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RESPONSE PARTY STATEMENT OF LILY MARSTON AND JESSICA VAZQUEZ

Case Name: Braun IP Law, LLC v. Lily Marston and Jessica Vazquez

Docket Number: 23-CCB-0404

I. Introduction & Background

1. Lily Marston and Jessica Vazquez ("Respondents") submit this response to Braun IP Law, LLC's ("Claimant") Opening Party Statement.
2. Respondents are the hosts of the podcast Do We Know Them?, which provides commentary on current events with a primary focus on internet drama. With over a decade of experience as content creators, the podcast offers a distinctive perspective by blending our insider knowledge of the digital industry with our insight as avid consumers of internet culture. Each episode is crafted using a variety of assets, including video clips and social media content, to enrich and drive the discussion. By incorporating both of our opinions and relevant materials—often including firsthand accounts directly from the sources being discussed—the respondents strive to present an honest, balanced, and engaging narrative that informs, entertains, and resonates with our audience.
3. The present copyright dispute arises from the Claimant's assertion that Respondents' use of a 1-minute portion of Claimant's 8-minute and 38-second TikTok video constitutes copyright infringement. Claimant alleges that this use falls outside the bounds of fair use, seeks statutory damages, and claims harm to both the marketability of her content and her professional reputation.
4. The claims for damages are speculative, unsupported by credible evidence, and grossly inflated. Claimant's attempts to assign disproportionate value to a brief excerpt of her work

are contradicted by analytics, lack of documented harm, and evidence of her own misrepresentations. The Respondents respectfully request that the Board dismiss the Claimant's allegations in their entirety.

5. Respondents contend that their use of Claimant's work is a clear example of fair use as defined under 17 U.S.C. § 107, given its transformative nature, limited scope, and the absence of any adverse effect on the market value of Claimant's original content.
6. Throughout the course of this proceeding, Claimant has failed to substantiate many of her key allegations, relying instead on speculative claims and unsupported assertions. Respondents respectfully request that the Board evaluate these deficiencies when assessing the merits and motive of Claimant's case.

Background on Claimant's "work" and Respondents use of it:

7. The content at the heart of this dispute is a TikTok video created and published by the Claimant in response to allegations regarding her professional conduct as an intellectual property lawyer. (Exhibit A)
8. Unlike her typical legal commentary which focuses on general education and analysis, (Exhibit C & Exhibit D), this video addresses specific accusations raised against her. The nature and subject matter of the video are inherently personal and niche, making it unlikely to have broad market appeal or licensing potential.
9. Respondents' podcast episode in question, (Exhibit B) provided commentary and critique on the broader implications of Claimant's actions, including the allegations that prompted Claimant's creation of the work being discussed in this case. Respondent's use of Claimant's work was limited to approximately 1 minute and 1 second, or 11.78% of the complete work. This portion was used to provide context for this discussion, accompanied by transformative

commentary and analysis throughout. This leaves over 7 minutes and 37 seconds of her work that was not used.

II. Response to Key Facts and Allegations

Validity of Copyright

10. While Respondents do not dispute the validity of the copyright registration, copyright registration is not determinative in a fair use analysis, which evaluates how the copyrighted material was used rather than the status of the registration.
11. Additionally, its timing raises questions about Claimant's motivations. Not only did Claimant register the work days after Respondents' podcast episode aired (see Exhibit F), it is notable that this would be the first time the Claimant had ever registered a copyright for any of her TikTok content or for works outside of branding material for her law firm (Exhibit G). These factors suggest Claimant's decision to register her work was a reactionary effort to bolster her infringement claims rather than a proactive attempt to protect intellectual property.

Use of the "Heart of the Work"

12. Claimant's repeated assertion that Respondents used the "heart" of her work is inaccurate. The excerpt—approximately 1 minute of a nearly 8-minute video—was selected solely to provide necessary context for critique. This limited portion cannot reasonably be considered the heart of her work, as it simply introduced the subject of the work, which is then expanded upon in the remainder of the video that was unused. Furthermore, in no way could the respondents' work be considered a substitute for the claimant's original work.

Claim of Market Overlap & Harm

13. Claimant asserts that Respondents and Claimant share the same market audience simply because both publish content online and generate revenue. This argument is fundamentally flawed and unsupported by evidence.
14. Respondents' podcast caters to a specific demographic—primarily young adults interested in long-form discussions of internet drama and online controversies. (Exhibit J) In contrast, Claimant's TikTok content consists of short-form legal commentary targeted at individuals seeking education on intellectual property law or advice on social media-related legal issues. (Exhibit C & D) These two audiences have fundamentally different motivations and interests, making any significant market overlap improbable.
15. Claimant attempts to equate Respondents' advertiser-driven revenue model with her alleged licensing income, despite these being entirely separate forms of monetization. Respondents' revenue is derived from ad placements within long-form, original content.
16. By Claimant's own admission, Claimant is not part of TikTok's Creator Fund and earns no direct revenue from the platform. This was explicitly stated by the Claimant in a recorded call with the CCB.
17. It can be assumed that any income Claimant earns from her TikTok videos is solely through potential business generated for her law practice and/or outside licensing agreements for which she has failed to provide adequate supporting documentation.
18. Claimant's claim of market harm is speculative, misleading, and unsupported by evidence. Respondents' use of the segment did not serve as a substitute for the original work, nor did it diminish its market value. To the contrary, analytics show that the episode increased visibility for Claimant's content, which experienced higher engagement following the Respondents' use. (see Exhibit H and Exhibit I)

Claimant's Persistent Attempts to Override YouTube's Fair Use Determinations

19. Though she would eventually succeed in getting the content removed, (Exhibit Q) Claimant has failed to address the fact that YouTube had not only initial denied her requests to have our content removed, (as seen Exhibits O & R) but even after they had removed the content, they ultimately reversed their decision and moved to reinstate both of the videos as well as remove the strikes that had resulted from the Claimant's persistent requests. (Exhibit P)
20. While we acknowledge that YouTube is not a judicial body and cannot definitively determine fair use, its position as an impartial platform that routinely evaluates copyright claims under fair use principles is relevant.

December 3, 2023: Claimant submits her initial takedown request regarding Respondents' episode featuring her TikTok content (Exhibit R).

December 4, 2023: YouTube requests more information from Claimant, stating concerns that her request may not be valid and noting potential fair use protections (Exhibit R).

December 6, 2023: YouTube again requests more details, referencing the potential of fair use for transformative purposes such as commentary and critique (Exhibit R).

December 7, 2023: Claimant appears to submit a second takedown request for the same content, explicitly stating her belief that no fair use applies and also now including details of a recently filed copyright registration (Exhibit P).

December 8, 2023: YouTube declines Claimant's initial request to take down the video, citing fair use (Exhibit O).

December 8, 2023: Claimant sends an email threatening litigation, accusing YouTube of overstepping its authority to determine fair use (Exhibit R).

December 8, 2023: Respondents receive notice that the content (Ep. 97 as well as Ep 96) had been removed based on the Claimant's second takedown request, collectively resulting in two strikes being issued against Respondent's account, leaving our account in jeopardy of termination if it received one more strike (Exhibit Q).

December 12, 2023: YouTube notifies Respondents that both videos have been reinstated and the strikes removed, citing that the second takedown request was invalid and affirming their belief in the content's protection under fair use (Exhibit P).

21. YouTube's consistent rejection of Claimant's initial takedown efforts demonstrates a thorough evaluation process that weighed the transformative nature of Respondents' content.
22. Claimant's repeated efforts to bypass YouTube's fair use determinations—culminating in a second takedown request with new arguments—underscore her unwillingness to acknowledge any perspective contrary to her own.
23. Claimant's repeated challenging of YouTube's determinations, along with her threats of litigation, only further demonstrate her attempts to censor critical commentary, which was the exact behavior in which our content she attempted to remove was highlighting, .
24. YouTube's final decision to reinstate the content and remove the strikes, coupled with a direct message from their Community Outreach Team apologizing for the error, reaffirms that Respondents' use of the content aligns with established fair use principles as outlined in YouTube's overview of Fair Use on their platform (Exhibit T).

III. Response to Damages

Unsubstantiated Licensing Agreements

25. Claimant is asking the CCB to assume that all her content is worth $7,500 per video based solely on vague example agreements. (Exhibit W) Claimant has failed to provide any financial records to substantiate her claim that the agreements were executed or that any payment was received, making these agreements mere hypothetical assertions, not evidence of actual financial harm.
26. Furthermore, unlike her general legal commentary, which could be considered to have a broader appeal, the content Respondents used strayed from Claimant's normal content as it was a personal rebuttal to allegations about Claimant's professional ethics and conduct. It is highly niche and unlikely to attract interest from potential licensees.
27. Additionally, not only has Claimant failed to demonstrate that anyone expressed interest in licensing the specific work referenced in this case, but has failed to provide any verifiable proof that suggests anyone has ever actually paid her this grossly inflated price to license one of her videos.
28. Notably, the example agreement provided by Claimant to serve as proof of these alleged licensing agreements does not even properly identify the content in which it is licensing, but rather relies solely on nondescript TikTok links with no further context or description of the content they are linking to. (Exhibit W)
29. This is especially problematic due to the fact that three out of the five works allegedly "licensed" in Claimant's sample agreements are represented by nothing more than defunct TikTok links, rendering the agreement effectively useless as there is no way of attributing the agreement to any specific content based on the agreement itself. (Exhibit W)
30. In addition to providing no financial evidence to support the $7,500 price tag of Claimant's videos, the agreements also include a provision allowing "in lieu of cash payment, MEDIA

may provide its services to ARTIST in the amount due to ARTIST," suggesting this agreement does not even require direct monetary compensation. If Claimant cannot demonstrate cash payment, the alleged licensing fees lack credibility as a basis for calculating damages. (Exhibit W)

31. Despite Claimant's assertion that her content holds exclusive licensing value, the agreements provided are explicitly non-exclusive. Claimant granted the licensee the right to modify and even register copyrights for the modified works, creating potential conflicts if she intended to license the same content to others. (Exhibit W) This undermines the plausibility of her claim that each video is consistently valued at $7,500 as well as the claim that our use of her content "destroys" its value.
32. Furthermore, Claimant attempts to inflate the value associated with her content by assigning value to generic TikTok features like editing tools and music libraries, which are accessible to all users and irrelevant to market harm claims.

Episode Revenue

33. Claimant references Respondents' revenue from the episode in question—$4,226.61—but deliberately omits critical analytics that would provide proper context:
34. At the time of discovery, the episode had garnered 204,334 views, with 76.8% (156,879 viewers) being subscribers to Respondents' channel. The average view duration for these subscribers was 33 minutes and 59 seconds, equating to 40.4% of the episode's 84-minute runtime. Non-subscribed viewers accounted for 23.2% (47,455 viewers), with an average view duration of 29 minutes and 55 seconds, or 35.6% of the episode. (Exhibit K)

35. These metrics suggest that a significant portion of viewers did not even watch the Claimant's clip, which didn't appear until the 47:02 mark, undermining her claim that the use of her content meaningfully contributed to the episode's revenue.
36. The episode's view count and revenue is consistent with other episodes on the Respondents' channel and does not reflect an outlier in performance. (Exhibit L)
37. It is unreasonable to attribute the episode's revenue to the brief use of Claimant's content, given the transformative nature of the use and the lack of evidence that the clip impacted viewership or engagement. Claimant's damages calculation is speculative and grossly inflated, with no basis in the actual impact of Respondents' use.

IV. Fair Use Analysis

The purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes:

38. The claimant repeatedly stresses the commercial nature of our content precludes our content from a fair use defense. She argues this by citing Campbell v. Acuff-Rose Music, seemingly overlooking the part in that case that explicitly states, "The mere fact that a use is commercial as opposed to nonprofit will not always preclude a finding of fair use." This is also supported by Matt Hosseinzadeh v. Ethan Klein and Hila Klein No. 16-CV-3081 at, which ruled that using someone's work for commercial use does not inherently prevent them from lawfully being able to use said content to critique it under 17 U.S.C. § 107.
39. While our podcast does fall under commercial use due to monetization, it is important to emphasize the transformative nature of our content and how the revenue earned by our content cannot reasonably be attributed to Claimant.

The nature of the copyrighted work:

40. Claimants' citation of cases such as Warhol, 143 S. Ct. or Campbell v. Acuff-Rose Music Inc. shows a blatant disregard for both the nature of Claimant's work and our use of it, as both of these cases relied on one specific, very distinct fact - that creative work seems to have a stronger protection under fair use law than factual work.

41. Claimant has made a clear attempt to exaggerate the creative nature of her work, describing it as "a scripted and produced video that comprises set design and other artistic elements and presents the Claimant's perspective in an ongoing online dispute." There is no set - the video is a straightforward, single-shot phone recording of the Claimant seated at her desk, addressing allegations made against her. It lacks hallmarks of highly creative works, such as storytelling, artistic cinematography, or professional production.

42. Claimant states that the purpose of her original work provided two functions (1) to provide Jeanette Braun's (and Braun IP Law's) side of an online dispute between her and another online content creator, and (2) to commercially generate revenue as a piece of audio-visual media. Claimant has admitted to CCB staff during recorded calls in which respondents were present that she is not a part of the creator fund on Tiktok - therefore, it is unreasonable that Claimant would expect to have earned any money from this work from Tiktok directly, leaving the only potential measurable revenue to what would have been earned through a third party licensing the content from her directly, something she has provided zero proof to support.

The amount and substantiality of the portion used in relation to the copyrighted work as a whole:

43. The portion of Claimant's work that was featured in our content was approximately 1 minute and 1 second of her original video that has a total runtime of 8:38. That is 11.78% of her work.

44. Claimant asserts that the purpose of her content was to present her side of an online dispute yet the portion we use is simply her introductory refuting of the allegations against her and asserting she would be explaining why - but does not include any of the subsequent reasoning that makes up the remaining 88.13% of the clip that we did not include.
45. The portion of the Claimant's work that was used only made up 1 minute 1 second clip of our episode filled with our original content that has a run time of 1:24:08, coming out to be only approximately 1.19% of our episode.
46. Despite the Claimant stating that we copied the "heart" of her work, and used an "unnecessary and disproportionate" amount of her work, we'd ask that the board consider how little of this work we actually used as well as how it factored into our content in terms of amount as well as purpose.

The effect of the use upon the potential market for or value of the copyrighted work:

47. Respondents' use of Claimant's content was brief, transformative, and used solely to provide context for commentary. Furthermore, it does not act as a substitute for the original work but rather to drive discussion and critique as well as provide context. Viewers would still need to view Claimant's TikTok video to access her full argument and perspective.
48. The speculative and unsupported nature of Claimant's licensing claims fails to demonstrate actual or potential market harm caused by Respondents' use.
49. Claimant states that "both Claimant and Respondent are in the same market of online content creator and influencer by generating and publicly publishing videos on social media platforms." This could not be further from the truth. Publishing content onto social media platforms does not automatically equate to having the same market. Our content is for those interested in our long form coverage of internet drama. Meanwhile, the claimant's content provides short form legal commentary. Due to the stark difference in the nature of our

respective content, it is unreasonable to suggest that there would be a significant overlap in audience, if any.

50. Additionally, Claimant states that "Braun IP Law receives in-kind compensation from TikTok in exchange for licensing the Work". These claims are baseless and nonsensical as claimant cites articles that aren't applicable to this case (ie. music library costs when her original work features no music) or simply reference features available to all TikTok users—not something unique to Claimant or her content. These are platform perks, not direct compensation or added value to be considered for licensing her work.
51. Claimant hasn't shown that TikTok provides her with anything uniquely valuable (e.g., exclusive marketing, tailored SEO, or promotional campaigns).
52. As for direct compensation, Claimant has noted to CCB officers directly on a recorded call in which respondents were present that she is <u>not</u> a part of the Tiktok Creator program and has no direct license agreement with Tiktok - the "licensing" she is referencing to in this case is her simply agreeing to TikTok's terms and conditions, as all users have to before they can use the app's functions.

V. Conclusion

53. Respondents' use of the content was limited, transformative, and protected under the doctrine of fair use. The damages sought by Claimant are speculative, unsubstantiated, and irrelevant to the determination of liability.
54. For these reasons, Respondents respectfully request that the Board dismiss the Claimant's claims and rule in favor of Respondents.

Respectfully submitted,

Lily Marston & Jessica Vazquez

Proof of Delivery

I hereby certify that on Wednesday, December 11, 2024, I provided a true and correct copy of the Response Party Statement of Lily Marston & Jessica Vazquez to the following:

Braun IP Law, LLC, represented by Jeanette M. Braun, served via ESERVICE at docket@brauniplaw.com

Jessica Vazquez, represented by Jessica Vazquez, served via MANUALEEMAIL

Signed: /s/ Lily Marston