

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

PATRICK URBAIN POTTIER

PLAINTIFF

VS.

HOTEL PLAZA LAS DELICIAS, INC.;  
ANTONIO MUÑOZ BERMÚDEZ;  
ANTONIO MUÑOZ GRAJALES

DEFENDANTS

CASE NO:

COMPLAINT FOR  
COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

**COMPLAINT**

TO THE HONORABLE COURT:

Comes now Plaintiff, PATRICK URBAIN POTTIER, through the undersigned attorneys, and respectfully alleges, states, prays and requests relief as follows:

**NATURE OF THE CLAIM**

1. Plaintiff, Patrick Urbain Pottier (“Urbain”) is currently devoted as an artist, actor and professor.
2. Part of Urbain’s income depends on his art and other projects and another part comes from his work as a French Assistant at the University of Puerto Rico, Río Piedras Campus.
3. Plaintiff is the author of the mural called “Espejismo Nocturno” painted in one of the interior walls of the pub “VIVA Bar” located in the city of Ponce, Puerto Rico, on the premises of the Ponce Plaza Hotel & Casino, owned by Defendants.

4. In this case, Defendants willfully violated Urbain's copyright protections and destroyed and copied one of his most significant work of art, for their own profit, benefit and convenience.
5. Defendants' conduct is causing, and unless immediately enjoined, will continue to cause, enormous and irreparable harm to Plaintiff. Defendants' may not continue to exploit Plaintiff's artwork without authorization and even worse, be allowed to copy it and use it for their financial benefit in their business. Defendants' conduct must immediately be stopped and Plaintiff must be compensated for Defendants' willful acts of infringement.

#### **JURISDICTION AND VENUE**

6. This is a civil action seeking damages and injunctive relief for copyright infringement under the *Copyright Act of the United States*, 17 U.S.C. § 101, *et seq.*
7. This Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
8. This Court has also supplemental jurisdiction over Plaintiff's claim arising under state law under Act No. 55 of 2012, *Moral Rights Act of Puerto Rico*, 31 L.P.R.A. §§ 141i – 141ff, as those claims form part of the same case or controversy.
9. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in the Commonwealth of Puerto Rico and in this judicial district, the acts

of infringement complained of herein occurred in the Commonwealth of Puerto Rico and in this judicial district, and Defendants have caused injury to Plaintiff and his intellectual property within the Commonwealth of Puerto Rico and in this judicial district.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or § 1400(a).

### **THE PARTIES**

11. PLAINTIFF, PATRICK URBAIN POTTIER, (“Urbain”) graduated as an architect and urbanist from the Institut Supérieur de la Ville de Mons in Belgium and practiced as such in that country until 1988. He is the author of the mural “Espejismo Nocturno”, and a legal and/or beneficial owner of a copyright interest in and to that specific artwork, among others.
12. DEFENDANT HOTEL PLAZA LAS DELICIAS, INC. is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, with their principal place of business in Ponce, Puerto Rico. This corporation does business in this judicial district and by information and belief is engaged in the tourism business managing and operating the Ponce Plaza Hotel & Casino and the pub “VIVA Bar” in Ponce, Puerto Rico.
13. DEFENDANT ANTONIO MUÑOZ BERMÚDEZ, is a natural person that by information and belief resides in Ponce, Puerto Rico and responds to

Plaintiff due to his direct and personal participation in the decision making of the acts that resulted in a copyright violation.

14. DEFENDANT ANTONIO MUÑOZ GRAJALES, is a natural person that by information and belief resides in Ponce, Puerto Rico and responds to Plaintiff due to his direct and personal participation in the decision making of the acts that resulted in a copyright violation.

15. Plaintiff is informed and believes, and on that basis avers, that at all times mentioned in this complaint, each of the Defendants were the agent and/or alter ego of each of the other Defendants and, in doing the things alleged in this Complaint, were acting within the course and scope of such agency.

#### **FACTUAL ALLEGATIONS**

16. Plaintiff has been painting for more than three decades, and his work has been featured in art galleries in Europe and across Puerto Rico, as well as in international art fairs. This Belgian author, who is also an urbanist, has created multiple works that have positioned him as an artist of quality and renown in the Puerto Rican art scene.

17. He has been painting for more than three decades, and his work has been featured in various cities in Puerto Rico, as well as other collective participation in works of art in Belgium and the United States. Among some of the awards won for his work is the International European Contest in Berlin, Germany; the Plastic Arts Contest of the *Ateneo Puertorriqueño* in San Juan, Puerto Rico; the MEH-OCFE National

Contest in Brussels, Belgium; and, the AIA Award of urban rehabilitation, in Puerto Rico. At this moment, his work is eclectic and is primarily related to the social or political reality of Puerto Rico; most part of his work is portraying people in their daily activities.<sup>1</sup>

18. Plaintiff depends mainly on his art to earn a living.

**“ESPEJISMO NOCTURNO”**

19. On 2013, Defendants, directly or through an authorized agent, asked Urbain to paint a mural in one of the interior walls of the pub “VIVA Bar” located in the premises of the Ponce Plaza Hotel & Casino in the city of Ponce, Puerto Rico.

20. “Espejismo Nocturno” (also referred to as the “Infringed Artwork”), a scenic mural, was actually painted in one of the interior walls of the pub “VIVA Bar” located on the premises of the Ponce Plaza Hotel & Casino.

21. Plaintiff owns the rights and title to the copyright in the artwork “Espejismo Nocturno” as author of such mural.

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<sup>1</sup> The *Foundation for Puerto Rico* and *Santurce Es Ley* from the Union of Independent Art, created a project to promote art in Puerto Rico and encourage local artists to continue to work and carry out their projects in Puerto Rico. Of such collaboration between both entities it was created a series called *Portraits of Puerto Rico*. These series are mini documentaries broadcasted on social media, about the work of local artists and community leaders in reflection on their artistic work and community efforts after the onslaught of Hurricane María in Puerto Rico. The project arises thanks to the union between *Foundation for Puerto Rico* and the artist Alexis Bousquet, creator of *Santurce Es Ley*, and the Institute of Subculture. The project documents the importance of art and culture during the process of social recovery and as an instrument for reflection, after the catastrophe. In addition to providing exposure for the artist, it provides a space for genuine questioning about their productive status and impact on the community after such a phenomenon. Episode 3 of *Portraits of Puerto Rico* features the work of Plaintiff, Patrick Urbain, as well as his daughter’s work, Sarah Urbain who is also an artist. In clips of the episode the mural “Espejismo Nocturno” can be seen. The episode can be found in the following link: <https://www.youtube.com/watch?v=aFZPagudeu4&feature=youtu.be>

22. In “Espejismo Nocturno”, Urbain wanted to capture the essence, not only of the wall on which he was going to paint, but of the entire room, building an architectural perspective that created the illusion that the room was infinite and full of people enjoying a night out at the pub. This work of art captured specifically the shapes and architectural features of the room’s ceiling, including even the lamps, as well as the furniture and other decorative elements.



“Espejismo Nocturno”

23. “Espejismo Nocturno” was a monumental work of fourteen (14) feet high by thirty (30) feet in width that required about twenty-three (23) days of intense labor to be completed. The work recovers elements of a collection of Urbain that consists of forty four (44) drawings that collect various aspects of the Ponce nightlife and was

reviewed by renowned newspapers and magazines on the Island. “Espejismo Nocturno” decorated the room being a visual focus of interest of tourists and other general clientele that certainly financially benefited the Defendants’ commercial activities.

24. Urbain finished his work on “Espejismo Nocturno” on April, 2013 when the work was officially published.
25. “Espejismo Nocturno” was designed specifically taking into consideration the structure and architecture of that specific room in the “VIVA Bar” owned by the Defendants.
26. After the completion of “Espejismo Nocturno” and for the inauguration of “VIVA Bar” the CHIC South Magazine<sup>2</sup> published a 7 page photoshoot of model Dharma Bayrón with the mural “Espejismo Nocturno” as background. Such spread served as marketing for “VIVA Bar” and the Defendants’ business.
27. That same magazine published a 2 page spread on Urbain’s artistic career and his experience creating “Espejismo Nocturno”.<sup>3</sup>
28. In the edition of February 27 to March 5<sup>th</sup>, 2013, *Periódico La Perla Del Sur*, the most read regional newspaper in the south area of the Island, featured Defendant’s Ponce Plaza Hotel & Casino (then named Hotel Ramada) in the cover of the newspaper stating that the hotel seeks to increase the tourist attraction of the historic center of the city by opening in those weeks two new halls for activities and a

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<sup>2</sup> See pages 12 – 19 of CHIC South Magazine. April, May, June, Spring Summer Edition of 2013.

<sup>3</sup> See pages 20 – 21 of CHIC South Magazine, April, May, June, Spring Summer Edition of 2013.

large room for a casino. One of these halls was the VIVA Bar. The newspaper article even shows a picture of Urbain while painting the mural. Such article represents publicity and marketing for the Defendant's business and it featured Urbain's mural as an attraction for the hotel and the tourists that it receives daily.

29. Later, the edition of May 1<sup>st</sup> to May 7 of 2013 of *Periódico La Perla Del Sur* featured an article about Urbain's mural at the VIVA Bar. The article was titled "Con nuevo huésped el salon del momento" (in Spanish), which translates into "With new guest the room of the moment". The article features a picture of Urbain with "Espejismo Nocturno" in the background and exposes an artistic review of the mural stating, among other things, that the mural "embellishes" ("engalana" in Spanish) the room VIVA of the Hotel Ramada (now Ponce Plaza Hotel & Casino).
30. Shortly after VIVA Bar's inauguration, "Espejismo Nocturno" became one of its known attractions. Customers came over to take pictures of them with the mural in the background, or even to take pictures of the mural alone.
31. The mural even served as a perfect spot for photo weddings that took place in the hotel or in the Cathedral of the city that is located in front of the hotel.
32. The work of art brought the night life vibe that the room needed according to the pub's business model.

33. Since the inauguration of the aforementioned pub in 2013, besides the contribution to the modern and elegant aesthetics of the place, “Espejismo Nocturno” was a fundamental part to appeal to customers and tourists who enjoyed contemplating this impressive work of art.
34. However, by the year 2016, the space formerly known as “VIVA Bar” was remodeled to become a larger version of the coffee shop known as “Melao”, while “VIVA Bar” became an entertainment area within the location of the casino of the Ponce Plaza Hotel & Casino.
35. As a result of the remodeling of the coffee shop “Melao”, “Espejismo Nocturno” was entirely covered with wallpaper mutilating it and destroying it completely to the point where it cannot be restored to its original state.



“Espejismo Nocturno” covered with wallpaper.

36. To make matters even worse, before destroying the mural, a copy of it was reproduced and transferred to another wallpaper and this cheap and apocryphal reproduction of the mural was placed in the new location of “VIVA Bar”, inside the casino of the Ponce Plaza Hotel & Casino.



“Espejismo Nocturno” illegal reproduction.

37. The wallpaper of the illegal reproduction of “Espejismo Nocturno” was so badly installed and in clear disrespect to the work of art that was even placed over a column that comes out of the wall.



Illegal reproduction of “Espejismo Noturno” placed over column in the wall.

38. All of this was carried out without prior notification to Urbain and without his consent.
39. The destruction and illegal reproduction of Plaintiff’s artwork came to his attention in or around June 21, 2016.
40. On May 22, 2017, an extrajudicial claim and effort to settle this dispute was sent through a letter by certified mail to Defendants. Such letter was received on May 24, 2017. The attempt was unsuccessful.
41. Defendants do not have any license, authorization, permission, consent or ownership of the Infringed Artwork in order to cover it, reproduce it,

move it, copy it, or use it for their benefit and/or pleasure in their commercial activities or personal ones.

42. Such action undermines the patrimonial and moral right that Urbain holds with respect to his work, which arises since the author fixes his work in a tangible medium of expression such as the wall of the room that is now known as “Melao”.
43. By covering the work “Espejismo Nocturno”, Defendants violated the moral right by attribution that Urbain has by preventing his recognition as author of the original work of art that now cannot even be contemplated.
44. On the other hand, the alteration and reproduction of the work without Urbain's authorization has resulted in a serious harm to his legitimate interests in the artwork and also his reputation as an artist and author of this work.
45. Considering that the mural was created taking into account the particular environment and architectural characteristics of that specific room, its reproduction into another room is not permissible and cannot stand to be displayed in another place or room that is not the one that was originally considered into the artist’s creative process while developing the idea and eventually executing it, turning it into a work of art.
46. The apocryphal reproduction is of poor quality, is inadequately installed and betrays the conceptual intention of the original work of

art. The mutilation and destruction of the mural by covering it with wallpaper represents an irreparable damage due to the impossibility of reversing the damage and returning it to its original state.

47. It is the author who has the exclusive right to authorize, or perform on his own, the reproduction of the work, prepare works derived from the original work, distribute copies, claim his authorship, prevent the use of his name as author of any work of visual art that he has not created, to prevent the use of his name as the author of the visual art work in case of distortion, mutilation or other modification of the work that could damage his honor or reputation and prevent any intentional distortion, mutilation or other modification of that work that could harm his honor or reputation.
48. Effective September 15, 2016 the mural “Espejismo Nocturno” was registered to Plaintiff’s name at the United States Copyright Office. A true and correct copy of Plaintiff’s Certificate of Copyright Registration from the United States Copyright Office is annexed hereto as Exhibit A.
49. The Infringed Artwork is also registered in the Intellectual Property Registry of the Commonwealth of Puerto Rico as of September 7, 2016, under inscription number 16-194. A true and correct copy of Plaintiff’s Certificate of Copyright Registration of the Commonwealth of Puerto Rico is annexed hereto as Exhibit B.

50. The violation of the patrimonial and moral rights of the author entitles him to request compensation for his damages.

51. Plaintiff is entitled to injunctive relief and redress for Defendants' willful, intentional and purposeful use and exploitation of the Infringed Artwork for their own financial benefit with full knowledge that such use constituted infringement of, and was in disregard of, Plaintiff's rights.

52. This lawsuit seeks all damages to which Plaintiff is entitled for the unlawful acts of Defendants.

**COUNT I**  
**COPYRIGHT INFRINGEMENT COMPENSATORY AND PUNITIVE**  
**DAMAGES**

**(17 U.S.C. §§ 106, et seq.)**

(By Plaintiff Against All Defendants)

53. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 52, inclusive.

54. Urbain is the sole owner of the copyright in an original work that is fixed in tangible media of expression. As of September 15, 2016, "Espejismo Nocturno" was registered to Plaintiff's name at the United States Copyright Office.

55. Defendants destroyed the original work of art "Espejismo Nocturno" without Urbain's consent or authorization.

56. Defendants also produced, reproduced, prepared derivative works based upon and publicly displayed Urbain's protected work without his consent or authorization.
57. Defendants' acts violate Urbain's exclusive rights under the Copyright Act, 17 U.S.C. §§ 106, 106A and 501, including Urbain's exclusive rights to produce, reproduce, and distribute copies of his work, to create derivative works, and to publicly display his work.
58. Defendants' infringement has been undertaken knowingly, and with intent to financially gain from Urbain's protected copyrighted work. Defendants have failed to exercise their right and ability to supervise persons within their control to prevent infringement, and they did so with intent to further their financial interest in the infringement of "Espejismo Nocturno". Accordingly, Defendants have directly, contributorily, and vicariously infringed Urbain's copyrighted work.
59. As a direct and proximate result of said infringement by Defendants, Plaintiff is entitled to his actual and punitive damages and any other relief allowed under the Copyright Act. The damages caused by the violation of the economic and moral rights of Urbain for the unauthorized mutilation, destruction and reproduction of "Espejismo Nocturno" are valued in a sum not less than \$1,000,000.00 for compensatory damages and \$1,000,000.00 for punitive damages.

60. Plaintiff is also entitled to Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504(b), including an accounting of and a constructive trust with respect to such profits.
61. Alternatively, Plaintiff reserves the right to claim statutory damages at any given time before final judgement is renders.
62. Defendants' infringement has caused and is causing irreparable harm to Urbain, for which he has no adequate remedy at law. Unless this Court restrains Defendants from continuing infringement of Urbain's protected work, the harm will continue to occur in the future. Accordingly, Urbain is entitled to injunctive relief to restrain and enjoin Defendants' continuing infringing conduct with an order for the immediate destruction of any copy of the mural "Espejismo Nocturno".
63. Through their conduct averred herein, Defendants have infringed Plaintiff's copyright in the Infringed Artwork in violation of Sections 106 106A and 501 of the Copyright Act, 17 U.S.C. §§ 106, 106A and 501.
64. Defendants' acts of infringement are willful, intentional and purposeful, in disregard of and with indifference to Plaintiff's rights.
65. Plaintiff is entitled to his attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.

**COUNT II**  
**ACT NO. 55 OF 2012, MORAL RIGHTS ACT OF PUERTO RICO**  
**(31 L.P.R.A. § 1401i – 1401ff)**

(By Plaintiff Against All Defendants)

66. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 65, inclusive.
67. Act No. 55 of 2012, the *Moral Rights Act of Puerto Rico*, prohibits the violation of an author's moral rights over a protected work produced through intelligence and creative in nature of the author that is expressed in a tangible way.
68. As author of "Espejismo Nocturno", Plaintiff has an exclusive right over his work that exists by virtue of the very personal relationship between him and his work.
69. Defendants willfully covered "Espejismo Nocturno" with wallpaper mutilating it and destroying it completely to the point where it cannot be restored to its original state.
70. Defendants also reproduced a copy of "Espejismo Nocturno" and transferred it to another wallpaper. This cheap and apocryphal reproduction of the mural is placed in the new location of "VIVA Bar", inside the casino for their own financial benefit for their commercial activities.
71. Defendants have unjustly enriched themselves by obtaining profits in their business activities, taking advantage of Plaintiff's work or

art, even though mutilated, depriving Plaintiff of his recognition for his original work.

72. All of this was carried out without prior notification to Urbain and without his consent.

73. As a moral right, Plaintiff has the right of attribution; to be recognized as the author, whenever that is the case, as well as to prevent the attribution thereto of works that are not his.

74. Plaintiff has also the right to prevent the mutilation, deformation, or alteration of the work so that it undermines the legitimate interests or reputation of him as the author.

75. Plaintiff has the right to prevent the public presentation or distribution of a mutilated, deformed, or altered work that can undermine the legitimate interests or reputation of him as the author.

76. Also, Plaintiff has the right to prevent the intentional or negligent destruction of the original of his work.

77. Section 1401(k) of Act No. 55 of 2012, establishes a presumption that the author is whoever appears as such in the work by means of his name, signature, or identifying mark, who in this case is the Plaintiff.

78. The Infringed Artwork is registered in the Intellectual Property Registry of the Commonwealth of Puerto Rico as of September 7, 2016, under inscription number 16-194. See Exhibit B.

79. As stated in section 1401(u) of Act No. 55 of 2012, the registration of the work in the Copyright Registry of Puerto Rico shall constitute *prima*

*facie* evidence of the validity of the Plaintiff's moral rights as an author and of the circumstances described in the certificate of registration.

80. Section 1401(s) of Act No. 55 of 2012, states that the violation of moral rights empowers the author to seek permanent injunction to assert his rights, redress for damages, and financial compensation.

81. As a direct and proximate result of Defendant's infringement, Plaintiff is entitled to his actual damages and any other relief allowed under Act No. 55 of 2012. The damages caused by the violation of the moral rights of Urbain for the unauthorized mutilation, destruction and reproduction of "Espejismo Nocturno" are valued in a sum not less than \$1,000,000.00.

82. Plaintiff reserves the right to claim an award for statutory damages in lieu of compensation if it deems it necessary.

#### **PRAYER FOR RELIEF**

WHEREFORE, in view of the foregoing, PLAINTIFF respectfully prays for judgment in his favor against Defendants, and each of them, jointly and severally, as follows:

1. For an amount of \$1,000,000.00 in compensatory damages pursuant to the Copyright Act.

2. For an amount of \$1,000,000.00 in punitive damages pursuant to the Copyright Act.

3. For an amount of \$1,000,000.00 in damages pursuant to Act No. 55 of 2012.

4. For a preliminary and permanent injunction prohibiting Defendants, and their respective agents, servants, employees, officers, successors, licensees and assigns, and all persons acting in concert or participation with each or any of them, from continuing to infringe Plaintiff's copyright in the Infringed Artwork.

5. That Defendant's products and materials that infringe Plaintiff's copyright, as well as any copy of Urbain's original work be impounded pursuant to 17 U.S.C. § 503(a).

6. That Defendant's products and materials that infringe Plaintiff's copyright, as well as any copy of Urbain's original work be destroyed pursuant to 17 U.S.C. § 503(b).

7. That Defendants be ordered to pay Plaintiff all compensatory damages as a result of the acts complained herein.

8. That Defendants be ordered to pay to Plaintiff punitive damages as a result of Defendant's deliberate and willful misconduct.

9. For pre-judgment and post-judgment interest according to law in all applicable damages;

10. For Plaintiff's attorneys' fees, costs, and disbursements in this action.

11. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In Ponce, Puerto Rico, this 15<sup>th</sup> day of June, 2018.

# **Bufete** *Emmanuelli* **C.S.P.**

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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury pursuant to Federal Rule of Civil Procedure 38.

In Ponce, Puerto Rico, this 15<sup>th</sup> of June, 2018.

**Bufete**  
*Emmanueli* **C.S.P.**

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