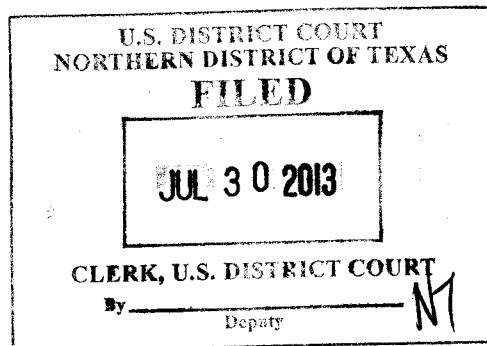


# 68165

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*Attorneys for Plaintiff*  
File No.: 103207



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

BWP Media USA Inc.,  
  
Plaintiff,  
  
vs.  
  
SoftLayer Technologies, Inc.,  
  
Defendant(s).

Docket No:  
  
DEMAND FOR JURY TRIAL  
  
COMPLAINT FOR:  
1) COPYRIGHT INFRINGEMENT  
  
**3-13CV2960-M**

BWP Media USA Inc., by and through its undersigned counsel, states and alleges as follows:

**INTRODUCTION**

1. Plaintiff BWP Media USA Inc. ("BWP") provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs featuring celebrities, which it licenses to online and print publications.
2. BWP's portfolio of celebrity photographs is the bread and butter of its business.
3. BWP has obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.
4. Defendant SoftLayer Technologies, Inc. owns and operates a website known as www.softlayer.com.
5. Without permission or authorization from BWP, SoftLayer Technologies, Inc. copied,

modified, and displayed BWP's photograph(s) on SoftLayer Technologies, Inc.'s website www.softlayer.com.

6. SoftLayer Technologies, Inc. engaged in this misconduct knowingly and in violation of the United States copyright laws.

7. BWP has been substantially harmed as a result of SoftLayer Technologies, Inc.'s misconduct.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331. The Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1367(a) in that the state claims are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy.

9. This Court has personal jurisdiction over SoftLayer Technologies, Inc. because SoftLayer Technologies, Inc. maintains its principal place of business in Dallas County, Texas and purposely directs substantial activities at the residents of Texas by means of the website described herein.

10. Venue is proper under 28 U.S.C. §1391(a)(2) because SoftLayer Technologies, Inc. does business in this Judicial District or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

### **PARTIES**

11. BWP is a California Corporation and maintains its principal place of business in Los Angeles County, California.

12. On information and belief, SoftLayer Technologies, Inc., a Incorporation with a principal place of business in Dallas County, Texas is liable and responsible to Plaintiff based on the facts herein alleged.

## **FACTUAL ALLEGATIONS**

### **BWP's Business**

13. BWP provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs which it licenses to online and print publications.

14. BWP has invested significant time and money in building its photograph portfolio.

### **BWP's Copyrights**

15. BWP has obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.

16. BWP's photographs are original, creative works in which BWP owns protectable copyright interests.

17. BWP owns several active and valid copyright registrations with the United States Copyright Office (the "USCO"), which registrations cover BWP's photographs.

18. BWP also has filed several copyright applications with the USCO, which are presently pending.

19. BWP applied for and received [a] copyright registration(s) for a collection(s) of photographs, which included the photograph(s) annexed hereto as Exhibit(s) "1" (the "Photograph(s)").

### **SoftLayer Technologies, Inc.'s Website**

20. On information and belief, SoftLayer Technologies, Inc. is the registered owner of the website located at [www.softlayer.com](http://www.softlayer.com) (the "Website"). On information and belief, SoftLayer Technologies, Inc. operates the Website and is responsible for all Website content.

21. The Website provides, *inter alia*, articles, photographs and other information regarding celebrities.

22. The Website is monetized in that it contains paid advertisements. On information and belief, SoftLayer Technologies, Inc. profits from these activities.

### **SoftLayer Technologies, Inc.'s Misconduct**

23. Without permission or authorization from BWP, SoftLayer Technologies, Inc. copied, modified, and/or displayed the Photograph(s) on the Website, in violation of BWP's copyrights. See Exhibit "1" annexed hereto.

24. On information and belief, the Photograph(s) were copied from the website(s) of BWP's Clients and reposted on the Website without license or permission, thereby infringing on the Copyrights (the "Infringement(s)").

25. On information and belief, SoftLayer Technologies, Inc. was aware of facts or circumstances from which the Infringement(s) was/were apparent. Based on this totality of circumstances, SoftLayer Technologies, Inc. cannot claim that it is not aware of the widespread infringing activities, including the Infringement(s), on the Website. Such a claim would amount to willful blindness to the Infringement(s) on the part of SoftLayer Technologies, Inc..

26. On information and belief, SoftLayer Technologies, Inc. engaged in the Infringement(s) knowingly and in violation of United States copyright laws.

27. On information and belief, SoftLayer Technologies, Inc. has received a financial benefit directly attributable to the Infringement(s). Specifically, by way of the Infringement(s), SoftLayer Technologies, Inc. increased traffic to the Website and, in turn, realized an increase in, its advertising revenues and/or merchandise sales.

28. As a result of SoftLayer Technologies, Inc.'s misconduct, BWP has been substantially harmed.

### **FIRST COUNT**

#### **(Copyright Infringement, 17 U.S.C. § 501 *et seq.*)**

29. BWP repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

30. The Photograph(s) are original, creative works in which BWP owns protectable copyright interests.

31. BWP has not licensed SoftLayer Technologies, Inc. to use the Photograph(s) in any manner, nor has BWP assigned any of its exclusive rights in the Copyrights to SoftLayer Technologies, Inc..

32. Without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. §106, SoftLayer Technologies, Inc. reproduced the Photograph(s).

33. On information and belief, without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. § 106, SoftLayer Technologies, Inc. displayed the Photograph(s) on the Website.

34. SoftLayer Technologies, Inc.'s reproduction of the Photograph(s) and display of the Photograph(s) on the Website constitutes copyright infringement.

35. On information and belief, thousands of people have viewed the unlawful copies of the Photograph(s) on the Website.

36. On information and belief, SoftLayer Technologies, Inc. had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of BWP's copyrighted material.

37. SoftLayer Technologies, Inc.'s copyright infringement has damaged BWP in an amount to be proven at trial.


**PRAYER FOR RELIEF**

**WHEREFORE**, BWP respectfully requests judgment as follows:

1. That the Court enter a judgment finding that SoftLayer Technologies, Inc. has infringed on BWP's Copyrights in the Photograph(s) in violation of 17 U.S.C. § 501 et seq.;
2. That the Court award damages and monetary relief as follows:
  - a. Statutory damages against SoftLayer Technologies, Inc. pursuant to 17 U.S.C. § 504(c) of \$150,000 per infringement or in the alternative BWP's actual damages and SoftLayer Technologies, Inc.'s wrongful profits in an amount to be proven at trial;
  - b. BWP's attorneys' fees pursuant to 17 U.S.C. § 505;
  - c. BWP's costs; and
3. Such other relief that the Court determines is just and proper.

DATED: July 24, 2013

**SANDERS LAW, PLLC**



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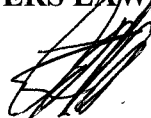
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csanders@sanderslawpllc.com  
*Attorneys for Plaintiff*  
File No.:103207

**REQUEST FOR JURY TRIAL**

Plaintiff hereby demands a trial of this action by jury.

DATED: July 24, 2013

**SANDERS LAW, PLLC**



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Facsimile: (516) 281-7601  
csanders@sanderslawpllc.com  
*Attorneys for Plaintiff*  
File No.:103207



Photo Owner: BWP Media USA Inc.  
Photo ID Number: 3254391  
Date Taken: 12/30/2012  
Photo Description: Bella Thorne makes the most of her winter holiday with friends, family, and puppies.  
Photo Location: California  
Copyright Application Date: 01/21/2013  
Application Number: 1-880582645  
Copyright Registration Date: 01/21/2013  
Registration Number: VA0001848280

Domain: [www.softlayer.com](http://www.softlayer.com)  
URL: <http://173.192.126.227-static.reverse.softlayer.com/aylalarubia>  
Observed Date: 06/28/2013



	
<p>Photo Owner: BWP Media USA Inc. Photo ID Number: 3283658 Date Taken: 01/18/2013 Photo Description: Adam Levine joins funny man Andy Samberg and his pals Akiva Schaffer and Jorma Taccone to film a music video in downtown Los Angeles. Photo Location: California Copyright Application Date: 01/21/2013 Application Number: 1-880582622 Copyright Registration Date: 01/21/2013 Registration Number: VA0001848278</p>	<p>Domain: www.softlayer.com URL: <a href="http://75.126.18.195-static.reverse.softlayer.com/gabylicious?page=1">http://75.126.18.195-static.reverse.softlayer.com/gabylicious?page=1</a> Observed Date: 06/28/2013</p>

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I (a) PLAINTIFFS**

BWP Media USA Inc.  
22287 Mulholland Highway, #229,  
CALABASAS, California 91302

(b) County of Residence of First Listed Plaintiff Los Angeles, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number)

Sanders Law PLLC  
100 Garden City Plaza  
Garden City, NY 11530 516-203-7600

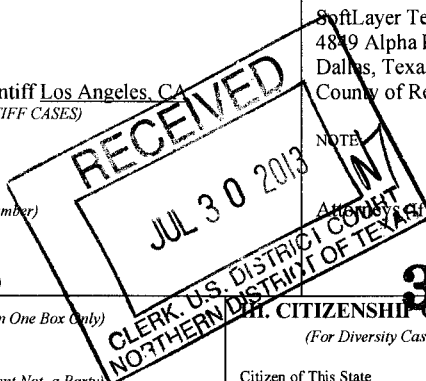
**DEFENDANTS**

SoftLayer Technologies, Inc.  
4849 Alpha Road,  
Dallas, Texas 75244

County of Residence of First Listed Defendant Dallas, TX  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorney (If Known)



**3-13CV2960-M**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for plaintiff and one for defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only.)

CONTRACT	TORTS	FORFEITURE PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal, Employees Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fund <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee, Retirement, Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionally of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - other <input type="checkbox"/> 448 Education	<b>Habeas Corpus</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus/ Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement			

**V. ORIGIN** (Place an X in One Box Only.)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify):
- 6 Multi-District Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
17 USC 501, et seq

Brief description of cause:  
Copyright Infringement

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

July 24, 2013

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_