

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

WALTER L. LOWE, JR.,	)	
	)	Civil Action No.: _____
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT AND</b>
	)	<b>DEMAND FOR JURY TRIAL</b>
WARNER MEDIA LLC, WARNER	)	
BROS. ENTERTAINMENT INC., WB	)	
STUDIO ENTERPRISES, INC.,	)	
WARNER BROS. ANIMATION,	)	
HOME BOX OFFICE, INC., REDBOX	)	
AUTOMATED RETAIL LLC,	)	
AMAZON.COM, INC., WALMART,	)	
INC., and BEST BUY CO., INC.,	)	
	)	
Defendants.	)	

This is a civil action for damages and injunctive relief in which it is alleged Defendants Warner Media LLC, Warner Bros. Entertainment Inc., WB Studio Enterprises, Inc., Warner Bros. Animation (altogether, “Warner Bros.” or the “Warner Bros. Defendants”), Home Box Office, Inc., Redbox Automated Retail LLC, Amazon.com, Inc., Walmart, Inc., and Best Buy Co. Inc., have committed, and continue to commit, copyright infringement in violation of the Copyright Act (17 U.S.C. § 101 *et. seq.*) in connection with their unauthorized exploitation of a motion picture entitled *Space Jam*, which is derived from Plaintiff’s copyrighted work, “The Devil and Doodazzle Dakins” (the “Story” or “Work”). This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 17 U.S.C. § 501(b). Plaintiff states and alleges, on personal knowledge as to himself and information and belief as to others, as follows:

**INTRODUCTION**

1. Plaintiff Walter L. Lowe, Jr. (“Lowe”) is the author and copyright holder of “The Devil and Doodazzle Dakins”, a fictional short story that was published in *Playboy* magazine April

of 1984. On April 17, 1989, Lowe received a copyright registration for “The Devil and Doodazzle Dakins”. The copyright registration number is V2453P022. Attached as Exhibit 1 is a true and correct copy of “The Devil and Doodazzle Dakins” (the “Story” or “Work”).

2. Lowe is a native Chicagoan who had a 21-year career in newspaper and magazine journalism that began in 1971 at the Chicago Sun-Times. He is among the first full-time African American reporters at the Chicago-Sun Times and he is the first African American editor to join *Playboy*.

3. Lowe received his Master’s Degree in Marriage and Family Therapy (“MFT”) from Purdue Calumet University, after his career in journalism, and his Ph.D. in MFT from Purdue University, West Lafayette. The Purdue MFT graduate program was considered the best in the country—the “Harvard” of MFT programs. At the time of his graduation, Lowe was the only African American male to graduate from the Purdue MFT program in its more than 50-year history. Lowe received his Ph.D. when he was 60, before taking his professorship at Antioch University New England. He is passionate about social justice causes, and writing (both fiction and essays) is one of Dr. Lowe’s favorite hobbies.

4. Lowe spent significant time with James Baldwin on the Atlanta Child Murders, which culminated in “The Evidence of Things Not Seen”, an essay that was written by Baldwin and edited by Lowe and that won *Playboy*’s award for the Best Essay of the Year. Lowe is also the winner of *Playboy*’s Article of the Year Award for his 1980 article, “Bad Dreams in the Future Tense”. His work made him a presence in African American artistic and social justice circles. That work included interviews with the literary and civil rights giants in African American history, including Alex Haley (author of *Roots*), two-time Pulitzer Prize winning playwright August Wilson, Chicago’s first Black Mayor, Harold Washington, and Ralph Ellison, author of the

National Book Award winning novel, *Invisible Man*. He also brought international attention to the work of Ernie Barnes, who is today one of the most famous and recognized African American visual artists of the 20<sup>th</sup> century.

5. At Lowe's insistence, *Playboy* commissioned Ernie Barnes to illustrate the Story as well as two other of Lowe's short stories published in *Playboy* ("Galahad", 1978, "An Ounce of Luck", 1989). Mr. Barnes was the first African American illustrator used by *Playboy*. Mr. Barnes, whose achievements include being named the Official Artist of the 1984 Olympics, later thanked Lowe for bringing him on at *Playboy*—acknowledging the exposure to being chosen as the "first Sport Artist of the Year" (<http://www.asama.org/awards-of-sport/medallion-series/sport-artist-of-the-year/ernie-barnes/>).

6. Lowe's short stories (including the Story) were the first submissions from an African American author that *Playboy* elected to publish, and he may be the only African American author who had 4 stories selected for publication by *Playboy*.

7. The Story describes a "cosmic duel of good [as represented by angels] and evil [as represented by demons, including Lucifer]." But rather than traditional elements of combat and the associated horrors, a game of "astral basketball" is used to decide the fate of mankind. On information and belief, the Story reflects the first instance where a basketball game is used to decide the fate of mankind's soul.

8. The games use "a luminous transparent sphere" as the ball, and the face of the person whose fate is to be decided by a given shot would be reflected in the sphere, and the astral players absorbed the skills of human basketball players.

9. The Story goes on to describe "a tall, lanky, dark-brown figure wearing the colors of the Chicago Bulls." This player, a young African American athlete named Danny Doodazzle

Dakins, is able to dribble down-court “through a full-court press applied by the Boston Celtics”, weaving “through the defenders with a nifty combination of dribbling techniques. Then, as he approached the basket, he soared into the air like a black falcon, arms outspread, the ball held firmly in his right hand”, and sinking the shot after drawing an “ill-timed leap” from the defender. By the end of the Bulls v. Celtics game, Dakins had scored 48 points and won the game, including a shot where he “leap[ed] over [Larry] Bird’s outstretched arms, dumping the shot and Bird in one motion.” His game-winning shot at the buzzer “left Celtics forward Larry Bird sprawled on the floor.”

10. With the benefit of hindsight, it is easy to think Doodazzle Dakins was based on Michael Jordan—one of the most dominant players in the history of the National Basketball Association. But that association would be an invention. The Story was published April of 1984, approximately 2 months before Jordan was drafted by the Bulls. The Dakins character could not have been based on Mr. Jordan. It is a work of pure fiction, and the description of him—along with the rest of the Story—reflect an original Work.

11. As told in the Story, the devils (and Lucifer in particular) wanted Dakins’ basketball playing abilities. Dakins, on the other hand, wanted to save the soul of a character under Lucifer’s control. To settle this dispute, Dakins challenged Lucifer to a basketball game and Lucifer accepted. If Lucifer won, Dakins’ soul would have headed for hell, and Lucifer would absorb Dakins’ basketball abilities; if Dakins won, he would have saved the soul of Yvonne Brown, who was under Lucifer’s control. Nothing in the Story compelled Dakins to risk his soul for another. But under Lowe’s direction, Dakins chose to put himself on the line for the greater good.

12. Lowe is a Native Chicagoan. Many of the references he makes in the Story (Soul Queen restaurant, Belmont towers, and the Chicago Bulls) have personal significance to him as an

African American man that was born and raised in Chicago. His Story, which incorporated his personal background, and the illustration by Mr. Barnes made the Story a significant work for the Black arts community, especially in the Chicago and Los Angeles areas (Barnes' home).

13. After the publication of the Story Messrs. Timothy Harris ("Harris") and Herschel Weingrod ("Weingrod") approached Lowe to option the movie rights for the Story. They reached Lowe on a weekend evening, by phone, at his home.

14. Both Harris and Weingrod were on the initial call. They introduced themselves as the writers for the movie *Trading Places* and expressed interest in optioning the Story for a screenplay. In particular, Harris and Weingrod explained that Eddie Murphy, the star in *Trading Places*, was interested in making another movie and they thought the Story would be a good fit.

15. Harris and Weingrod twice optioned the movie rights for the Story. Each option period was for 6 months, and Lowe was paid approximately \$3,000 for each option.

16. Harris and Weingrod later explained that Eddie Murphy decided to make a movie called *Beverly Hills Cop*, and was not presently available to take on the Story as another project. After the options expired, Lowe did not hear from Harris or Weingrod again.

17. One or more of the Warner Defendants later made, released and distributed *Space Jam*, a movie starring Michael Jordan and characters from Looney Tunes. Defendants have profited and continue to profit from the copyright infringement of the Story.

18. The screenplay for *Space Jam* was written, among others, by Harris and Weingrod.

19. As in the Story, *Space Jam* focuses on a battle between the forces of good (Looney Tunes) and evil (the Monstars); and as in the Story, that battle is resolved over a game of basketball.

20. In both the Story and *Space Jam*, a luminous/glowing basketball is used. The glow represents the soul of basketball players in the Story, and the powers of basketball players in *Space*

*Jam*. It is through the luminous/glowing basketball that the astral players in *Space Jam* absorb the powers of professional basketball players—as did the astral players in the Story. In the Story, the glow in the basketball represented the fate of a soul; in *Space Jam*, the basketball-playing abilities of NBA stars. And in both the Story and *Space Jam*, a basketball player’s skills are absorbed before that player dies.

21. In both the Story and *Space Jam*, the basketball game is played on a court that is not on earth.

22. As with the Dakins character in the Story, *Space Jam* featured an African American basketball player that played for the Chicago Bulls (Michael Jordan), and that dominated the league.

23. In the Story Dakins’ on-court prowess resulted in his opponent (Larry Bird) being sprawled on the floor. This too was featured in *Space Jam*’s final sequence during Jordan’s game-deciding shot, where a Monstar laid sprawled on the floor. And in that same sequence, Jordan “soared into the air like a black falcon, arms outspread, the ball held firmly in his right hand”—just like Dakins in the Story.

24. In both the Story and *Space Jam*, the lead character (Dakins and Jordan, respectively) placed his soul / freedom on the line in a bet with the forces of evil. In both, the lead character had nothing to gain personally from the bet. And the stakes were similar in both, the lead character’s soul / freedom.

25. Although *Space Jam* is largely a cartoon movie that presumably targeted kids, the movie made sure the Swackhammer character evoked images of the devil. His saliva was acid, his grin “malevolent,” his laugh “wicked,” and his description of Jordan’s fate is a depiction of hell—complete with ball and chain. In addition, although his minions were initially cuddly and miniature

creatures, they took on the appearance and abilities of demons once they absorbed the powers of basketball players. In the final scene of the Story, Lucifer “cursed” and exploded in a black cloud of acrid smoke, and *Space Jam* depicts Swackhammer being stuffed into a cartoon rocket and sent deep into space. These too are elements that were copied from the Story.

### **PARTIES**

26. Plaintiff Walter L. Lowe, Jr. is an individual residing in Keene, New Hampshire. He is the present owner of the copyrighted written work (the Story) which is the subject of this action.

27. Upon information and belief, Defendant Warner Media LLC is organized under the laws of the state of Delaware with its headquarters located in New York, New York. Defendant Warner Media LLC is a subsidiary of AT&T Inc.

28. Upon information and belief, Defendant Warner Bros. Entertainment Inc. is organized under the laws of the state of Delaware with its headquarters in Burbank, California. Warner Bros. Entertainment Inc. is a subsidiary of Warner Media LLC.

29. Upon information and belief, Defendant WB Studio Enterprises Inc. is organized under the laws of the state of Delaware with its headquarters in Burbank, California. WB Studio Enterprises Inc. is a subsidiary of Warner Bros. Entertainment Inc. and, upon information and belief, contains the Warner Bros. Pictures division.

30. Upon information and belief, Defendant Warner Bros. Animation Inc. is organized under the laws of the state of Delaware with its headquarters in Burbank, California. Warner Bros. Animation Inc. is a subsidiary of Warner Bros. Entertainment Inc.

31. Upon information and belief, Defendant Home Box Office Inc. is organized under the laws of the state of Delaware with its headquarters in New York, New York. Home Box Office Inc. is a subsidiary of Warner Media LLC.

32. Upon information and belief, Defendant Redbox Automated Retail LLC is organized under the laws of the state of Delaware with its headquarters in Oakbrook Terrace, Illinois. Redbox Automated Retail LLC is a subsidiary of Coinstar, Inc.

33. Upon information and belief, Defendant Amazon.com, Inc. is organized under the laws of the state of Delaware with its headquarters in Seattle, Washington.

34. Upon information and belief, Defendant Walmart, Inc. is organized under the laws of the state of Delaware with its headquarters in Bentonville, Arkansas.

35. Upon information and belief, Defendant Best Buy Co., Inc. is organized under the laws of Minnesota with its headquarters in Richfield, Minnesota.

### **JURISDICTION & VENUE**

36. This Court has subject matter jurisdiction over this Complaint pursuant to 28 U.S.C. §§ 1331, 1338(a), and 17 U.S.C. § 501(b).

37. This Court has personal jurisdiction over Defendants. Defendants have committed copyright infringement within Texas and caused injuries in this State. Defendants have transacted business directly with Texas consumers and through resellers that operate in Texas. Defendants have continuous and systematic contacts with the state of Texas. Such minimum contacts have included targeting movie watchers and subscribers in Texas, selling copies of the infringing work in Texas, as well as public performance of *Space Jam* to consumers in Texas.

38. The cause of action in this lawsuit arises out of Defendants' contacts with Texas. Personal jurisdiction over the non-resident Defendants is proper because this lawsuit arises from



and relates to the purposeful acts of the non-resident Defendants directed to the forum state. Each Defendant has invoked the rights, benefits and privileges of Texas law.

39. The assumption of jurisdiction by this Court over the non-resident Defendants does not offend traditional notions of fair play and substantial justice.

40. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because all Defendants are subject to personal jurisdiction in this District and can be found here.

### **BACKGROUND FACTS**

41. Walter L. Lowe, Jr. authored the short story at issue in this Complaint, “The Devil and Doodazzle Dakins”, which was originally published in *Playboy* Magazine in April of 1984. Lowe was an editor for *Playboy* at the time.

42. Lowe registered the work with the United States Copyright Office and obtained the registration number V2453P022 on April 17, 1989.

43. Lowe received a phone call from screenwriters Tim Harris and Herschel Weingrod seeking to discuss a possible motion-picture adaptation of the Story. Harris and Weingrod explained the idea of having Eddie Murphy play Danny Dakins, the lead character in the Story. Lowe and Harris and Weingrod then executed two successive option agreements, each for six months, where Lowe was paid approximately \$3,000 per agreement. The option agreements were never exercised, and Lowe did not hear from the screenwriters from that point forward.

44. In November of 1996, Warner Bros. released its newest production, *Space Jam*, which is an unauthorized derivative work of the Story, as explained in the Introduction above. *Space Jam*’s screenwriters included, among others, Tim Harris and Herschel Weingrod. *Space Jam* was an immediate box-office hit. Since its original release, the Warner Bros. Defendants have widely distributed *Space Jam* through VHS cassettes, DVDs, and Blu-ray through traditional retailers such as Walmart and Best Buy, and, more recently, have made the film available for

viewing on Video On Demand (“VOD”) streaming platforms such as Amazon Prime Video, Redbox, and HBO Max.

45. Harris and Weingrod’s knowing and willful copy and misappropriation of the Story were done on behalf of and imputable to the Warner Bros. Defendants. The Warner Bros. Defendants knowingly and willfully infringed Lowe’s registered copyright by writing, producing, and releasing an unauthorized derivative of Lowe’s original work. Their infringement began decades ago and continues today through, *inter alia*, Warner Bros.’ persistent marketing of *Space Jam*, licensing of the infringing work to streaming platforms, and other widespread distribution of the unauthorized derivative. Moreover, Warner Bros. has even begun marketing its sequel to *Space Jam*, *Space Jam 2: A New Legacy*, set to release in July of 2021.

46. Additionally, the remaining Defendants, Home Box Office, Inc., Redbox Automated Retail LLC, and Amazon.com Inc. (altogether, the “VOD Defendants”) as well as Walmart Inc. and Best Buy Co., Inc. infringe Lowe’s exclusive reproduction and public performance rights by offering *Space Jam* through their VOD platforms and retail stores. With respect to the VOD Defendants, customers either (1) purchase subscriptions to the VOD platforms whereby video content is made available to them after paying a subscription fee, or (2) customers can elect to purchase or rent a particular film or item on a per-item basis.

47. None of the Defendants have ever obtained a license for the exclusive rights held by Lowe for the Story.

#### **COUNT I – COPYRIGHT INFRINGEMENT**

48. Lowe re-alleges and incorporates by reference Paragraphs 1-47 as if fully set forth herein.

49. Plaintiff is the owner of all rights, titles, and interests, including the copyrights, in and to “The Devil and Doodazzle Dakins”.

50. Plaintiff has the exclusive right to prepare derivative works based upon the copyrighted Story.

51. By their production and release of *Space Jam*, a motion picture based on and derived from Plaintiff’s Story, as well as their subsequent licensing of the same, the Warner Bros. Defendants knowingly and willfully infringed, and continue to infringe, Plaintiff’s protected rights of distribution, reproduction and the right to authorize derivative works.

52. Additionally, Defendants Home Box Office, Inc., Redbox Automated Retail LLC, Amazon.com, Inc., Walmart, Inc., and Best Buy Co., Inc. likewise directly infringe Plaintiff’s protected rights of performance, distribution, and reproduction.

53. At no time has Plaintiff authorized any Defendant to create, release, produce, or distribute derivative works or otherwise exploit all or any portion of the Story in connection with the copying, sale, distribution, or display of *Space\_Jam*.

54. Plaintiff placed Defendants on notice of his copyright by registering his work with the United States Copyright Office. At least the Warner Bros. Defendants were actually aware of Plaintiff’s copyrighted work as is evidenced by the multiple option agreements entered into between Plaintiff and Messrs. Harris and Weingrod (the screenwriters for *Space\_Jam*) for a possible motion-picture adaptation.

55. As a direct and proximate result of Defendants’ copyright infringement, Plaintiff has suffered, and will continue to suffer, severe financial harm, much of which cannot be reasonably or adequately measured or compensated in money damages and certainly if such

wrongful conduct is allowed to continue unabated. Plaintiff's damages include, but are not limited to, injury to his reputation as an author and diminution of the value of his intellectual property.

56. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a preliminary injunction during the pendency of this action and to a permanent injunction enjoining Defendants, their officers, agents, and employees, and all persons acting in concert with them, from engaging in such further violations of the Copyright Act.

57. Plaintiff is further entitled to recover from Defendants the damages sustained as a direct and proximate result of Defendants' acts of copyright infringement within the limitations period prescribed by law. Plaintiff is at present unable to ascertain the full extent of the monetary damages he has suffered by reason of Defendants' act of copyright infringement, but Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Plaintiff has sustained such damage in amount to be proven at trial.

58. Plaintiff is further entitled to recover from Defendants the gains, profits, and advantages they have obtained as a result of Defendants' acts of copyright infringement. Plaintiff is at present unable to ascertain the full extent of the gains, profits and advantages Defendants have obtained by reason of their acts of copyright infringement, but Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendants have obtained such gains, profits, and advantages in an amount to be proven at trial.

#### **JURY DEMAND**

59. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Lowe prays for judgment against Defendants as follows:

- a. An adjudication that one or more Defendants have infringed Plaintiff's copyright;
- b. An adjudication that one or more Defendants have infringed Plaintiff's copyright willfully and any associated enhanced damages;
- c. An award of damages to Plaintiff to be proven at trial for Defendants' copyright infringement;
- d. For attorneys' fees and costs pursuant to Section 505 of the Copyright Act of 1976, 17 U.S.C. § 505;
- e. Prejudgment interest;
- f. For interim and permanent injunctive relief restraining future violations of Plaintiff's copyrights; and
- g. For such other and further relief as the Court deems just and appropriate.

Dated: May 20, 2021

/s/ Li Chen

Li Chen  
State Bar No. 24001142  
Nicole Burleson  
State Bar No. 24116148  
**CHEN LEFTWICH LLP**  
Office: 214.627.9950  
Fax: 214.627.9960  
lchen@chenleftwich.com  
nburleson@chenleftwich.com

ATTORNEYS FOR PLAINTIFF WALTER  
L. LOWE, JR.