Opening Party Statement of Helen Walters

I make this statement in the full knowledge that if I have documented anything that I know to be false or do not believe to be true, this may affect the outcome of my Copyright Infringement claim and render me liable to perjury.

This opening party statement aims to provide the Copyright Claims Board evidence of Copyright Infringement of a poem, Ms Helen Walters created in 2016. The poem (work) was predominantly for use on greeting cards and prints that are sold from the company owned by Helen Walters; known as Shmuncki.

This poem is intellectual property, owned by Ms Helen Walters.

Key facts relating to claim

Within this party statement, it will be demonstrated:

- Ms Walters created the poem (work) in 2016 for greetings cards and prints *and* holds the worldwide Copyright and distribution rights for it.
- The Respondent's product uses *exactly* the same poem as written by Ms Walters.
- The Respondent has used all constituent elements of Ms Walters' poem and placed on their products without her knowledge or consent.
- The Respondent's company ('IdeasGreatest LLC'), did not exist when Ms Walters created the poem in 2016 or first published the poem on 24th January 2017.
- The Respondent had access to the poem owned by Ms Helen Walters, across different internet sites/platforms that Ms Walters sells greetings cards and prints through.
- The Respondent's products, bearing Ms Walters' poem, have been sold via public internet selling sites/platforms for the Respondent's financial gain.

Summary of Facts

1. This claim relates to a poem entitled "***You held me close***". The poem reads:

"*You held me close when times were tough,*

Been by my side, when life got rough.

Praised my gains, embraced my flaws,

Back my side, despite the cause.

Forever constant, always there,

Sometimes firm, but always fair.

You are my rock, my inspiration,

Gave my life its strong foundation.

Ever loving, patient, kind,

And listen with an open mind.

You mean the world for all you do,

I love you Mum for being you."

2. Ms Helen Walters created the poem in the United Kingdom in 2016 at which point, under UK law, a 'written work' on completion assumes automatic Copyright – something provable by longevity. Ms Walters is able to provide proof of this via independent sales listing and reviews of this poem. The poem was listed for sale on a print via independent platform, Etsy.com on the 24th January 2017. Furthermore, an independent positive customer review of that product was posted on Etsy.com on 17th March 2017.

Evidence of a screenshot of the first print listing, dated 24th January 2017, is provided by an independent source (Etsy.com) at ***Evidence List, Document Item A*****.**

Evidence of a screenshot of an independent customer review of print dated 17th March 2017, is provided at ***Evidence List, Document Item B*****.**

3. Ms Walters protected this poem work on 8th March 2023 via 'protectmywork.com'.

   Evidence of a screenshot of certificate of Ms Walters' poem Copyright protection (all versions) dated the 8th March 2023, is provided at ***Evidence List, Document Item C.***

4. The same poem is displayed on alternative greeting cards and prints, for other family relatives (father, grandmother etc) by Ms Walters.

   Evidence of a screenshot of alternative version 'Mom' poem on print, is provided at ***Evidence List, Document Item D.***

   Evidence of a screenshot of alternative version 'Dad' poem on greetings card, is provided at ***Evidence List, Document Item E.***

5. Since 2017, Ms Walters has sold those greetings cards and prints online via various outlets, internet sites/platforms including: Shmuncki.com, Etsy.com and Amazon.com.

   Evidence of screenshot of 'Mom' card for sale on Shmuncki.com, is provided at ***Evidence List, Document Item F***.

   Evidence of screenshot of 'Mom' card for sale on Etsy.com, is provided at ***Evidence List, Document Item G***.

   Evidence of screenshot of 'Mum' card for sale on Amazon.com, is provided at ***Evidence List, Document Item H.***

6. The Respondent in this case is a company called 'IdeasGreatest LLC'.

   ('https://interestpod.co' is where the infringing material was located and being sold).

7. The registered Associated Agent is listed: 'North West Registered Agent Service, Inc'.

   Evidence of a screenshot showing 'IdeasGreatest' LLC's business details and registered agent, is provided at ***Evidence List, Document I***.

   Evidence of proof of service on 'IdeasGreatest' LLC, via North West Associated Agent, is at ***Evidence List, Document J***.

Evidence of invoice of proof of service is provided at ***Evidence List, Document K***.

8. The Respondent would have been able to gain access to Ms Walters' poem via one of the selling platforms listed at 5. (above)

9. Alternatively, the Respondent could have accessed Ms Walters' poem from various US websites and via search engines from other companies that are also in breach of Ms Walters' Copyright. Ms Walters has duly challenged each of these companies breaching her Copyright.

10. Some of the additional companies breaching Ms Walters' poem Copyright on US websites were selling exactly the same blanket as the Respondent in this case, as well as other products bearing Ms Walters' poem; using the same artwork, font and poem. Relevant examples of the online companies breaching Ms Walter's Copyright are:

- '**Pofily**',

Evidence of a screenshot of blanket with poem sold by 'Pofily' dated 27th September 2024, is provided at ***Evidence List, Document L***.

Evidence of copied email exchange between AWS and Helen Walters regarding 'Pofily' Copyright Infringement upheld, is provided at ***Evidence List, Document M***.

- '**Duinend**',

Evidence of a screenshot of a canvas with poem sold by 'Duinend' dated 27th September 2024, is provided at ***Evidence List, Document N***.

Evidence of a copied email exchange with 'Duinend' re multiple breaches dated 31st January 2024, is provided at ***Evidence List, Document O***.

- '**AZHobbieshop**'

Evidence of a screenshot of blanket with poem sold by 'AZHobbieshop' dated 9th February 2024, is provided at ***Evidence List, Document P***.

Evidence of a DMCA Takedown Notice from Shopify to 'AZHobbieshop', dated 31st January 2024, is provided at ***Evidence List, Document Q***.

Evidence of screenshot of Shopify email removing 'AZHobbieshop' content, dated 21st February 2024, is provided at ***Evidence List, Document R***.

- '**Muchnee**'

Evidence of a screenshot of wooden ornament with poem on Amazon.com sold by 'Muchnee' dated 27th January 2024, is provided at ***Evidence List, Document S***.

Evidence of copied repeated apology emails from 'Muchnee' regarding Copyright infringement, dated between 11th June 2024 and 29th July 2024 is provided at ***Evidence List, Document T.***

11. The Respondent sells many different items on their internet site, 'https://interestpod.co', such as mugs, canvas's, prints and blankets. The item of concern in this case, displaying Ms Walters' poem, is a blanket. The poem the Respondent has reproduced on the blanket is *identical* to the poem written by Ms Walters in 2016; exact and unedited, save for the word '***Mom***' being used instead of the UK derivative '***Mum***'.

Evidence of a screenshot of Ms Walters' poem on a blanket, dated 9th February 2024 being sold on the Respondent's site 'https://interestpod.co', is provided at ***Evidence List, Document U***.

12. The item lists the following description, "*This design can also be an awesome present for Grandparent Day, Parent Day gift, Birthday, Happy New Year, Christmas gifts, Mother's Day gifts, Father's Day Gifts".* The listing also advertised six different sizes, "*Small, Medium Large (Standard), Small, Medium, Large (Premium)*". This provides a strong indication the blanket was sellable in multiple versions.

Evidence of a screenshot of Ms Walters poem on a blanket, with variables, being sold on the Respondent's site 'https://interestpod.co', is provided at ***Evidence List, Document V***.

13. The Respondent sells blankets through their 'https://interestpod.co' site, with different writings thereon; all in similar font and layout. All prices of the blankets are the same.

Evidence of a screenshot dated 24th September 2024 of an alternatively worded blanket being sold on 'https://interestpod.co', displaying minimum price option, is provided at ***Evidence List, Document W***.

14. The Respondent has been actively using Ms Walters' poem to enhance the sale of their product, as without the poem, the blanket would undoubtedly be worth significantly less. There is evidence that the blanket has been purchased on the Respondent's website dues to a customer review being posted.

Evidence of a screenshot of 'https://interestpod.co' positive customer review for the blanket with poem, dated 24th January 2024, provided at ***Evidence List, Document X.***

15. On 22nd January 2024 Ms Walters filed a DMCA 'Takedown' notice with Shopify, the Respondent's website host. Shopify removed the Respondent's product listings from the site, noting their support of the protection of Ms Walters' intellectual property and thanking Ms Walters for making them aware of the Respondent's Copyright infringement.

Evidence of copied Takedown Notice from Shopify to 'https://interestpod.co', dated 22nd January 2024 is provided at ***Evidence List, Document Y.***

16. On 24th January 2024, a person by the name of 'Cuong Nguyen Ich', the Respondent from 'https://interestpod.co', filed a counter notice and made a sworn statement *under the penalty of perjury* that their content and listing had been removed as a result of a mistake or misunderstanding.

This exhibits the Respondent's knowledge and understanding of their alleged infringement.

Evidence of DMCA counter notice from 'https://interestpod.co' to Shopify, dated 24th January 2024, is provided at ***Evidence List, Document Z.***

17. Ms Walters was previously unaware there was a facility to further protect her work in the USA and what was required prior to a case being filed with the United States Copyright Claims Board.

18. On 24th January 2024 Ms Walters certified the protection of the work further against plural versions of her poem ("*Our" instead of "My"*), with 'protectmywork.com'.

The list of countries applicable to this Copyright Protection and relevant to this claim against the Respondent include; the United Kingdom, United States of America, Vietnam and Singapore.

Evidence of a screenshot of Copyright protection certificate (plural versions), dated 24th January 2024 of Mr Walters' poem is provided at ***Evidence List, Document AA.***

19. On 26th January 2024 Ms Walters registered the Copyright for this poem with the United States Copyright Office. The Copyright certificate acknowledged creation of the poem (work) in 2016 and date of first publication on 24th January 2017. Evidence of a photograph of certificate of Ms Walters' poem US Copyright protection registration is provided at ***Evidence List, Document AB.***

20. Ms Walters was also unaware that in order to register a claim with the Copyright Claims Board, she had to find a verifiable service address within the United States of America in order to serve the Respondent with proof of service.

21. Enquiries reveal the US address for 'https://interestpod.co' to be: [redacted] [redacted] MO 63640; however this address is just a mailing house.

22. The address provided by the Respondent on the 'counter notice' to the DMCA is: [redacted] Hoang Mai, Ha Noi, 10000, Vietnam.

23. Further research has revealed that https://interestpod.co was part of another US registered Limited Liability Company - namely 'IdeasGreatest LLC'.

24. When Ms Walters typed the word 'InterestPodaz' into the Google search engine, the search bar redirected to 'www.ideasgreatest.com'. The layout of the website, font and picture used and items being sold, were all fundamentally similar to that of 'https://interestpod.co'; with *practically identical* 'About Us' information.

Evidence of copy of email, dated 24th August 2024, sent to Copyright Complaints Board showing 'www.ideasgreatest.com' 'About Us' section on website versus 'https://interestpod.co' 'About us' section on website, is provided at ***Evidence List, Document AC***.

25. On 30th September 2024, there is now no online presence of a website or Shopify store 'www.ideasgreatest.com'.

26. 'IdeasGreatest' is now trading on two websites: 'https://interestpod.co' *and* 'www.interestpod.com'. 'www.interestpod.com' lists its contact details as 'hello@ideasgreatest.com' and refer to its customer service team as 'Interestpodaz'.

Evidence of a screenshot of 'InterestPod.com' website 'contact us' page showing link between, 'InterestPodaz' and 'IdeasGreatest', dated the 27th September 2024 is provided at ***Evidence List, Document AD.***

27. Both sites ('https://interestpod.co' and 'www.interestpod.com') have the same 'InterestPod' logo and the same contact information/addresses at the bottom of the 'About Us' section of their websites in the 'Get in Touch' section.

Evidence of a screenshot of website 'www.interestpod.com' with 'InterestPod' logo, dated 1st October 2024, is produced at ***Evidence List, Document AE***.

Evidence of a screenshot of website 'https://interestpod.co' with 'InterestPod' logo, dated 30th September 2024, is produced at ***Evidence List, Document AF***.

Evidence of a screenshot of website 'www.interestpod.com' 'About Us' and 'Get in Touch' sections, dated 1st October 2024, is produced at ***Evidence List, Document AG***.

Evidence of a screenshot of website 'https://interestpod.co' 'About Us' and 'Get in Touch' sections, dated 1st October 2024, is produced at ***Evidence List, Document AH***.

28. There is a strong indication and likelihood, prior to removal of the listing, Ms Walter's poem was being sold on blankets in a multitude of versions on 'https://interestpod.co' and IdeasGreatest.com (now www.interestpod.com).

29. The Respondent first began trading as 'https://interestpod.co' in '2021'.

Evidence of a screenshot showing the date 'https://interestpod.co' began trading as a company in 2021, is provided at ***Evidence List, Document Item AI.***

30. On 9th February 2024 Ms Walters filed a case with the United States Copyright Claims Board, having satisfied their requirements for onward service of the claim.

31. The use of Ms Walters' poem on blankets devalues her brand significantly. Since Ms Walters created this poem, she has been careful to use the poem on quality, high-end products and materials. When the poem is copied, Ms Walters has no control over quality or customer service. Unauthorised individual use/copying of Ms Walter's poem can create a negative reflection upon Ms Walters, her company and her brand.

32. The value of the poem is in its originality; therefore when the poem is widely available, it devalues the products Ms Walters sells. Illegal use of Ms Walters' poem inhibits the ability of Ms Walters to sell the licence for the poem.

Ms Walters does offer a 12-month licencing option to companies to use the poem at her discretion; at a cost of £1,500 (GBP) or $2008 (approx.)

Evidence of poem licence sold, along with restrictions for usage and pricing, is provided at ***Evidence List, Document Item AJ.***

33. Ms Walters confirms she has no business relationship, nor has she ever had any form of relationship with the Respondent to this claim. Ms Walters is able to confirm she never had any direct or indirect communication with the Respondent in any way whatsoever; prior to discovering this Copyright infringement and engaging with the US Copyright Claims Board process. Ms Walters confirms the Respondent does not have a licence or any specific permission, written or otherwise, to use this poem.

34. In the absence of information being provided by the Respondent and without any specific information of how long they have been selling the product bearing Ms Walters' poem, it is largely impossible know precisely how much profit the Respondent would have made from the use of Ms Walters' poem.

35. The minimum price of one identical blanket sold by the Respondent is **$39.95** the maximum price of one blanket being sold was **$84.95**

36. Assuming the Respondent sold one blanket per week, across their entire range and varieties of blankets sold, they would have made in excess of **$8,300**. This does not take into account the use of Ms Walters' poem on other products sold by the Respondent such as mugs, canvases and prints.

37. If the Respondent would have purchased a licence each year for four years (2021, 2022, 2023 and 2024), this would have cost them in excess of **$8,000**.

38. On that basis, Ms Walters would seek to recover statutory damages of $5,000.

Legal obligations

39. Ms Walters is aware of relevant US case law *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991):

To succeed on a claim for Copyright infringement, on the balance of probabilities, she must be able to provide clear evidence to the Copyright Complaints Board of:

- Ownership of a valid Copyright and
- Copying of constituent elements of the work that are original.

40. Courts have wide latitude to determine the scope of a statutory damages award and there need not be a direct correlation between statutory and actual damages. *Psihoyos v. John Wiley & Sons, Inc*., 748 F.3d 120, 127 (2d Cir. 2014).

41. An award may be in such amount "as the court considers just." 17 U.S.C. § 504(c)(1); *see also* 17 U.S.C. 1504(e)(1)(A)(ii)(stating that statutory damages in CCB proceedings "shall be determined in accordance with section 504(c)"); *F.W. Woolworth Co. v. Contemporary Arts, Inc*., 344 U.S. 228, 233 (1952).

Closing comments

42. Ms Walters' poem was first listed as independently sold on 24th January 2017. Some five years after this date, the Respondent, IdeasGreatest LLC, began trading products on 'www.interestpod.co' in 2021. This would have been the earliest time they could have sold a blanket exhibiting Ms Walters' poem. This provides reliable irrefutable evidence that the Respondent could not have written the poem subject to Copyright infringement in this case.

43. The blankets being sold by the Respondent are commonplace online and identical blankets are sold by other retailers. The only differentiating factor which makes them more attractive to purchase, at such an inflated price, is Ms Walters' poem.
The profit margin the Respondent has benefitted from has undoubtedly been greatly enhanced by the use of Ms Walters' poem.

44. In this case, Ms Walters has provided a comparable invoice showing an online one-year licence fee to use her poem; to the amount of £1,500 ($2,008).

45. The Respondent has never purchased any licence from Ms Walters, nor communicated with Ms Walters in any regard requesting rights of access to the licence, in order to use and publish Ms Walters' poem on their products.

46. It has been demonstrated the Respondent advertised Ms Walters' poem on blankets for other relatives (father, grandmother etc); a clear further infringement of Ms Walters' poem by the Respondent.

47. There appears to be no lawful defence to the Respondent's usage of Ms Walters' poem; either by implied licence, or that the Respondent made no financial gain from the use of Ms Walters' poem on their product.

48. In this case and from the information provided, there is clear evidence to demonstrate

- Ms Walters' creation and ownership of the poem and
- The Copyright infringement of Ms Walters' poem/work by the Respondent was an intentional act - not merely an oversight.

49. It is relevant to point out; since 'IdeasGreatest LLC' were served with notice of Copyright infringement, they have removed that internet site and reopened in 'www.interestpod.com'.

50. If any of the factual information provided by Ms Walters is to be contested, then within the confines of the Copyright Claims Board adjudication process, Ms Walters would reserve the right to request a hearing.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Helen Walters **3rd October 2024**