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COPYRIGHT CLAIMS BOARD DOCKET NO.: 23-CCB-0211

JOSEPH ROONEY, Claimant,

v.

ALEXANDRA VON PARIS, and ROUTE ONE APPAREL, LLC, Respondents.

CLAIMANT'S REPLY TESTIMONY

I. INTRODUCTION AND PROCEDURAL OBJECTIONS

A. Improper Introduction of Evidence

1. Respondents' defense rests almost entirely on evidence not produced during

discovery, specifically:

- Exhibits 4, 5, 6, 7, 22, 23, and 25 form the cornerstone of their public domain defense yet were never disclosed
- Exhibit 4, 5, 6, 7, 23, and 25 are clearly dated as either 10/15/2024 or 10/22/204 which is after discovery closed on July 29, 2024
- Marketing images on page 11 of their response were withheld during discovery
- Exhibit 22 does not show a date but was not included in discovery
- These exhibits form the basis for their key public domain and sales arguments

2. This improperly introduced evidence must be stricken because:

- Violates CCB discovery procedures
- Prevents fair opportunity to challenge or rebut
- Undermines fundamental fairness of proceedings
- Forms basis of Respondents' primary defenses

B. Three Elements of Copyright Infringement

3. Originality of Work:

- Created unique narrative linking heritage to modern use
- Original selection and arrangement of elements
- Creative transformation of generic concepts into specific marketing message
- Distinctive flow connecting product history, utility, and instructions
- Respondents unable to challenge originality with admissible evidence
- Their copying demonstrates Work's unique value

4. Access (Undisputed):

- Respondents admit access during business discussions
- Direct evidence shows sharing through proper channels
- Discovery responses confirm access
- Initial discussions were facilitated through the proper channels with McCormick representative Rob Johnson
- Professional experience makes them aware of proper procedures

5. Substantial Similarity:

- Nearly identical text with only minor changes
- Same sequence and structure throughout
- No evidence of independent creation from the Respondent's creative team
- No drafts or emails showing Respondent’s writing process
- No documentation of creative development
- Experienced creative team yet chose to copy rather than create

II. REBUTTAL OF SPECIFIC DEFENSES

A. Merger Doctrine Defense Fails

6. Multiple Ways to Express Same Ideas:

- Other Old Bay products use different marketing language
- Industry examples demonstrate various approaches
- Their creative team is capable of original expression but chose to copy instead of create
- No necessity to copy exact arrangement

7. Work Contains Protectable Expression:

- Unique narrative structure
- Creative combination of elements
- Original flow and presentation
- Distinctive voice and style
- Protected creative choices in arrangement

B. Joint Work Defense Conclusively Fails

8. No Evidence of Joint Authorship:

- Emails show independent creation by my team and finalization
- No creative contribution from Respondent
- Business discussions focused on manufacturing, not joint ownership or product development
- Timeline proves independent development

- Their claim is contradicted by their own behavior - no ownership claimed until litigation

9. Business Discussions ≠ Joint Authorship:

- Manufacturing agreement discussions do not create copyright ownership
- Standard industry practice distinguishes creative rights from production
- No documentation of any creative input
- Their sophisticated business operations make lack of documentation telling
- Clear distinction between manufacturing rights and creative ownership

C. Trademark Arguments Are Irrelevant

10. Distinct Forms of IP Protection:

- First, this is a copyright case, not a trademark case
- Trademark license does not grant copyright rights
- Old Bay® trademark usage distinct from creative text
- License to use trademark doesn't include right to copy marketing materials
- Professional experience demonstrates their understanding of IP rights and awareness of the distinction between trademarks and copyrights

11. Side-by-Side Comparison Proves Copying:

Registered Work - Registration No. TXu 2-329-132:

For over 75 years, OLD BAY has been a Chesapeake Bay area custom that has been used to spice up seafood, meats, salads, french fries and much more. Now with OLD BAY Mini, you can use this time-honored seasoning anywhere, anytime, to battle bland food. Simply clip OLD BAY Mini to your keychain, backpack, or purse and you're ready to go. And with the enclosed mini funnel, refilling is a breeze! OLD BAY Mini — an on-the-go tradition!

Respondents' Text From Marketing On Packaging And Online:

For over 75 years, OLD BAY has been a Chesapeake Bay area custom that has been used to spice up seafood, meats, salads, french fries, and much more. Now with OLD BAY To Go, you can use this time-honored seasoning anywhere, anytime, to battle bland food. Simply clip OLD BAY To Go to your keychain, backpack, or purse and you're ready! OLD BAY To GO - an on-the-go tradition!

For over 75 years, Old Bay has been a Chesapeake Bay area custom that has been used to spice up seafood, meats, salads, french fries, and much more. Now with Old Bay Travel Tin, you can use the time-honored seasoning anywhere, anytime, to battle

bland food. Simply Clip Old Bay Travel Tin to your keychain, backpack, or purse and you're ready!

Key Points of Copying:

- Identical opening phrase
- Same sequence of product uses
- Identical "battle bland food" phrase
- Same portable use description
- Nearly verbatim clipping instructions
- Only minor change is product name

D. Statute of Limitations Defense Fails

12. Timely Filing and Continuing Violations:

- Discovered infringement March 2021
- Filed June 19, 2023 within three-year period
- Each sale represents new violation
- Ongoing inventory shows continuing infringement
- Pattern of behavior shows deliberate continuation
- Removal of product and emails demonstrate awareness of infringement

E. Fair Use Defense Comprehensively Fails

13. Purpose and Character of Use:

- Purely commercial exploitation
- No transformative elements
- Direct market competition
- Same context and purpose
- Substantial profits ($208,415.38) demonstrate commercial nature

14. Nature of Protected Work:

- Creative marketing expression
- Original narrative structure
- Unique arrangement of elements
- Protected form of expression
- Type of work copyright law specifically protects

15. Amount and Substantiality Used:

- Nearly complete verbatim copying
- Used "heart" of creative expression
- Minimal changes only to product name
- Copied entire structure and flow

- More taken than necessary for any legitimate purpose

16. Market Effect:

- Direct market substitution
- Destroyed other licensing opportunities with licensees through McCormick that were presented and introduced to me by Rob Johnson
- Blocked access to McCormick network
- Saturated market
- Permanent damage to business relationships

III. DAMAGES ANALYSIS

17. Documented Impact:

The Respondents' decision to reproduce the Work verbatim on their product packaging and marketing materials is strong evidence of the Work's commercial value and importance in driving sales. Experienced marketers like the Respondents do not simply copy another party's creative content word-for-word unless they recognize its distinct ability to appeal to consumers and increase market demand.

The Respondents' choice to forgo creating their own original marketing and instead appropriate the protectable elements of the Work suggests they understood the unique sales-generating power of the copyrighted expression. This undermines any claims that the Respondents' profits were solely due to the broader Old Bay brand recognition, rather than the specific creative work I produced. The Respondents' actions demonstrate the commercial significance and market impact of the infringed Work.

- 12,828 units sold
- $208,415.38 gross revenue
- $102,643.39 net sales
- 1,637 units in current inventory
- Each sale is a separate infringement

18. Calculated Damages ($104,971.37):

- Direct royalties lost: $20,528.68

- Lost licensing opportunities: $31,823.00
- Future market harm: $50,000.00
- Ongoing inventory infringement: $2,619.69

19. Market Impact:

- Severed McCormick relationships.
- Lost access to distribution network.
- Damaged professional reputation
- Blocked future opportunities with other McCormick licensees that were presented to me by Rob Johnson.
- Long-term industry impact

IV. CONCLUSION

20. Evidence Overwhelmingly Supports Infringement:

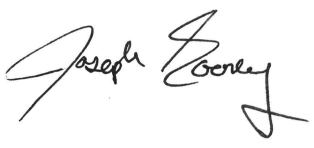
- Valid copyright with clear originality
- Admitted access
- Nearly identical copying
- No independent creation
- Continuing violations
- Pattern of deliberate infringement
- Recognition of wrongdoing through product removal
- Sophisticated business operations make conduct egregious

21. Requested Relief:

- Strike improperly introduced evidence
- Find infringement
- Award maximum actual damages of $30,000
- Order cessation of remaining inventory sales
- Protect against future use
- Recognize need for deterrent damages

Dated: November 13, 2024

Respectfully submitted,



/s/ Joseph Rooney

Proof of Delivery

I hereby certify that on Wednesday, November 13, 2024, I provided a true and correct copy of the Reply Written Testimony to the following:

Route One Apparel, LLC, represented by Rajkumar Vinnakota, served via ESERVICE at ahegedish@coleschotz.com

Alexandra Von Paris, represented by Alexandra Von Paris, served via MANUALEEMAIL

Signed: /s/ Joseph Rooney