COPYRIGHT
CLAIMS BOARD

Docket number: 23-CCB-0240
November 21, 2024

Wendy Papula
CLAIMANT

v.

Celil Akgobek
RESPONDENT

PROPOSED STATEMENT OF FACTS

The parties appeared at a Merits Conference on July 2, 2024. Claimant Wendy Papula ("Papula" or "Claimant") submitted a position statement, an evidence list, and evidence on May 21, 2024. (Dkt. 18 – 28). Respondent Celil Akgobek ("Respondent" or "Akgobek") submitted a position statement, an evidence list and evidence on May 24, 2024. (Dkt. 29 & 30). At the Merits Conference, Papula and Akgobek testified. Based on the submissions and the witness testimony at the conference, the Copyright Claims Board ("Board") finds the following facts as established.

1. Wendy Papula is a graphic designer and e-commerce store owner who sells merchandise featuring her designs on Amazon, eBay, Etsy, Shopify, and her website redstatebotique.com. Merits Conference Testimony ("Conference Tr.") at 11:00-14:00.

2. Cecil Akgobek is a college student and e-commerce store owner who sells t-shirts with graphic designs on Etsy under the alias "Bliss Custom Designs." Response. (Dkt. 12); Conference Tr. at 1:17:03-1:17:14.

3. Claimant is the joint author and co-owner of an image titled "Liberal Tears Starbucks Parody," which was registered by the United States Copyright Office effective as of June 23, 2017 (Reg No VA0002100800) (the "Work"). Claim (Dkt. 1); Claimant Exhibit A (Dkt. 24). The date of first publication of the Work is February 24, 2017. (Dkt. 24).

4. The Work was created by Claimant and co-owner George Jones ("Jones") using Photoshop in early 2017 and was inspired by the Starbucks logo. It shows the traditional Starbucks circular logo, but replaces the words "STARBUCKS COFFEE" with the words "LIBERAL TEARS," replaces the two stars with two teardrops, and replaces the Starbucks mermaid with an image of a cartoon-like girl, who is wearing a hat associated with women's marches and crying. Conference Tr. at 3:45-4:08; Exhibit A (Dkt. 24) Claimant testified that Starbucks dropped a claim regarding the logo that it brought against her in 2017. Conference Tr. at 37:54:13-39:09.

5. A Board search of Copyright Office records shows correspondence between the Copyright Office and Jones. During the course of the correspondence, Jones authorized the Copyright Office to add "Material Excluded" and "Material Included" statements to the registration to further clarify that the Work included "pre-existing artwork," which Claimant described to the Copyright Office as the Starbucks Coffee Logo. Registration Record Reg No VA0002100800 available at https://publicrecords.copyright.gov/detailed-record/29874910.

6. Claimant began selling various type of mugs featuring the Work using Amazon's distribution system in March 2017. Conference Tr. at 10:35-10:57 and1:57:25-01:57:32.

7. On or around December 6, 2017, Claimant had the Work printed on t-shirts in four colors in various sizes ("2017 Wholesale Order"). *Id.* at 20:04-22:52.

8. Claimant sold the t-shirts and other merchandise such as magnets, stickers and yard signs featuring the Work primarily on Amazon under the store name "Funny Political Times." Claimant also sold merchandise on other platforms, including Etsy, eBay and the Claimant's website redstatebotique.com (*Id.* at 26:00-29:56) but also sells merchandise under the aliases "Official Liberal Tears" and "Red State

Boutique." *Id.* at 11:19-12:25.

9. Claimant testified that they sold approximately 1,000 t-shirts from the 2017 Wholesale Order based on information in the receipt from the manufacturer. *Id.* at 30:41-32:07. From 2017 until 2020, Claimant charged between $34.99 and $38.99 per t-shirt. *Id.* at 47:04-47:45.

10. Claimant continued to sell the t-shirts displaying the Work until approximately January 2019. *Id.* at 27:00-28:28. Claimant testified that sometime in 2019, she stopped ordering wholesale t-shirts and was attempting to sell her remaining inventory on Etsy, eBay, and her website. *Id.* at 27:53- 28:49. At some point in 2020, Claimant began selling merchandise displaying the Work on Shopify. Conference Tr. at 29:28-30:15.

11. In 2020, Claimant reduced the price of the t-shirts to $22.99 in an effort to sell the remaining inventory. *Id.* at 28:00-29:01; 47:23-48:16. Claimant testified that currently she only has one or two sizes left in stock. *Id.* at 43:18- 43:28.

12. Claimant did not produce any records or documents showing sales of merchandise featuring the Work during discovery because she stated that she does not want to reveal her business records to Respondent or the public. *Id.* at 17:17; 32:12-32:44. As such, Claimant has presented no evidence besides her own testimony related to sales.

13. During the Merits Conference, Papula testified that she understood the potential implications of not providing the records:

> "I understand. I believe it is irrelevant. Obviously, there is not much of a financial award for this infringement and you [the Board] had noted that this information would be public and I'm just not willing to do that. I'm not interested in disclosing our business model out for others… it's not information I'd like public."

Id. at 17:31-19:20.

14. Claimant regularly patrols various sales platforms for potential infringement. Claimant testified that she reviews e-commerce platforms including Etsy for infringement and contacts alleged infringers. When necessary, Claimant also sends DMCA takedown notices to alleged infringers. *Id.* 49:13-49:31, 1:07:27-1:09:35.

15. Respondent testified that he searches Etsy for downloadable graphic designs he can license and sell on t-shirts. Once he finds a desirable design, he claims that he checks the listing to make sure that it includes a licensing for commercial use. He then purchases the design, and with the help of his uncle in Turkey, creates an Etsy listing for the t-shirt using Photoshop to manipulate the images he purchases. *Id.* at 1:27:40- 01:27:47. After an order has been made, the Respondent uses a print of the design to heat-press it onto t-shirts. He then sends the custom t-shirt to his customer. Response (Dkt. 12); Conference Tr. at 1:25:23-1:28:34.

16. Respondent does not contest the fact that he used the Work on t-shirts but alleges that he thought that he legally obtained a copy of the Work. He testified that he purchased a downloadable file with the "Liberal Tears Parody" design from the Etsy store "TheHogansArts" for $2.20 on or about May 24, 2023. Respondent Evidence, Exhibit F, at page 4; Conference Tr. at 1:20:13-01:22:46; 1:33:09-1:33:29.

17. Respondent alleges that "TheHogansArts" listing included a license for commercial use but says he no longer has a copy of the listing and can provide no other details about it. Conference Tr. at 1:21:34-1:23:03; 1:25:15-1:26:45; Respondent's Interrogatory Responses, submitted as Claimant Evidence, Exhibit H at No. 2 and 4 (Dkt. 27).

18. Respondent submitted a May 24, 2023 email from Etsy which he calls a "Receipt screenshot showing respondents purchase of the design from Etsy" regarding his alleged purchase of the graphic from "TheHogansArts." Respondent Evidence

List at 1 (Dkt. 29). However, the email itself, titled "An update on your recent order," states that the purchase of the design "was unable to be completed," and is not the actual receipt for his purchase of the design. Respondent Evidence, Exhibit F; Conference Tr. at 1:20:13-1:22:51.

19. Respondent did not submit a confirmation or receipt of purchase or license for use of the Work from "TheHoganArts" as evidence. Conference Tr. at 1:22:11-1:22:21. He, in fact, testified that Etsy does not send confirmation of purchases or receipts to customers. Conference Tr. at 1:31:18-1:31:24**.**

20. After the Mertis Conference, the Board ordered the Respondent "to do a reasonable search for any confirmation email or receipt for the digital download purchase at issue." Copyright Claims Board Docket Note (Dkt. 34). On July 20, 2024, the Respondent filed a sworn statement that affirmed he conducted a search and contacted Etsy, but was unable to produce a confirmation or receipt. Respondent's Statement (Dkt. 35).

21. Respondent testified that he listed the Work for sale for two weeks between May 25, 2023, and July 13, 2023. Conference Tr. at 1:32:56-1:37:34.

22. Respondent testified that during that period he sold one t-shirt featuring the Work for $17.49 and incurred a cost of $4.00 for the t-shirt. Conference Tr. at 1:28:41-1:28:55; Respondent's Position Statement at 1 (Dkt. 30); Respondent's Evidence, Exhibit E (Dkt. 29).

23. On July 13, 2023, Claimant sent a DMCA takedown notice to Etsy alleging that Respondent's t-shirt listing was infringing the Work. Claim Attachment (Dkt. 1).

24. On July 17, 2023, Respondent submitted a counternotification to Etsy stating that Respondent affirmed that "the material was removed or disabled by mistake or because of misidentification of the material." *Id.* After Respondent filed his

counternotice, Etsy restored the material that had been taken down (Interrogatory Responses, submitted as Claimant Exhibit H at No. 11), but he later voluntarily removed his live t-shirt listing shortly before he received the Claim from Claimant. Claimant Exhibit G (Dkt. 20); Conference Tr. at 1:34:34-1:34:58. It appears that the listing still appears on Etsy although it is not live. Conference Tr. at 2:03:35-2:04:13.

25. After receiving the counternotice, Claimant filed this claim on July 17, 2023. Claim (Dkt. 1).

26. Claimant testified that Respondent's listing caused her stores harm because Respondent's listing drove internet traffic to Respondent's listing instead of hers because "he had a better price. So, Etsy pushed that higher because Etsy makes the commission off of every sale that's made on their platform. They push what they think will sell faster." Conference Tr. at 40:11- 42:26. She also testified that her business was hurt because there is a counternotice on Etsy that states that she filed a fake copyright infringement notice. Conference Tr. at 2:05:03-2:10:08.

27. Claimant testified that "at the time of infringement we only had two sizes of the design in stock in two colors…So he couldn't have hurt our [t-shirt] sales on what he sold because we didn't have it in stock." *Id.* at 43:25-43:28.

28. Claimant also testified that she could not identify any monetary harm because "it is impossible to say how the infringement affected our sales." *Id.* at 44:32-44:57.

29. Claimant has requested the maximum allowable amount of statutory damages in a smaller claim, which is $5,000. Claimant's Position Statement at 1 (Dkt. 28).

30. During the Merits Conference, the Respondent agreed to permanently delete his "Liberal Tears" Etsy listing and rescind the counternotice filed on July 17, 2024. *Id.* at 2:04:00-2:05:39.

The parties have until **December 12, 2024**, to file submissions which detail which factual findings, if any, they disagree. If a party disagrees with the Board's factual finding(s), they must be specific both as to which factual finding(s) they disagree with and the evidence or testimony that contradicts that factual finding(s).

Any filing which disagrees with these factual findings must follow the procedures set forth in **§ 220.5(b)** and be limited to five pages. Nothing should be attached to, or filed with the response because a party may only rely on evidence or testimony already submitted, unless the presiding officer grants leave to do so. More information is available on page 9 of the **Smaller Claims Chapter** of the CCB Handbook.

Copyright Claims Board