

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MITCHELL A. POHL, D.D.S. an individual,

Plaintiff,

Case No.: 4:17-cv-00181

v.

MH SUB I, LLC d/b/a/ OFFICITE an Illinois
Limited Liability Company

Defendant.

COMPLAINT

Plaintiff, MITCHELL A. POHL, D.D.S. (“POHL” or “Plaintiff”), sues Defendant
MH SUB I, LLC d/b/a OFFICITE (“OFFICITE”) as follows:

NATURE OF THIS ACTION

1. This is an action for Copyright Infringement under the Copyright Act, 17 U.S.C. § 101 et seq., and for associated damages, injunctive relief, and attorney’s fees arising from the OFFICITE’s unauthorized copying, distribution, and public display of photographs authored by POHL and in which POHL owns the copyright.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

3. This court has personal jurisdiction over OFFICITE by virtue of its substantial, continuous and not isolated activity, e.g., providing websites to

persons/businesses throughout Florida and within this judicial district, contracting with the Florida Dental Association within this district, and maintaining an office in Florida.

4. Representative examples of OFFICITE created and hosted websites for dentists located within this judicial district include: <http://www.healthysmilestally.com/>; <http://www.drswaltonandcardman.com/>; <http://www.capitalperio.com/>; <http://www.gulfcoastperio.com/>; <http://www.smileperdido.com/>; <http://www.andrewtaylordental.com/>; <http://www.pensacoladentist.net/>; <http://www.buschdental.com/>; <http://www.destindental.com/>.

5. Venue is proper in this District, pursuant to 28 U.S.C. §§ 1392(b)-(c) and 1400 (a).

THE PARTIES

6. OFFICITE is an Illinois limited liability company, having its principal place of business at 909 N. Sepulveda Blvd, 11th Floor, El Segundo, CA 90245. OFFICITE provides pre-packaged website designs to dentists and other health care providers throughout the United States and throughout Florida. OFFICITE contracts with dental clients located within this judicial district.

7. POHL is a practicing dentist in Boca Raton, Florida who devotes a substantial amount of his practice to cosmetic dentistry.

BACKGROUND

8. As part of his practice, Dr. Pohl has extensively documented his work through the use of “before and after” photographs that depict the transformational nature of his work. POHL has published these photographs on his website,

www.bocaratoncosmeticdentist.com, to inform the public about his knowledge and practice of restorative and cosmetic dentistry.

9. On November 28, 2005, Dr. Pohl registered the artwork, photographs and text titled “Boca Raton Cosmetic and Restorative Dentistry” (the “Work”) with the United States Copyright Office (Registration No. TX 6-210-837). This registration was subsequently amended by Supplementary Registration TX 6-484-589, effective February 3, 2014, to correct and limit Dr. Pohl’s authorship to photographs. A copy of the ‘837 Registration Certificate and the ‘589 Supplementary Registration Certificate are attached as Exhibit “A” hereto (collectively, the “Registration”).

10. The Registration covers and includes “before and after” photographs of Dr. Pohl’s patients. The Registration includes the following photographs:



(collectively, the above photographs, shall hereafter be referred to as the “Infringed Photographs”).

OFFICITE’S BUSINESS MODEL

11. OFFICITE markets itself as “the world’s leading provider of websites and online marketing for healthcare practices.”

12. OFFICITE’s YouTube marketing materials (<https://www.youtube.com/watch?v=sRLAETgbLk0>) state that it will “design, develop, and host” websites for its clients, and that OFFICITE will “even provide content.”

13. OFFICITE also partners with medical associations to market its services. OFFICITE has partnered with the Florida Dental Association (“FDA”), and is listed on the FDA website (<http://www.fdaservices.com/crownsavings/>) as a “Crown Merchant,” and is the only vendor recommended by the FDA to its members for website development and hosting services. The FDA is headquartered in Tallahassee, Florida, within this judicial district.

14. Upon information and belief, OFFICITE has created hundreds of websites for its dental clients, with many of these websites including the Infringed Photographs.

15. OFFICITE’s marketing materials (shown below) state in part “[w]e’ll give you a state-of-the-art Web presence that means top rankings on Google, a strong image for your practice, more patients, more referrals and greater levels of success.”



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Results-Driven Online Medical Marketing Officite



In today's Internet world, people of all ages rely on the Internet to find what they're looking for, whether it's the symptoms of a certain medical condition or the contact info for a reliable doctor. And when they're searching—be it from an office desktop or a mobile phone in a sandwich shop—you want to make your practice easy to find. That's where Officite comes in. We'll give you a state-of-the-art Web presence that means top rankings on Google, a strong image for your practice, more patients, more referrals and greater levels of success.

Other medical practices in every specialty and every locale are already responding to the needs of this Internet-obsessed society with their own websites, social media campaigns and reputation management—don't get left behind! Let Officite build your online image into a powerful, highly competitive 24/7 marketing tool that delivers results, from increased traffic to new contacts to more patients. It's time your Web presence was as strong and reliable as your practice. We'll make it happen.

WHY OFFICITE?

When you partner with Officite, you gain the assistance of the world's leading provider of websites and online marketing for healthcare practices. We've worked with over 6,000 healthcare providers worldwide and are recommended by over 20 top medical associations. Our comprehensive online marketing services have been proven to increase visibility, boost brand awareness, deliver new patients and bring in new referrals.

OFFICITE'S ONLINE MEDICAL MARKETING SERVICES

- ✓ **Customized Medical Websites.** 24/7 marketing tools reflective of you.
- ✓ **Local Search Marketing.** Increased visibility to users in your community.
- ✓ **Mobile Websites.** Connections with patients using mobile devices on the go.
- ✓ **Social Media Marketing.** Greater exposure & referrals via social networks.
- ✓ **Blog Marketing.** Stronger authority and visibility via blog marketing.
- ✓ **Reputation Management.** Enhanced online image through proven strategies.
- ✓ **Patient Education.** Trusted educational options for preventative healthcare and treatment acceptance.
- ✓ **Doctor Portal Web Management Tool.** Convenient control over Web presence.
- ✓ **Brand Marketing.** Unified marketing materials to enhance your brand.

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20. In May, 2016, POHL contacted OFFICITE to demand that OFFICITE: a) cease and desist from the unauthorized use of POHL's photographs; b) provide written confirmation of its non-use of POHL's copyrighted photographs; and c) pay POHL for its unauthorized use of POHL's copyrighted photographs.

21. OFFICITE did not respond to POHL's demands. However, OFFICITE did remove the Infringed Photographs from the Websites.

22. OFFICITE has infringed the copyright in the Infringed Photographs and has failed to account to POHL for such infringement.

23. POHL has never authorized or consented to OFFICITE's use of his copyrighted work.

COUNT I
DIRECT COPYRIGHT INFRINGEMENT

24. Plaintiff incorporates by references allegations 1 – 23.

25. This is action for direct Copyright Infringement of photographs covered by the Registration, pursuant to 17 U.S.C. § 501, against OFFICITE.

26. POHL is the owner of all rights, title, and interest in and to the Registration.

27. The photographs that are the subject matter of the Registration are wholly original and copyrightable matter under the Copyright Act.

The photographs covered by the Registration include but are not limited to:



28. OFFICITE has infringed POHL's copyright, in violation of 17 U.S.C. § 501 et seq., by creating websites for its clients that reproduce, distribute and publicly display POHL's copyrighted photographs without POHL's consent or authorization.

29. OFFICITE has provided POHL's copyrighted photographs, as website content, to OFFICITE's customers, and has been paid for this content. As a result, OFFICITE has profited from its unlawful use of POHL's copyrighted photographs.

30. Upon information and belief, OFFICITE's infringement is continuing in nature and is willful.

31. OFFICITE's infringement has caused injury to POHL, including damages.

WHEREFORE, POHL prays that this Court:

A. Enter judgment against OFFICITE for infringement of the POHL's copyrights in the Work;

- B. Award POHL his actual damages and OFFICITE's profits pursuant to 17 U.S.C. § 504(b);
- C. Award POHL statutory damages pursuant to 17 U.S.C. § 504 (c) (1);
- D. Award an increased amount of statutory damages for willful infringement of the '837 Registration, if proven, to a sum of \$150,000 pursuant to 17 U.S.C. § 504 (c) (2);
- E. Award POHL his costs and reasonable attorney's fees in connection with this action pursuant to 17 U.S.C. § 505;
- F. Permanently enjoin OFFICITE from further acts of infringement; and
- G. Award POHL such other relief as this Court deems appropriate

Jury Demand

POHL hereby demands trial by jury on all issues so triable.

Respectfully submitted,

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