

Each month we report to you moves among, within and between: publishing houses, stock agencies, photo buyers, photo researchers, ad agencies, and design firms.

CHANGES

PERISCOPE (921 Washington Ave S, Minneapolis, MN 55415) contact person Lisa Paczkowski's name changed to Lisa McHugh, Art Buyer, lmchugh@periscope.com
NATIONAL GEOGRAPHIC BIRD WATCHER (324 10th St SE, Washington, DC 20003) National Geographic Bird Watcher has suspended publication.

IN STYLE MAGAZINE (1271 6th Ave Room 2671B, New York, NY 10020) former contact and e-mail: Angela Drexel, angel_drexel@instylemag.com ; current contact and e-mail: Rebecca Karamehmedovic, Rebecca_karamehmedovic@Timeinc.com .

CDI GROUP (216 E 45th St 6th Fl, New York, NY 10017) former contact and e-mail: Kay Yamamoto, Project Designer, kyamamoto@CDIgrp.com ; current contact and e-mail: Dave Pinter, Project Designer, dpinter@cdigroup.com .

BENCHMARK EDUCATION, former address: 523 Fifth Ave Ste 296, Pelham, NY 10803; current address: 629 5th Ave, Pelham, NY 10803.

HORTICULTURAL PRINTERS (3638 Executive Blvd, Mesquite, TX 75149) former contact and e-mail: Ben Philips, Director of Horticulture Photography, bphilips@hplprnt.com ; current contact and e-mail: Larry Maupin, lmaupin@hplprnt.com .

PHILIP JOHNSON ASSOCIATES (12 Arrow St, Cambridge, MA 02138) former contact and e-mail: Matt Thorsen, mthorsen@agencypja.com ; current contact and e-mail: Ken Denorscia, kdenorscia@agencypja.com .

FODOR'S TRAVEL PUBLICATION, former company address, contact and e-mail: 280 Park Ave 10th Fl, New York, NY 10017, Jolie Novak, Senior Picture Editor, jnovak@fodors.com ; current company address, contact and e-mail: 1745 Broadway 15th Fl, New York, NY 10019, Melanie Marin, Senior Picture Editor, mmarin@fodors.com .

ENVIRONMENT MAGAZINE (1319 18th St NW, Washington, DC 20036-1802) former contact and e-mail: Catherine Feeny, Editorial Assistant, env@heldref.org ; current contact and e-mail: Ellen Fast, Editorial Assistant, efast@heldref.org .

FITNESS MAGAZINE (15 E 26th St, New York, NY 10010) former contact, phone and e-mail: Maria Kantlis, 1 646 758-0465, mkantlis@fitnessmagazine.com ; Current contact, phone and e-mail: Tara Canova, 1 646 758-0474, tcanova@fitnessmagazine.com .

MAGNETIC NORTH PRESS (420 Oak St N Ste 101, Carver, MN 55315) former contact: Gary Gernbacher, Art Director; current contact: Nancy Clauss, Art Director.

HUMAN DEVELOPMENT RESOURCES COUNCIL INC, former address: 3941 Holcomb Bridge Rd Ste 300, Norcross, GA 30092; current address: 5415 Sugarloaf Parkway Ste 2201, Lawrenceville, GA 30043.

CUL-MAC INDUSTRIES, INC, (3720 S Venoy Rd, Wayne, MI 48184) contact person Frederick Cizauskas's e-mail has changed. Former e-mail: fcizauskas@juno.com ; current e-mail: fcizauskas@cul-mac.com .

COPYRIGHT for stock photographers

GENTIEU LOSES CLAIM AGAINST GETTY

In *Gentieu et al v. Tony Stone Images/Chicago, Inc. et al* ("Getty") (00C269, March 26, 2003), the Federal District Court for the Northern District of Illinois dismissed a copyright and breach of contract claim brought by famous baby photographer Penny Gentieu.

Gentieu began photographing babies in 1985 using a technique that made the babies appear as if they were floating in white space without any shadow. In 1993, Gentieu appointed Tony Stone as her agent and, in 1995, Getty acquired Tony Stone.

In 1996, Getty art directors sent a "shoot brief" to Gentieu and other Getty photographers with suggestions for new baby images based upon trends and customer needs. As a result, several Getty photographers created and submitted baby images. Gentieu's revenue for sales per image with Getty began declining shortly thereafter.

Gentieu sued, claiming that the resulting images were a copyright infringement. She also claimed that Getty's actions in soliciting similar images from other photographers were a breach of fiduciary duty and a breach of contract. The Court disagreed and dismissed Gentieu's claims in their entirety as a matter of law without a trial or jury.

CAN'T COPYRIGHT AN IDEA

The Court first dismissed Gentieu's copyright infringement claim. Because Gentieu "cannot claim copyright in the idea of photographing naked or diapered babies or in any elements of expression that are intrinsic to that unprotected idea," the Court held that her copyright "is limited to protecting against exact replication of her images." [Italics

added]

Copyright, the court said, protects the expression of ideas but not the ideas themselves. Copyright "does not extend to the subject matter of the image itself, but instead protects the expression of the subject as contained in such elements of the author's composition as the selection of lighting, shading, camera angle, background and perspective."

In this instance, however, Gentieu's white backgrounds, straight camera angles, and sharp focus were not protectable original elements. Rather, the Court considered these features to be indispensable to studio portrait photography and, therefore, unprotectable under copyright law's *scènes faire* doctrine (i.e., scenes that must be done). This doctrine makes it impossible to have copyright protection in standard photographic conventions and devices necessary or standard in a genre. To protect these elements, the Court stated, "would come all too close to granting one photographer a monopoly over all photographs of naked babies on white backgrounds . . ."

Thus, even though the allegedly infringing images showed babies of similar ages and coloring, using white backgrounds, straight camera angles and sharp focus, they were not "substantially similar" or infringing. For similar reasons the court found that there was no infringement of Gentieu's photocompositions that contained more than one baby.

GETTY NOT AT FAULT

The Court also found that Getty did not breach its fiduciary or contractual obligations by requesting that other photographers supply baby images. Although Getty was required to act with loyalty and good faith toward Gentieu, there was no evidence that Getty sought to replace Gentieu's images. The Court found that it is inherent in the stock photography business for agents to solicit similar images from a variety of photographers, and Gentieu knew from the start that the agency represented competitors and was soliciting other baby images.

Copyright (c) 2003 Stephen Filler. Stephen Filler is an attorney in New York state (www.nylawline.com) whose practice focuses on intellectual property, copyright, trademark, technology, media, contracts, corporate and photography law. His office is located at 303 South Broadway, Tarrytown, NY 10591, 212-204-3508, sfiller@nylawline.com. This column is to be used for informational purposes only; it is not legal advice. For legal advice, please consult an attorney.

Shooters

One of Bill Crane's images—"Philadelphia From Art Museum," was chosen for three separate retail products to be sold at the new Constitution Center opening in Philadelphia on June 1st 2003.

This month's
ALIAS BOOK

May

1959 - Photographs in color of the heavens (the Great Nebula in Orion, Crab Nebula, Veil Nebula in Cygnus and the Swan) were published in May 1959 issue of National Geographic magazine.

A VISIT WITH ARNIE IN MINNEAPOLIS--

