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File Number: 16233-00059



September 25, 2012

Via E-Mail and U.S. Mail

Graydon Carter
Editor, Vanity Fair Magazine
Condé Nast Publications
4 Times Square, 22nd Floor
New York, New York 10036
Graydon.Carter@condenast.com

Christopher Rozvar
Web Editor, Vanity Fair.com
Condé Nast Publications
4 Times Square, 22nd Floor
New York, New York 10036
Christopher.Rozvar@condenast.com

Re: Tom Cruise / Unauthorized Use of Photographs

Dear Mr. Carter and Mr. Rozvar:

This firm represents Tom Cruise. In 2006, Mr. Cruise provided Vanity Fair with a limited license to publish photographs of his daughter Suri taken by Annie Leibovitz (collectively, the "Suri Photos") in its October 2006 issue. In 2007, Mr. Cruise extended this limited permission to allow Vanity Fair to use one of the photographs of Suri (the "Image") in connection with a traveling art exhibition and a coffee table book entitled "Vanity Fair Portraits," subject to the terms and conditions set forth in a September 19, 2007 agreement (the "Agreement"), a copy of which is attached.

In the Agreement, the parties agreed and acknowledged that "Artist [Mr. Cruise] owns all rights of any kind in and in connection with the Image and other Suri Photos, and to the extent, if any VF owns, holds, or retains any rights of any kind in or in connection with any Suri Photos, VF hereby fully assigns all such rights to Artist."

Under the Agreement, Vanity Fair was only permitted to make future use of the Suri Photos "as part of archiving all or substantially all of VF past issues . . . on various archival media (such as microfilm, CD-Rom, etc.)" (emphasis added). In addition, such archival use was expressly limited to the exploitation of "the issue of Vanity Fair in which some of the Suri Photos were originally published in substantially the same form as that issue was originally published" (emphasis added).

It has come to our attention that Vanity Fair is currently exploiting the Suri Photos on its Internet website in numerous ways, all of them exceeding the scope of the magazine's limited license and in violation of the Agreement. These uses include, without limitation, a reproduction of eleven different Suri Photos as part of a "Suri Portfolio," a reproduction of the October 2006

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article with one of the Suri Photos, and a copy of the October 2006 cover photo as part of a compendium of Tom Cruise's Vanity Fair cover appearances. Hyperlinks to these photographs appear below:

http://www.vanityfair.com/culture/features/2006/10/suri_portfolio0610#slide=1

<http://www.vanityfair.com/culture/features/2006/10/suri200610>

<http://www.vanityfair.com/hollywood/2012/09/tom-cruise-photos-vanity-fair#slide=7>

Vanity Fair had no permission to use any of the Suri Photos in the above-referenced manner. Indeed, the Agreement does not give Vanity Fair permission to use the Suri Photos on its website at all. The website does not constitute "archival media" as defined in the Agreement. Even if it did, the website does not include "all or substantially all of VF past issues" as required by the Agreement. In addition, the use made of the Suri Photos in various locations on the website (e.g., as part of a compendium of Vanity Fair covers, or as part of a compendium of Suri Photos) violates the provision of the Agreement requiring that permitted uses of the Suri Photos be used "in substantially the same form as that issue was originally published."

Vanity Fair's unpermitted uses constitute a material breach of the Agreement and, accordingly, Mr. Cruise has hereby elected to terminate, revoke and rescind Vanity Fair's limited license to use the Suri Photos. We hereby demand that Vanity Fair immediately cease and desist all future reproduction, distribution, display and other exploitation of any and all Suri Photos, in any and all media, including, without limitation, on its website, in "Vanity Fair Portraits," and in any connection with any other uses of which we currently may be unaware.

While Vanity Fair's pre-termination conduct constitutes a breach of the Agreement for which the magazine is liable for damages, as the copyright owner of the Suri Photos, any further use of these photos by Vanity Fair will constitute a willful infringement of Mr. Cruise's copyrights. It is well established that where a license agreement contains restrictions implicating the exclusive rights of a copyright owner (such as the right of reproduction, distribution or display), a licensee will be liable for copyright infringement if it exceeds the scope of the license. *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 940 (9th Cir. 2010). *See also LGS Architects, Inc. v. Concordia Homes*, 434 F.3d 1150, 1156 (9th Cir. 2006) ("When a licensee exceeds the scope of the license granted by the copyright holder, the licensee is liable for infringement.").

Please note that Mr. Cruise vigorously enforces his rights, and will not hesitate to do so when they are infringed. The remedies available to Mr. Cruise for copyright infringement include an injunction and an award of actual damages plus a disgorgement of the profits Vanity Fair has made from its infringing uses, or, in the alternative, statutory damages of up to \$150,000 per work infringed.

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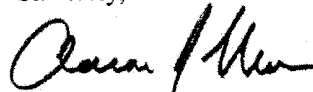
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This letter shall not be construed to constitute a waiver or relinquishment of any of Mr. Cruise's rights, remedies or claims for relief, at law and in equity, all of which are hereby expressly reserved.

We look forward to Vanity Fair's prompt confirmation that it will comply with this demand and cease all use of the Suri Photos.

Sincerely,



Aaron J. Moss

AJM/jgg

cc: Bertram Fields
Matt Galsor

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