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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.

RESPONDENTS' REQUEST TO FILE SUR-REPLY

Dated: November 13, 2024

COLE SCHOTZ P.C.

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Respondents, Alexandra Von Paris and Route One Apparel, LLC (the "**Respondents**"), by and through their undersigned attorneys, hereby request permission to file a Sur-Reply to respond to the Claimant's Reply Testimony (the "**Claimant's Reply**") [Dkt. No. 97] and ensure the record in this case is clear. In support, Respondents state as follows:

RESPONDENTS' REQUEST

While Respondents understand that the briefing schedule before the CCB generally ends with the Claimant's Reply, the Respondents request permission to file a 2-to-3-page Sur-Reply solely to address the erroneous (or false) statements on the first page of Claimant's Reply regarding what the Respondents produced in discovery. For example, Claimant expressly misrepresents the Respondents' production by stating:

> Respondent's 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.

See Claimant's Reply at 1 (emphasis added).

Contrary to Claimant's representations, the Respondents provided the screenshots and/or website addresses for **Exhibits 4, 5, 6, 7** in Interrogatory Answer No. 5 (*See* Answers to Interrogatories pp. 6-7), and the data and reference to the publicly filed 10-k in **Exhibit 22** in Interrogatory Answer No. 15(c) (*See* Answers to Interrogatories pp. 6-7, 12-13). Moreover, **Exhibits 23 and 25** (and the images on page 11 of the Respondents' Statement) are rebuttal exhibits used to rebut arguments raised by Claimant in Claimant's Statement for the first time which were not described in the Claim itself. They are simply screenshots of Respondents' website and publicly available ads and articles about Old Bay which Respondents found

contemporaneous with the filing of Respondents' Statement. Indeed, Claimant notes the burn-line dates at the top of 10/15/24 and 10/22/24 which indicate the dates they were printed from the internet. They were clearly not found before the discovery deadline and withheld as Claimant falsely alleges. In fact, the Claimant has turned the circumstances on their head. The Respondents contend that Claimant took the language at issue in this case directly from Exhibits 4, 5, 6, and 7 to create his work. So it is the Claimant who should have produced the images in discovery, but presumably he failed to do so because he has can't admit that he took the language which was already in the public domain.

Accordingly, Claimant's contentions are incorrect or false. Even if the CCB believes the Respondents' should have supplemented in some way, the Claimant was not harmed. Respondents' Answer to Interrogatory No. 5 not only contained the subject exhibits, but it laid out the public domain defense in detail. In addition, Claimant fails to even allege in the Claimant's Reply that he was not aware of these publicly available websites or how he was harmed -- because he was not. He had ample opportunity in the weeks leading up to the filing deadline for the Claimant's Reply to challenge or rebut. The Respondents' wish to file a Sur-Reply to provide the CCB the Answers to Interrogatories and production references which support their position.

Proof of Delivery

I hereby certify that on Wednesday, November 13, 2024, I provided a true and correct copy of the Respondents' Request for Leave to File Sur-Reply to the following:

Joseph Rooney, represented by Joseph Rooney, served via ESERVICE at joe@epgdenver.com

Signed: /s/ Gary H Leibowitz