

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

v.

NATIONAL GEOGRAPHIC SOCIETY, a district
of Columbia corporation,
NATIONAL GEOGRAPHIC ENTERPRISES, INC, a
corporation, and MINDSCAPE, INC., a
California corporation,

**PARTIAL ANSWER TO
AMENDED COMPLAINT AND
AFFIRMATIVE DEFENSES**

Defendants.

The defendants National Geographic Society and National Geographic Enterprises, which is incorporated under the name NGE, Inc. and does business as National Geographic Interactive (collectively, the "Society"), by their attorneys, Weil, Gotshal & Manges LLP, hereby answer in part¹ the Amended Complaint of the plaintiffs, Jerry and Idaz Greenberg, as follows:

1. Deny the allegations contained in paragraph 1, except admit that the plaintiffs purport to set forth claims for damages and permanent injunctive relief under the Copyright Act.

1. Defendants are serving and filing herewith a Motion to Dismiss Count II and to Dismiss or for Summary Judgment on Counts III-V of Plaintiff's Amended Complaint.

2. Deny the allegations contained in paragraph 2, except admit that the plaintiffs purport to invoke subject matter jurisdiction of this Court by virtue of 28 U.S.C. §1338.

3. Deny the allegations contained in paragraph 3, except admit that the Society markets, distributes and sells the products addressed in the Amended Complaint within the district.

4. Admit that the Society engaged in business activity in the district, deny knowledge or information sufficient to form a belief as to the location of the plaintiffs' residence and principal place of business, and deny the remaining allegations contained in paragraph 4.

5. Admit that the National Geographic Society is a not-for-profit corporation formed in the District of Columbia with its principal place of business there, and deny the remaining allegations contained in paragraph 5.

6. Admit that NGE, Inc. is a Delaware corporation and is a wholly-owned subsidiary of the National Geographic Society.

7. Admit that Mindscape, Inc. is a computer software publisher and distributor and deny the remaining allegations contained in paragraph 7.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

The Educational Insights Product

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. Admit that a photograph of a scuba diver under water, taken by Jerry Greenberg, was originally published in the January 1962 of National Geographic Magazine (the "Magazine") and that copyright as to that photograph was assigned to Mr. Greenberg by the Society on December 18, 1985 and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 15.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Admit that Educational Insights, Inc. sells a product in this judicial district and elsewhere entitled "Oceans GeoPack" (the "GeoPack") and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17.

18. Admit that elements within the GeoPack bear a logo of the National Geographic Society and a 1995 copyright notice of the National Geographic Society, and deny the remaining allegations contained in paragraph 18.

19. Deny the allegations contained in paragraph 19.

20. Deny the allegations contained in paragraph 20.

21. Do not respond to the allegations of paragraph 21, since the defendants are moving to dismiss the plaintiffs' claims based on the sea fan photograph.

22 - 41. Do not respond to the allegations contained in paragraphs 22 - 41, since the defendants are moving to dismiss and for summary judgment on the plaintiffs' claims based on the Complete National Geographic CD-ROM.

Count I

42. The responses contained in paragraphs 9 through 19 are incorporated herein.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

44. Deny the allegations contained in paragraph 44.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46.

47. Admit that use of the images in the GeoPack continued and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 47.

Affirmative Defenses

48. The plaintiffs have failed to state a claim on which relief may be granted.

49. On information and belief, the plaintiffs have not properly registered their copyrights in the photographs referenced in paragraphs 15, 21 and 33 with the Copyright Office.

50. On information and belief, the transfers of copyright ownership alleged by the plaintiffs are not valid.

51. The defendants' use of any images of the plaintiffs' was fair use.

WHEREFORE the defendants demand judgment against the plaintiffs dismissing this action, awarding to the defendants their costs and disbursements incurred in connection with this action, including attorneys' fees, and granting the defendants such other and further relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing has been sent by hand delivered this 30th day of January, 1998 to Norman Davis and David A. Aronberg, Steel Hector & Davis LLP, 200 South Biscayne Boulevard, 40th Floor, Miami, Florida 33131-2398, attorneys for plaintiff.

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