

The Motion to Dismiss filed by Defendant Scranton Greeting Cards Co. (“Scranton Cards”) requires this Court to confront several novel questions of law. For the reasons explained below, I resolve them in favor of Scranton Cards. Accordingly, the Motion to Dismiss will be granted.

1. BACKGROUND

1.1. Facts.

Most everyone knows of Plaintiff Michael Scott. Scott is a resident of West Ames who was previously the star of the popular reality show *The Office: An American Workplace*. After he left that show, he vaulted to true superstardom by starring in, writing, and directing two popular spy movies involving his alter ego Michael Scarn. He alleges that his “picture, likeness,

and identity are extremely valuable,” and this is likely an understatement. Given the exploding popularity of the Michael Scarn series, Scott’s likeness is surely among the most valuable in the country.

He alleges that on December 1, 2015, he gave an interview to his hometown newspaper, the *Scranton Daily Eagle*, as part of the promotional tour for his latest film. The otherwise unremarkable interview contains the following exchange:

Q: So, what did you do to keep the branch successful?

A: Well, you know how people in real estate say “location, location, location”? I would say my secret to success in business was simple: distraction, distraction, distraction. And comedy. Keep people laughing and distracted and they’ll do their best work.

Q: How is that possible?

A: Who knows? But I’ll be damned if it didn’t work like a charm!

Compl. ¶ 10 & Ex. A. The entire interview is attached to the Complaint, so I may consider it in deciding this Motion to Dismiss.

Scott alleges that he understood that the newspaper would publish his comments verbatim, and he apparently had no problem with that, but he alleges that he expected “that the newspaper would ask his permission if it wished to license the interview anywhere after first publication,” given his

understanding at the time that he was the “author” of his own words and would maintain the copyright interest in his interview responses. Compl.

¶ 11.

The Scranton Greeting Cards Company, which sells greeting cards throughout the country, apparently was inspired by this interview to create a greeting card for new graduates. Their card, which Scott alleges is currently on sale in West Ames and throughout the country, features a picture of Scott on the front of the card along with a full, paragraph-long quotation from the interview:

Well, you know how people in real estate say “location, location, location”? I would say my secret to success in business was simple: distraction, distraction, distraction. And comedy. Keep people laughing and distracted and they’ll do their best work.

The card, which is laid out in landscape format, says on the inside: “Happy Graduation! May you always be distracted and laughing.” There is also a copyright notice that acknowledges the photo was licensed, but it does not indicate that any other part of the card was licensed. *See* Compl. Ex. B.

1.2. The Complaint and This Motion.

Scott brings two causes of action based on the publication of the greeting card. First, he claims that Scranton Cards has infringed his copyright by copying, without his authorization, a paragraph he gave as an

answer to an interview question that was published in the *Scranton Daily Eagle*. Second, he claims that Scranton Cards has violated his common-law right of publicity by using an image of him, his words, and his likeness without authorization in the greeting card.

Scranton Cards did not answer the Complaint but instead filed a Motion to Dismiss. I have determined that oral argument is unnecessary and I now render this decision.

2. DISCUSSION

There are two distinct claims at issue here with different governing legal principles. I take each in turn.

2.1. Copyright Infringement.

For his first claim, Scott contends that Scranton Cards has violated his copyright by using without authorization an entire paragraph of words that he said in the interview published in the *Scranton Daily Eagle*.

Scranton Cards responds that it could not have violated Scott's copyright because interviewees have no copyright interest in the interview responses that appear in published interviews. Although this area of law is somewhat unsettled, I agree with Scranton Cards.

Before I turn to the merits of that question, a bit of jurisdictional housekeeping is necessary. The Copyright Act states that, before filing a suit

for infringement, a plaintiff must register with the Copyright Office any copyright claimed to have been infringed. *See* 17 U.S.C. § 411. Scott has alleged that he has filed a registration application with the Copyright Office for his interview responses, *see* Compl. ¶ 15, but the Copyright Office apparently has not acted on that application. Nonetheless, most courts hold that merely filing the registration application permits a plaintiff to sue for infringement in federal court. *See, e.g., Cosmetic Ideas, Inc. v.*

IAC/INTERACTIVECORP., 606 F. 3d 612, 622–23 (9th Cir. 2010).

Although the West Ames Circuit has not yet decided this issue, I am confident it would agree with these courts. Moreover, Scranton Cards does not contend that Scott must wait to sue until the Copyright Office acts on his registration application. Thus, this Court has jurisdiction.

Although this Court has jurisdiction, I nonetheless must dismiss this cause of action, because I agree with Scranton Cards that interview responses are not copyrightable by the interviewee. Here, I follow *Taggart v. WMAQ Channel 5 Chicago*, No. 00-cv-4205, 2000 WL 1923322 (S.D. Ill. Oct. 30, 2000). The court in *Taggart* refused to allow a prisoner who had submitted to an interview with a television station to use the copyright law to force the station to destroy the tapes of their interview, on the ground that the interview responses were not copyrightable by the interviewee.

The *Taggart* court gave at least three reasons for denying the plaintiff's "singular and unjustified" attempt to claim copyright in the oral responses to the interviewer's questions: (1) there is no copyright in the spoken word; (2) the interviewee is not the "author" of any published work; and (3) the responses were uncopyrightable facts. Although I do not find here that the interview responses consisted of uncopyrightable facts, I am persuaded that there is no copyright in the spoken word and, most importantly, Scott was not the "author" for copyright purposes of any copyrightable "work." See 17 U.S.C. § 102 (providing that copyright subsists only in "original works of authorship fixed in any tangible medium of expression").

I recognize that there is dicta that disagrees with this position. The district court in *Swatch Group Management Services, Ltd. v. Bloomberg L.P.*, 808 F. Supp. 2d 634 (S.D.N.Y. 2011), for instance, refused to dismiss a case where the defendant alleged that the interview responses given during a corporate earnings conference call were not copyrightable. Likewise, the court in *Maxtone-Graham v. Burtchaell, Andrews & McMeel, Inc.*, 803 F.2d 1253 (2d Cir. 1986), implied that authors of books containing interviews must get copyright assignments from the interviewees before the authors can sue for infringement based on use of the interviewees' words. Book authors would only be required to obtain copyright assignments from

interviewees if the interviewees held the copyright in their responses in the first place.

Moreover, some academic commentary takes a different tack altogether and suggests that interviews should be considered “joint works,” where the copyright in the entire article is held jointly by the interviewer and the interviewee. The reasoning here is that “the questions and answers in an interview are contemporaneous” and so the resulting interview is a joint product of both parties. See Paul Goldstein, *Goldstein on Copyright* § 4.2.1.3 (3d ed. 2016). This conclusion would help Scott defeat the motion to dismiss, because if the interview is considered a joint work with Scott and interviewer Toby Flenderson as co-authors, Scott could still sue Scranton Cards for infringement—though, should he prevail, Scott might be forced to split any damages with his co-author.

But these positions both run up against two fatal flaws. First, as mentioned, granting any form of copyright ownership to interviewees is generally inappropriate, because they are not “authors” of their own “works.” Instead, they simply answer questions and leave it up to interviewers and publishers to create the published interviews, which often contain introductions and edits. It is the *published interview* that is the “fixed” work and therefore the proper subject of copyright. Interviewees

typically have no control over that fixation nor any hand in the resulting work; they only take part in the conversation that led to the work. They thus have no authorship interest at all—joint, solo, or otherwise.

Second, denying interviewees any copyrightable interest in interviews published in newspapers or magazines is the only way to maintain the delicate balance between the First Amendment and intellectual property protection that the Copyright Act demands. Scott's claim for infringement may seem modest here, but if interviewees are granted a copyright interest in their interview responses, the threat to the freedom of the press is hard to exaggerate. If Scott's view is correct, politicians who do not like what they said to interviewers may block publication of the resulting articles, or force previously published articles to be taken down, because the control in the interview responses would vest in the *interviewees*—not in the authors or publishers, who typically exercise control over the intellectual property now. So too for actors, athletes, businesspeople, scientists, dancers, police officers, singers, or anyone else quoted at any length in virtually any medium. But there is no evidence that Congress ever meant to reverse the centuries-old understanding that publishers ultimately control the use and reuse of interviews and quotations that appear in their pages.

Thus, I conclude that, as a matter of law, Scott can have no copyrightable interest in his interview responses. His copyright infringement claim fails and must be dismissed.¹

2.2. Right of Publicity.

Scott's second claim alleges that Scranton Cards violated his right of publicity by using his image and likeness without his consent. This is a state law claim, but there is diversity jurisdiction to hear it, and there would be supplemental jurisdiction in any event. Nonetheless, while I conclude I have the power to hear it, the claim fails as a matter of law because such a claim is necessarily barred by the First Amendment.

First, the law. It is undisputed that the law of West Ames applies here, because that is the state where Scott is domiciled and where the injury occurred. West Ames has no statute governing right of publicity claims, but it does recognize right of publicity claims under the common law. In particular, in *Malone v. Martin*, 34 W. Ames Rptr. 357 (2011), the West Ames Supreme Court recognized a common-law right of publicity doctrine that is identical to the common-law right of publicity in California. *Id.* at

¹ It is possible that, even if Scott had a copyrightable interest in the interview responses, Scranton Cards' use would be permissible under the fair use doctrine. See *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 88 (2d Cir. 2014). But fair use is not often determined on a motion to dismiss, and Scranton Cards has not raised the issue as a potential defense. Thus, I express no opinion on that question.

359 (citing *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1397 (9th Cir. 1992)).

Under the California common law, a plaintiff states a claim for violation of the right of publicity by alleging: “(1) the defendant’s use of the plaintiff’s identity; (2) the appropriation of plaintiff’s name or likeness to defendant’s advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury.” *Eastwood v. Superior Court*, 149 Cal. App. 3d 409, 417 (1983). Scranton Cards concedes that Scott meets the prima facie elements of this test, because it used Scott’s identity, including a photo of him, without his consent and to its advantage. But Scranton Cards argues that such a claim is barred by the First Amendment, because the right of publicity cannot trump its First Amendment right to use Scott’s likeness in an expressive work such as a greeting card.

No federal or state court has yet stated the proper test for determining when a West Ames common-law right of publicity claim would be barred by the First Amendment. That is unfortunate, because “different courts have adopted (at least) five different approaches” to answer this question with respect to other states’ rights of publicity doctrines, often with conflicting results. See Amicus Br. of 31 Constitutional Law Professors in *Electronic Arts, Inc. v. Davis* at 6, U.S. Supreme Court No. 15-424, cert.

denied Mar. 21, 2016. Three general approaches jump out as worth discussion.

The first is the so-called “transformative use” test. The Ninth Circuit and California Supreme Court apply this test, which balances the defendant’s First Amendment rights and plaintiffs’ rights to control their image “based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation.” *Davis v. Elec. Arts Inc.*, 775 F.3d 1172, 1177 (9th Cir. 2015) (quotation marks omitted). Applying that test, the court refused to dismiss several lawsuits brought by athletes whose likenesses were used without authorization in sports video games. *See id.* That court also held that reality-show star Paris Hilton had a probability of prevailing on her claim that Hallmark Cards had violated her right of publicity by using her likeness and catchphrase on a greeting card because that use was insufficiently transformative to be privileged by the First Amendment. *Hilton v. Hallmark Cards*, 599 F.3d 894, 908 (9th Cir. 2010).

A second approach is much more protective of expressive speech. Called either the *Rogers* or relatedness test, courts applying this approach to publicity claims based on uses in expressive works ask whether the use is “wholly unrelated” to the work or whether the work is “simply a disguised

commercial advertisement for the sale of goods or services.” If the use meets either of these prongs, the claim may proceed. *Rogers v. Grimaldi*, 875 F.2d 994, 1004 (2d Cir. 1989). But if not, then the defendant’s use of a celebrity likeness is sufficiently integrated into an expressive work such that the First Amendment bars the claim. This approach is much more protective of speech than the transformative use test, because it permits rights of publicity claims to be made primarily against commercial advertising or other commercial speech. Under this test, nearly all uses of a celebrity’s likeness in expressive works will be protected from liability by the First Amendment.

Still other courts attempt expressly to balance the two interests against one another to determine which must give way. For instance, in *Cardtoons v. Major League Baseball Players Assoc.*, 95 F.3d 959 (10th Cir. 1996), the Tenth Circuit “balanc[ed] the magnitude of the speech restriction against the asserted governmental interest in protecting the intellectual property right” that exists in the identity of athletes. *Id.* at 972. In that case, the court found that the First Amendment rights of the authors of parody trading cards trumped the rights of publicity of major league baseball players. *Id.* at 962. And there are still other approaches out there. *See*

generally Amicus Br. of 31 Professors in *Electronic Arts v. Davis*

(explaining cases and tests).

I hold that the *Rogers*/relatedness test is the proper approach. A balancing test is too difficult to administer and requires courts to pass judgment on how harmful it would be to restrict speech in an expressive work—but that sort of judicial evaluation of art is exactly what the First Amendment prohibits. And the “transformative use” test or any other evaluation of transformativeness or artistic purpose improperly elevates expressive works that “transform” their real-world subjects over those that attempt a straightforward portrayal. By contrast, the *Rogers* test permits celebrities to complain of misuse of their likeness only in connection with unauthorized advertisements or endorsements. That should be the outer limits of a right of publicity claim.

Applying the *Rogers* test, I must dismiss the claim. The greeting card at issue here is an expressive work and is not a disguised commercial advertisement, and the use of Scott’s image is not “wholly unrelated” to the work. Moreover, Scott does not allege that Scranton Cards has used the card or his likeness in any advertising or promotional campaign. Rather, it has used his likeness and words to create a card meant to make graduates smile and to ponder their futures. To be sure, creating the greeting card

here may not have taken the amount of creative effort it took to create *War and Peace*. But the First Amendment does not prefer novels over cards, films over comics, or television shows over video games. The greeting card is an expressive work, and the use is protected.

CONCLUSION

Both claims fail as a matter of law and cannot be corrected with amendment. The Complaint shall be dismissed with prejudice, and a judgment entered accordingly.

/s/ Andrew Bernard
Andrew Bernard
Judge of the United States District
Court for the District of West Ames

August 12, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF WEST AMES

| | | |
|------------------------------|---|----------------------------|
| Michael G. Scott, | : | |
| | : | No. 16-cv-3388 |
| Plaintiff, | : | |
| | : | NOTICE OF MOTION TO |
| - against - | : | DISMISS |
| | : | |
| Scranton Greeting Cards Co., | : | |
| | : | |
| Defendant. | : | |

On July 14, 2016, or as soon thereafter as the Motion may be heard, Defendant Scranton Greeting Cards Co. will and hereby does move this Court to dismiss the Complaint of Plaintiff Michael Gary Scott with prejudice on the following grounds:

1. Count I fails as a matter of law because Plaintiff does not own any copyrightable interest in oral responses he gave to an interviewer for the *Scranton Daily Eagle*.
2. Count II fails as a matter of law because Defendant has a First Amendment right to use the image, words, and likeness of Plaintiff in an expressive work like the greeting card at issue here.

Accordingly, this Court should dismiss the Complaint with prejudice and award judgment to Defendant.

Dated: West Ames City, West Ames
June 24, 2016

Respectfully submitted,

SCHRUTE LAW, LLP

By: /s/ Dwight K. Schrute
Dwight Schrute

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Co.

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UNITED STATES DISTRICT COURT
DISTRICT OF WEST AMES

| | | |
|------------------------------|---|----------------------|
| Michael G. Scott, | : | |
| | : | No. 16-cv-3388 |
| Plaintiff, | : | |
| | : | COMPLAINT FOR |
| - against - | : | DAMAGES |
| | : | |
| Scranton Greeting Cards Co., | : | |
| | : | |
| Defendant. | : | |

For his Complaint against Scranton Greeting Cards, Co., Plaintiff Michael Gary Scott alleges:

PARTIES

1. Plaintiff Michael Gary Scott is an individual residing in West Ames City, West Ames. Scott formerly was one of the stars of the documentary series entitled “The Office: An American Workplace,” and he has since become famous as the star of the *Michael Scarn* series of spy films.

2. Defendant Scranton Greeting Cards Co. is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania. It sells paper and online greeting

cards in all 51 states through company-owned stores, online, and through other retail outlets.

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, *et seq.*, as well as for violation of the right of publicity under the common law of West Ames.

4. This Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has jurisdiction over the right of publicity claim pursuant to 28 U.S.C. § 1332 (diversity jurisdiction), and, if necessary, § 1367 (supplemental jurisdiction).

5. This Court has personal jurisdiction over Scranton Greeting Cards because it is a corporation that has company-owned stores in West Ames, sells cards extensively in this State (including the card at issue in this litigation), and has directed marketing expressly toward West Ames. Further, the foreseeable injury complained of occurred in West Ames.

6. Venue is proper in this Court under 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

Michael Scott

7. From 2005 to 2011, Scott appeared on the popular unscripted television series *The Office: An American Workplace*. For much of the series, he was the Regional Manager at Dunder Mifflin, Inc., a paper supply company located in Scranton, Pennsylvania.

8. Scott left Dunder Mifflin to pursue a career in film. In 2013, he starred as Agent Michael Scarn in the spy thriller *Threat Level Midnight*, which he also wrote and directed. In 2015, he appeared in the sequel *Threat Level Midnight 2: Goldenface's Revenge*. The films proved to be very popular, and they have combined to earn more than \$750 million worldwide at the box office.

9. The success of both the television show and the Michael Scarn movies has made Scott an internationally-known celebrity. He has appeared on the cover of magazines such as *GQ*, *Entertainment Weekly*, and *American Way* (the in-flight magazine of American Airlines), and he is a paid celebrity endorser for Chili's restaurants. Accordingly, his picture, likeness, and identity are extremely valuable.

The Interview and Greeting Card

10. On December 1, 2015, in connection with the promotion of *Threat Level Midnight 2: Goldenface's Revenge*, Scarn was interviewed by Toby Flenderson, a former colleague of his at Dunder Mifflin and now a reporter at the *Scranton Daily Eagle*. The interview was arranged for promotional purposes for the film, but Flenderson also asked Scott about his management style while he was at Dunder Mifflin. As published in the *Scranton Daily Eagle* on December 2, 2015, they engaged in the following exchange:

Q: So, what did you do to keep the branch successful?

A: Well, you know how people in real estate say "location, location, location"? I would say my secret to success in business was simple: distraction, distraction, distraction. And comedy. Keep people laughing and distracted and they'll do their best work.

Q: How is that possible?

A: Who knows? But I'll be damned if it didn't
work like a charm!

See Exhibit A to Complaint.

11. Scott intended for Flenderson and the *Scranton Daily Eagle* to publish this interview on their website and in the newspaper verbatim, but he expected that, as with other interviews he had done, the newspaper would ask his permission if it wished to license the interview anywhere after first publication, because it was Scott's understanding at the time that Scott would maintain the copyright interest in his interview responses.

12. Despite this, and without asking for permission from Scott, Scranton Greeting Cards reprinted verbatim the entirety of Scott's response on a greeting card currently sold in stores in West Ames and elsewhere. Scranton Greeting Cards did not obtain a license from Scott. Scott would not have granted a license if he was asked.

13. The infringing greeting card has a picture of Scott on the outside with the following verbatim quotation from the December 2 interview:

Well, you know how people in real estate say “location, location, location”? I would say my secret to success in business was simple: distraction, distraction, distraction. And comedy. Keep people laughing and distracted and they’ll do their best work.

The inside of the card says “Happy Graduation! May you always be distracted, laughing, and successful.” A copy of the infringing greeting card is attached as Exhibit B.

14. The infringing greeting card violates both the copyright that Scott owns in his interview responses and his common-law right of publicity under West Ames law.

15. On June 1, 2016, immediately after seeing the infringing greeting card, Scott filed a copyright application with the United States Copyright Office to register his interview responses. The application expressly limits Scott’s claim of copyright ownership to his responses only. The Copyright Office has not yet acted on his application and issued its certificate of registration, but Scott expects that it will in due course.

CLAIMS FOR RELIEF

CLAIM I

VIOLATION OF THE COPYRIGHT ACT, 17 U.S.C. § 106

16. Scott incorporates all previous paragraphs as if fully set forth herein.

17. Scott is the author of the responses he gave in the interview published as Exhibit A. Accordingly, the responses are protected under the Copyright Act.

18. Through their conduct of publishing a card with a verbatim quotation from the interview, Scranton Greeting Cards has violated Scott's rights to reproduce the work, to prepare derivative works, and to publicly display the work. *See* 17 U.S.C. § 106.

19. Scranton Greeting Cards' infringement is willful, intentional, and purposeful.

20. As a direct and proximate result of the infringement, Scott is entitled to damages in an amount to be proven at trial, including the profits that Scranton Greeting Cards accrued as a result of the infringement. Scott is also entitled to attorney's fees and costs.

CLAIM II

VIOLATION OF WEST AMES COMMON-LAW RIGHT OF PUBLICITY

21. Scott incorporates all previous paragraphs as if fully set forth herein.

22. Scott has a valuable identity, and Scranton Greeting Cards unlawfully appropriated Scott's words, name, and likeness to its advantage. Scott did not consent to this use.

23. Scott has been injured by Scranton Greeting Cards' unlawful misappropriation, in an amount to be proved at trial.

PRAYER FOR RELIEF

Plaintiff Michael Scott respectfully requests that the Court:

1. Find that Defendant Scranton Greeting Cards has infringed Scott's valid copyright and unlawfully appropriated his valuable identity;
2. Award Scott damages in an amount to be proved at trial;
3. Award Scott reasonable costs and attorneys' fees; and
4. Award Scott such other and further relief as the Court deems just and proper.

Dated: West Ames City, West Ames
June 2, 2016

Respectfully submitted,

HOWARD AND KAPOOR LLP

By: /s/ Kelly Kapoor
Kelly Kapoor

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EXHIBIT A

THE SCRANTON DAILY EAGLE

Exclusive Interview: Michael Scott Returns Home!

By Toby Flenderson

First Published December 2, 2015

Michael Scott. The name conjures up so many memories for Scrantonians. For many years, he was a Regional Manager at Dunder Mifflin, a now-defunct local paper company. But when British television producers decided to film a reality show at his office, he became familiar to everyone instantly as the good-natured, if occasionally inappropriate, star of the show *The Office: An American Workplace*. He left the show to pursue his long-running interest in movies, and his Michael Scarn movie *Threat Level Midnight* became a worldwide megahit.

Now, on the occasion of the release of the sequel, *Threat Level Midnight 2: Goldenface's Revenge*, Scott has finally returned to Scranton and agreed to sit down for an interview with his hometown paper. We talked for about 30 minutes at a local coffee shop, but we could hardly have a proper conversation, because we were often interrupted by adoring fans. What appears below is an edited transcript of our conversation.

Full disclosure: I worked with Scott at Dunder Mifflin for seven years. And we didn't always get along back then. But this interview was my chance to make-up with this unlikely superstar. I was grateful for the time he gave.

Q: Michael, can I just start off by saying: Wow. Congratulations on your success. I'm really happy for you.

A: Thank you, Toby. It's really great to be back and to see everyone in Scranton again. Even you! I'm kidding. It's good to see you. You're not my HR rep any more.

Q: I'm not! I'm a reporter now.

A: How'd they let you do that? Do they know that you suck the fun out of any room you're in?

Q: Michael, that's not...

A: I'm kidding! Toby, Toby, Toby. You just don't understand acting. Never did. I do.

Q: And on that note, tell me about the Michael Scarn series. Did you ever dream of this level of success?

A: Honestly? Yes and no. Michael Scarn was my day job when I was working at Dunder Mifflin. Well, not my day job, because being a Regional Manager was my day job. But it was my

second day job if you know what I mean. So I put my heart and soul into it. I think I always knew it could be something really great.

But I don't want to talk about Michael Scarn. Every day, back home in West Ames City, it's like Michael Scarn, Michael Scarn, Michael Scarn. I want to talk about Michael Scott. The old one.

Q: Okay. So what was your favorite part of the old job?

A: The people. And the success. You know, I look back and I think: we were the number one branch in the company during my time there. I'm making millions of dollars now, but I'm equally proud of that achievement, honestly. We beat Buffalo! We beat Utica!

Q: So, what did you do to keep the branch successful?

A: Well, you know how people in real estate say "location, location, location"? I would say my secret to success in business was simple: distraction, distraction, distraction. And comedy. Keep people laughing and distracted and they'll do their best work.

Q: How is that possible?

A: Who knows? But I'll be damned if it didn't work like a charm!

Q: Yes, Michael, it did. I was there and I must say I can't put my finger on the success either.

A: But that's the thing in life that I've found, Toby. You can't explain these things. You just have to wake up and think about being the World's Best Boss, or, now, being the World's Best Actor/Writer/Director. You don't know how you're going to do it every day, but you just do.

EXHIBIT B

“Well, you know how people in real estate say **location, location, location**? I would say my secret to success in business was simple: **distraction, distraction, distraction.**

And comedy. Keep people laughing and distracted and they'll do their best work.”

JAY33



Happy Graduation!

May you always
be distracted and laughing

JA 34

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