COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0328
January 6, 2025

Florian Sommet	*v.*	Pleasure in Life LLC d/b/a Laser Facial Miami
CLAIMANT		**RESPONDENT**

PROPOSED DETERMINATION DISMISSING PROCEEDING

The respondent, Pleasure in Life LLC d/b/a Laser Facial Miami ("PIL" or "Respondent"), has not appeared or participated in this proceeding before the Copyright Claims Board (Board), and the claim is now in default. When a respondent fails to appear in a proceeding and the Board proceeds to a default determination, the Board requires the claimant to submit written direct testimony. 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a). The claimant, Florian Sommet ("Sommet" or "Claimant"), has submitted written direct testimony upon the order of the Board. The Board has reviewed Claimant's submission and now issues this proposed default determination. 17 U.S.C. § 1506(u)(2). For the reasons that follow, the Board finds that the presented evidence is not sufficient to support a finding in favor of Claimant and proposes to dismiss the claim without prejudice.[1]

I. Procedural History

This claim was filed on September 29, 2023. Claim (Dkt. 1). The Board found the Claim compliant on that same date, and Claimant was directed to serve within ninety days. (Dkt. 2). Claimant filed a Proof of Service on October 27, 2023, stating that Respondent was served on October 24, 2023, by personal service to Respondent's Administrator, Mia Zolla, under the laws of Florida. (Dkt. 5). On November 17, 2023, and December 5, 2023, the Board notified Claimant by email that the Board could not ascertain whether Mia Zolla was an officer, a managing or general agent, or an agent authorized to receive service of process on behalf of Respondent. On December 7, 2023, Claimant filed an updated Proof of Service that stated that "[a]t the time of service, Mia Zolla who identified

[1] Dismissals in default cases are without prejudice because the applicable regulation provides: "If the Board determines that the evidence is insufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed determination dismissing the proceeding without prejudice and shall provide written notice of such proposed determination to the claimant or counterclaimant." 37 C.F.R. § 227.3(a)(2).

herself as an Administrator, informed me that George M. Mohama, Registered Agent for Pleasure in Life LC d/b/a Laser Facial Miami, was not present. However, she stated that she was authorized to accept service on behalf of George M. Mohama." (Dkt. 6). The Board sent a second notice to Respondent by mail and email on December 13, 2023. The Board did not receive an opt-out from PIL.

On December 28, 2023, the Board notified the parties that the Claim had entered the "active phase" because Respondent did not submit a timely opt-out, and it ordered Claimant to pay the second filing fee and Respondent to register for eCCB. (Dkt. 8). The Board issued this order through the online docketing system (eCCB) and also mailed it to Respondent. Claimant paid the second filing fee on January 2, 2024. (Dkt. 9). On January 11, 2024, the Board issued a Scheduling Order (Dkt. 10) and a Second Notice for Respondent to register for eCCB. (Dkt. 11). These orders were issued using the same contact procedure described above.

In the Scheduling Order, PIL was ordered to submit a response by February 12, 2024, but did not. Respondent also did not attend the pre-discovery conference held on February 28, 2024, despite the Board sending the Zoom link to the email on file for Respondent.

On March 4, 2024, the Board issued a First Default Notice (Dkt. 13) because Respondent did not meet any of the required deadlines set by the Board. The first default notice gave Respondent another thirty days to file a response and register for eCCB. *Id.* On March 18, 2024, the Board issued a Second Default Notice (Dkt. 14), reminding Respondent of the April 3, 2024, deadline to cure the missed obligations. These notices were issued using the same contact procedure described above.

Respondent did not file a response or register for eCCB by April 3, 2024. The Board has received no communications from Respondent to date. Accordingly, on April 8, 2024, the Board ordered Claimant to submit written direct testimony in support of a default determination. (Dkt. 15). Claimant submitted the required written materials on May 23, 2024, consisting of a party statement, an evidence list, evidence, and witness statements of herself and her attorney. (Dkt. 16-19). On June 13, 2024, the Board issued an order related to two issues. (Dkt. 20). The first issue was that "[w]hile Claimant has submitted evidence showing that a copy of the photograph was publicly displayed on an Instagram account of "laserfacialmiami," there appears to be no evidence in the record

connecting Respondent, Pleasure in Life LLC, to that account" and therefore, the alleged infringement in this proceeding. *Id.* The second issue was that Claimant had submitted minimal information regarding damages, namely two redacted invoices that did not appear to be fully relevant to a lost license fee in this case. Claimant was therefore given time to supplement the record on these issues. *Id.* On July 8, 2024, Clamant submitted additional evidence related to the issue of whether PIL could be held responsible for the alleged infringement and a supplemental witness statement from Claimant's attorney related to that issue and damages. (Dkt. 21-23).

II. Factual History

Sommet is a professional photographer specializing in beauty photography. Declaration of Florian Sommet ¶ 3 (Dkt. 16) ("Sommet Statement"). Sommet photographed a woman with beauty tools being used on her face and obtained a copyright registration for the photograph ("the Beauty Photograph"), from the Copyright Office with an effective date of January 29, 2021.[2] The certificate of registration states that the photograph was published on January 3, 2014.

On January 2, 2021, Sommet's licensing agency, Trunk Archive, discovered that the Beauty Photograph appeared in two separate posts on the Instagram page @laserfacialmiami. Sommet Statement ¶ 11; Exhibits C and D (Dkt. 19, at 8-11). Each of the posts included a (different) substantial part of the Beauty Photograph next to a message advertising the services of Laser & Facials Med Spa. Exhibits C and D; Sommet Statement ¶¶ 12-16.[3] After confirming that no license to use the Beauty Photograph had been granted for these uses, Sommet filed the Claim for copyright infringement with the CCB. Sommet Statement ¶¶ 18-21.

Sommet licenses the use of his photographs for a fee, which is determined by usage type, duration of use, and

[2] Sommet provided evidence of U.S. Copyright Registration No. VA 2-237-252 by submitting a copy of the Copyright Office Catalog record for a group registration of seventeen published photographs published in January 2014, with an effective date of January 19, 2021. Exhibit B (Dkt. 19, at 6); Sommet Statement ¶ 10 (Dkt. 16). The title provided in the registration is "Florian Sommet 2014 Kiki Published Photo Collection." Among the seventeen photographs included in the registration is the Beauty Photograph, which is identified in the registration record as "FLSO20150715/fsommet-nn14-kiki*/unsorted/FS_Kiki_5.tif / TRU1766987." Sommet has also submitted to the Board a copy of the Beauty Photograph. Exhibit A (Dkt. 19 at 4); Sommet Statement ¶ 8. That photograph is identical to one of the photographs deposited with the Copyright Office as part of Registration No. VA 2-237-252 and identified as "TRU1766987.jpg." Therefore, it is clear that the allegedly infringed photograph is among the works included under that registration.

[3] The advertisements also referred to the business as "Laser and Facial Beauty Clinic." *Id.* Elsewhere, the business identifies itself as Laser***s*** & Facials Med Spa. *See* https://laserfacialmiami.com/ (emphasis added).

the website or publication in which the work appears. *Id.* ¶ 21. He has submitted two heavily-redacted license invoices that his agent issued in 2018, each for the online use of a different photograph, for license fees of 5,700 euros ($5,680) for a six-month license for at least digital, website, and social media use (although some of the use allowed is redacted) and 7,490 euros ($7,464) for a three-month license allowing "all online" use. Exhibits E-F (Dkt. 19, at 13-16); Sommet Statement ¶¶ 22-26.

Lasers & Facials Med Spa is located at 3749 NE 163 St., North Miami Beach, FL 33160 and is owned by Angie and George Mohama. Supplemental Declaration of Taryn R. Murray ¶¶ 5, 9 (Dkt. 23) ("Murray Supp. Decl."); Supplemental Exhibits A and C (Dkt. 21, at 2, 7). According to PIL's listing with the Florida Secretary of State, it is also located at 3749 NE 163 St., North Miami Beach, FL 33160, its registered agent is George Mohama, and Angelica Mohama is an authorized person and manager for the business. Murray Supp. Decl. ¶¶ 7-8; Supplemental Exhibit B (Dkt. 21, at 4-5). Another limited liability company, "Lasers & Facials Franchising LLC," also has a principal place of business at 3749 NE 163 St, North Miami Beach, FL 33160 and its listing with the Florida Secretary of State has the same business information (i.e., George Mohama is its registered agent and Angelica Mohama is an authorized person and manager) as PIL. Murray Supp. Decl. ¶¶ 12-13; Supplemental Exhibit C.

III. Copyright Infringement

A. *Copyright Ownership and Infringement*

To succeed on a claim for copyright infringement, a claimant must establish: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). As noted above, Sommet has provided evidence of his copyright registration. A certificate of registration, if obtained before or within five years after the first publication of a work, is prima facie evidence both that a copyright is valid and that the registrant owns the copyright. *See* 17 U.S.C. § 410(c); *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 906 F.3d 1229, 1236 (11th Cir. 2018), *aff'd, Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255 (2020). Because Sommet's certificate of registration was issued more than five years after first publication of the Work, it is not considered "timely obtained" and subject to the Section 410

presumptions. However, Sommet has provided sufficient evidence that he was the author of the Beauty Photograph, and the Board finds that the Beauty Photograph is sufficiently original to qualify for copyright protection.

In the absence of direct evidence, copying is proved by circumstantial evidence of access to the copyrighted work and substantial similarities as to protectible material in the two works. *See, e.g., Boisson v. Banian, Ltd.*, 273 F.3d 262, 267-68 (2d Cir. 2001); *Corwin v. Walt Disney World Co.*, 475 F.3d 1239, 1253 (11th Cir.2007). However, copying can also be inferred without additional evidence of access if the allegedly infringed work and the allegedly infringing work are "so strikingly similar as to preclude the possibility of independent creation." *Herzog v. Castle Rock Ent.*, 193 F.3d 1241, 1249 (11th Cir. 1999). *See also Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 988 (9th Cir. 2017) (making an inference of copying when "the works are virtually identical").

In order to prove infringement, the claimant must also show that the allegedly infringing work is substantially similar to protectable elements of the infringed work. When "duplication is literal or verbatim, then clearly substantial similarity exists." *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065, 1074 (9th Cir. 2021) (quoting 4 Nimmer on Copyright § 13.03(A)(1)). A comparison of the Beauty Photograph, Exhibit A, and the images in the Laser Facial Instagram Posts, Exhibits C and D, leaves no doubt that each of the two posts feature exact duplicates of substantial portions of the Beauty Photograph. The copies are both strikingly similar and substantially similar. As a result, both infringe the copyright in the Beauty Photograph.

Exhibit A

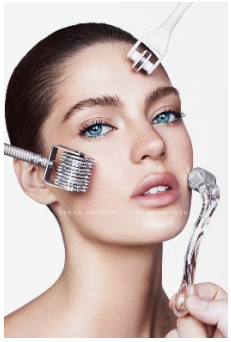


Exhibit C (excerpt)

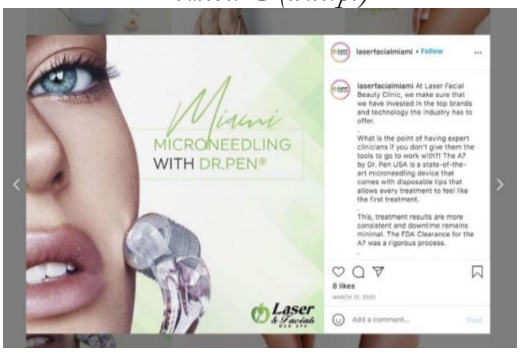
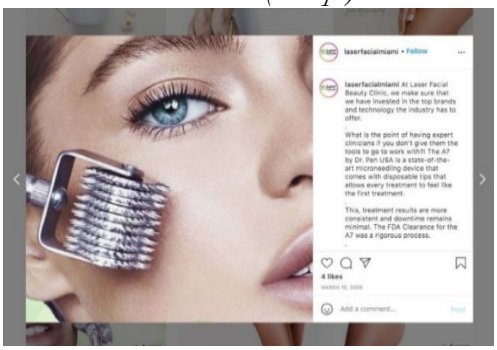


Exhibit D (excerpt)



B. Liability of Respondent Pleasure in Life LLC

The only question that remains – and the only issue that the Board needs to decide in this determination – is whether Respondent PIL is liable for the infringements. Claimant has established only that the Beauty Photograph was reproduced on an Instagram account operated on behalf of Lasers and Facials Med Spa.

Claimant's Party Statement asserted that "Respondent Pleasure in Life LLC ('PIL') is a commercial medical spa specializing in botox injections, fillers, skin rejuvenation, laser treatments and body contouring. *See* https://laserfacialmiami.com/. PIL operates and manages Instagram account @laserfacialmiami ('Respondent's Instagram'), which they directly link to at the bottom of their website." Claimant Party Statement, at 1-2. However, the website at https://laserfacialmiami.com does not refer to PIL. The only reference in Claimant's Witness Statement to PIL is that statement that "I never granted a license or otherwise gave permission to Respondent Pleasure in Life LLC to use by Beauty Photograph in any manner." Sommet Statement ¶ 20.

Claimant's supplemental papers included the Murray Supplemental Declaration and four new exhibits related to the identification of PIL as the infringer. (Dkt. 21). That evidence showed that:

- PIL and Lasers & Facials Med Spa share the same address (3749 NE 163 St, North Miami Beach, FL 33160). Murray Supp. Decl. ¶¶ 5-7 (Dkt. 23); Supplement Exhibits A and B;
- According to a Yelp listing for Laser Facial Beauty Clinic, George and Angie Mohama are the founders of Lasers & Facials Med Spa. Murray Supp. Decl. ¶¶ 9-10; Supplemental Exhibit C;
- According to records filed with the Florida Secretary of State, George Mohama is the registered agent for PIL and Angelica Mohama is an authorized person and manager for the business. Murray Supp. Decl. ¶ 8; Supplemental Exhibit B.
- According to records filed with the Florida Secretary of State, George Mohama is the registered agent for another limited liability company named Lasers & Facials Franchising, LLC and Angelica Mohama is an authorized person and manager for Lasers & Facials Franchising, LLC. Murray Supp. Decl. ¶¶ 12-13; Supplemental Exhibit D.

Claimant's supplemental papers concluded, "[b]ased on the facts available to Claimant, the business registration

for Pleasure In Life LLC establishes that Pleasure In Life LLC is the owner, operator, and manager of the business Lasers & Facials Med Spa, as the business addresses are the same, the registered agent is an owner of Lasers & Facials Med Spa, and Angelica Mohama is a manager and owner of PIL and Lasers & Facials Med Spa." Murray Supp. Decl. ¶ 14.

The Board is unable to reach the same conclusion that Claimant reaches. While PIL *could be* the owner, operator, and manager of Lasers & Facials Med Spa, the same evidence is also consistent with the conclusion that PIL is a separate company that is owned by the Mahomas but has no connection to Lasers & Facials Med Spa. For example, it is equally possible that Lasers & Facials Franchising, LLC is the owner, operator, and manager of Lasers & Facials Med Spa, or that George and Angelica Mohama are the owners of, and do business as, Lasers & Facials Med Spa, and that PIL has no connection (apart from common ownership by the Mohamas) to Lasers & Facials Med Spa.

Moreover, the Florida Secretary of State's public records – the records consulted by Claimant in his effort to prove that PIL owns Lasers & Facials Med Spa – also provide evidence that raises the possibly that two other entities are also candidates for the role of owner, operator, and manager of Lasers & Facials Med Spa:[4]

- Pleasures of the Sea, LLC is also located at 3749 NE 163 St, North Miami Beach, FL 33160. George Mohama is its registered agent and Angelica Mohama is also listed as its manager.
- Global Personal Protective Equipment, Inc. is also located at 3749 NE 163 St, North Miami Beach, FL 33160, and its (apparently sole) officer and director is George Mohama.

What the evidence appears to show is that George and Angelica Mohama operate several limited liability companies (and George Mohama operates at least one corporation) out of the 3749 NE 163 St. address in North Miami Beach, and that among those companies are (a) PIL, (b) Lasers & Facials Franchising, LLC, (c) Pleasure of the Sea, LLC, and (d) Global Protective Equipment, Inc. The Mahomas (perhaps through one of those companies) also appear to operate a business known as Lasers & Facials Medical Spa, also out of the same address. *See*

[4] The information may be found in the Florida Department of State's online records at https://search.sunbiz.org/Inquiry/CorporationSearch/ByName.

Supplemental Exhibit A.

The Board concludes that Claimant has failed to show, by a preponderance of the evidence, that PIL was responsible for the acts of infringement in this case. As a result, the Claim must be dismissed without prejudice.

IV. Conclusion

The Board finds the evidence submitted by Claimant Florian Sommet is not sufficient to support a finding in favor of Claimant, and therefore the Board's proposed determination is to dismiss the Claim without prejudice.