COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0028
January 8, 2025

Helen Walters, Ms	*v.*	Spring Pet Products, LLC
CLAIMANT		**RESPONDENT**

PROPOSED DEFAULT DETERMINATION

Respondent, Spring Pet Products, LLC ("Spring Pet" 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, Helen Walters ("Walters" or "Claimant"), has submitted testimony, which the Board has reviewed, and now the Board 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 sufficient to support a finding in favor of Walters and awards $5,000 in statutory damages. **Any determination against Spring Pet, including a monetary award for damages, will be enforceable in a court of law.**

I. Procedural History

This claim was initially filed on January 30, 2024. (Dkt. 1). Walters filed the operative Amended Claim on February 23, 2024. Claim (Dkt. 3). The Board found the Claim compliant and, on March 28, 2024, directed Walters to serve Spring Pet within ninety days. (Dkt. 8). Walters filed a Proof of Service on April 15, 2024, which affirmed that Spring Pet was served on April 10, 2024, by personal service to its registered agent. (Dkt. 9). The Board sent a Second Notice to Spring Pet by mail and email on May 1, 2024, and May 2, 2024, respectively. (Dkt. 10). The Board did not receive an opt-out form from Spring Pet.

On June 11, 2024, the Board notified the parties that the proceeding had entered the "active phase" because Spring Pet did not submit a timely opt-out, and it ordered Walters to pay the second filing fee and Spring Pet to register for the Board's online docketing system (eCCB). (Dkt. 11). The Board issued that order through eCCB

and also mailed and emailed it to Spring Pet. Walters paid the second filing fee on June 11, 2024. (Dkt. 12). On June 20, 2024, the Board received and approved a request from Debra A. Garrison (who appears to be Spring Pet's founder) to be linked to this case on behalf of Spring Pet. (Dkt. 13-14). On July 1, 2024, the Board issued a Scheduling Order (Dkt. 15). In the Scheduling Order, Spring Pet was ordered to submit a response by July 31, 2024, but Spring Pet did not. Both parties were also ordered to attend a pre-discovery conference to be held on August 12, 2024. (Dkt. 15-16). While Walters attended the August 12 conference, Spring Pet did not. However, Spring Pet's representative emailed the Board during the conference to state that she was having technical difficulties; thereafter, an Amended Scheduling Order was issued, giving Respondent until August 26, 2024, to file its response. (Dkt. 17). Spring Pet failed to file a response and that was the last the Board heard from Spring Pet.

On September 17, 2024, the Board issued its First Default Notice because Spring Pet did not meet any of the mandatory deadlines set by the Board. (Dkt. 18). The First Default Notice gave Spring Pet another thirty days to file a response. *Id.* On October 2, 2024, the Board issued its Second Default Notice, which reminded Spring Pet of the October 17, 2024 deadline to cure the missed obligations. (Dkt. 19). These notices were issued through email and eCCB—to which Respondent is linked such that Respondent receives email updates for each eCCB filing.

Spring Pet failed to file a response or register for eCCB by October 17, 2024. Accordingly, on October 21, 2024, the Board ordered Walters to submit written direct testimony in support of a default determination. (Dkt. 20).

Walters submitted the required written materials on December 4, 2024, consisting of a party statement (Dkt. 21), her own witness statement (Dkt. 26), an evidence list (Dkt. 22-25), and evidence (Dkt. 27-106). This case is now ripe for a proposed default determination.

II. Factual History

Helen Walters is the Director of Shmuncki, a greeting cards company in the United Kingdom. Declaration of Helen Walters ("Walters Decl.") ¶ 4 (Dkt. 26). Walters creates poems, which she sells on various products through Shmuncki, and she retains the copyrights to the poems. *Id.* ¶¶ 3-6. In 2016, she created a poem titled "You held me close" (the "Work"). *Id.* ¶¶ 5-6. On January 24, 2017, she first offered the Work for sale on a print on Etsy.

Id.; Exhibit A (Dkt. 90). She has additionally sold almost identical versions of the Work on greeting cards, prints, and other products since that time on Etsy and other websites. Walters Decl. ¶¶ 9-10. *See also* Exhibit D, E, F, G, H, BW, BX, and BY (Dkt. 60, 85, 69, 34, 74, 79, 84, 87). Walters registered a copyright in the Work, securing copyright Reg. No. TX 9-360-328 in the United States, with an effective date of January 26, 2024. Exhibit AI (Dkt. 96); Walters Decl. ¶ 48.

Walters has also published a shortened version of the Work, replacing the subject from "Mum" to "Dad." Walters Decl. ¶ 18. On January 24, 2024, Walters discovered an almost identical copy of the shortened version of the Work reproduced on the insert for a jewelry box for the shop "Mallardmoongifts" on Etsy.com. *Id.* ¶¶ 13, 17-19; Exhibit Z (Dkt. 62). Her research also established that Mallard Moon "was under the umbrella of parent company "Spring Pet Products LLC."[1] Walters Decl. ¶¶ 14, 52-55; Exhibit AE (Dkt. 99); Exhibit AK (Dkt. 83). Walters investigated and found various uses of her Work, both the full and shortened versions, on both Etsy and on mallardmoongiftshop.com. Walters Decl. ¶¶ 20-24, 30-32; Exhibit R, S, X, Z, AA, AB, AC, AD, AR, AS, AU, AV, AY, AZ, BJ, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BZ, CA & CB (Dkt. 102, 42, 67, 62, 95, 89, 61, 32, 31, 94, 30, 101, 97, 66, 70, 45, 80, 59, 75, 49, 81, 51, 33, 55, 72, 71, 52, 106, 54). Spring Pet continues to sell the Work on products (at least as of November 19, 2024). Walters Decl. ¶ 56.[2]

Walters has never given permission to Spring Pet to use her Work in any form. *Id.* ¶ 37. On January 24, 2024, Walters contacted Debra Garrison—the person who eventually linked themselves to this claim on behalf of Spring Pet—via Etsy Messages and asked Garrison to remove various listings. *Id.* ¶ 39; Exhibit AE. Garrison replied to one communication, "Your link is dead. I wrote this several years ago," and to another, "Thank you for that, I published in June 2022. I will be contacting my attorney for a solution." Walters Decl. ¶¶ 39-41; Exhibit AE at 4;

[1] As detailed elsewhere in this proposed determination, a representative for Spring Pet linked herself to eCCB, which demonstrates that it was aware of this proceeding being brought against it. Despite that knowledge, Spring Pet did not contact the Board to submit any information that it was not the correct party-in-interest. In addition, as detailed below, that same representative corresponded with Walters about the infringement. Furthermore, the mallardmoongiftshop.com website "About Us" (**https://mallardmoongiftshop.com/pages/about-us**) page says "Mallard Moon is under the umbrella company, Spring Pet Products, LLC. owned by Debra Garrison."

[2] Walters states that she has also noticed Spring Pet infringing additional poems of hers, but that is not part of this proceeding. Walters Decl. ¶¶ 61-65.

Exhibit AT (Dkt. 73). Garrison did not give any proof of having created the Work as she claimed, and Walters never received any contact from Respondent's attorney. Walters Decl. ¶ 42. Walters notes that Mallard Moon did not begin selling products (whether with her Work or otherwise) until 2019, which is two years after she created the Work. *Id.* ¶ 77.

On January 26, 2024, Walters filed a DMCA takedown notice via the website's host, Shopify. Shopify removed the allegedly infringing content in the notice, and on January 29, 2024, Garrison filed a counternotice stating the content was wrongfully removed by Shopify. *Id.* ¶ 43-44; Exhibit AF & AG (Dkt. 35, 68).

Walters licenses the Work for a fee based on usage, duration, and the licensee itself. Walters Decl. ¶ 11. She submits an example of a license into which she has entered with the licensee name redacted and without the signed signature page. *Id.;* Exhibit AM (Dkt. 48). On March 30, 2023, she charged a company £1,500 (which she says converts to $2,008, but a review of the historic pound to dollar conversion rates shows £1,500 was approximately $1,850 at that time) for a one-year license to put the Work on jewelry. Walters Decl. ¶ 12; Exhibit AM. Walters suggests that Spring Pet typically sells products containing the alleged infringements for prices ranging from $59.95 to $187.86. Walters Decl. ¶ 73.

Walters is seeking $5,000 in statutory damages, which is the maximum that the Board can award due to Walters' election when she filed her claim that this be a "smaller claims" proceeding. Party Statement ¶ 76; Claim; 17 U.S.C. § 1506(z).

III. Copyright 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). Walters submitted a Certificate of Registration for the Work. Exhibit AI. A certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid, and that the registrant owns the copyright. *See* 17 U.S.C. § 410(c); *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 988 (9th Cir. 2017) (citing *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1110 (9th Cir. 1998)). Because Walters' United States 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, neither the copyrightability of the Work nor the ownership of the Work is in question, and evidence has been provided supporting the copyrightability and ownership of the clearly creative expression in the Work.

In the Fifth Circuit, where Spring Pet resides, copying has two components: "factual" copying and "actionable" copying. In the absence of direct evidence, factual copying is proved by circumstantial evidence that the defendant had access to the copyrighted work and that the works contain similarities that are probative of copying. *Armour v. Knowles*, 512 F.3d 147, 152 (5th Cir. 2007); *Unicolors*, 53 F.3d at 984–85. However, copying can also be inferred if the allegedly infringed work and the allegedly infringing work are "strikingly similar," regardless of whether there is any evidence of access. *Unicolors*, 53 F.3d at 985. Two works are strikingly similar when the similarities between them are "of a kind that can only be explained by copying, rather than by coincidence, independent creation, or prior common source," such as when the similarities are "sufficiently unique or complex so as to preclude all explanations other than copying." *Guzman v. Hacienda Recs. and Recording Studio, Inc.*, 808 F.3d 1031, 1040 (5th Cir. 2015). *See also Unicolors*, 53 F.3d at 988 (inferring copying when "the works are virtually identical").

To prove actionable copying, the claimant must show "that the allegedly infringing work is substantially similar to protectable elements of the infringed work." *Batiste v. Lewis*, 976 F.3d 493, 502 (5th Cir. 2020). 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 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[A][1] (2019)). *See also Southern Credentialing Support Servs., LLC v. Hammond Surgical Hosp., LLC*, 946 F.3d 780, 784 (5th Cir. 2020) (protected elements of the original work are necessarily incorporated into the allegedly infringing work when the latter work extensively copies the protected material verbatim).

Walters has demonstrated that, without her consent, Spring Pet reproduced, publicly displayed, and offered for sale copies of her Work. There is no question that in each instance the original and infringing poem are practically identical, and thus both strikingly and substantially similar.

IV. Defenses

When reviewing the evidence provided by a claimant in support of a default determination, the Board must

consider whether the respondent has a meritorious defense. 37 C.F.R. § 227.3(a). The Board has considered the facts in this case and finds that no such defense exists to this claim.

V. Damages

Walters elects statutory damages and asks for $5,000, which is the maximum the Board can award in a "smaller claims" proceeding. Party Statement ¶ 76; 17 U.S.C. § 1506(z).

Courts have wide discretion to award statutory damages as long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231–32 (1952); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986); *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 143 (2d Cir. 2010). "[T]he court's conception of what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like, is made the measure of the damages to be paid. . . . Within [the statutory] limitations the court's discretion and sense of justice are controlling[.]" *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919). *See also Alouf v. Expansion Products, Inc.*, 417 F.2d 767, 769 (2d Cir. 1969); *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *F.W. Woolworth*, 344 U.S. at 232).

Furthermore, various courts have explained that (regardless of willfulness or lack thereof) statutory damages awards should significantly exceed the amount of unpaid license fees because the award "should put infringers on notice that it costs less to obey the copyright laws than to violate them." *Broadcast Music, Inc. v. DFK Entertainment, LLC*, No. 1:10-CV-1393 GLS/DRH, 2012 WL 893470, at *4 (N.D.N.Y. Mar. 15, 2012) (internal quotation marks and citation omitted). As the court noted in *Werner v. Evolve Media, LLC*, No. 2:18-CV-7188-VAP-SKx, 2020 WL 4012784, at *3 (C.D. Cal. June 22, 2020):

> Such an approach is consistent with the Copyright Act's purpose of deterring copyright infringement. Indeed, as the Supreme Court has held, "a rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of copyright policy. The statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed to discourage wrongful conduct."

(quoting *F.W. Woolworth*, 344 U.S. at 233). *See also Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018), *rev'd and remanded on other grounds*, *Philpot v. LM Commc'ns II of S.C.*, 776 F. App'x 906 (6th Cir. 2019) ("Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement

would do little to discourage infringers.").

In deciding the appropriate amount of statutory damages to award, courts generally seek to establish a relationship between statutory damages and actual damages. *See, e.g.*, *Atari Interactive, Inc. v. Redbubble, Inc.*, 546 F. Supp. 3d 883, 888 (N.D. Cal. 2021) ("A statutory damages award 'must bear a plausible relationship to Plaintiff's actual damages[.]'") (citation omitted); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) ("Undoubtedly these [statutory] damages should bear some relation to the actual damages suffered[.]"); *Seoul Broad. Sys. Int'l v. Young Min Ro*, No. 1:09cv433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011) ("After all, 'when awarded, statutory damages should bear some relation to the actual damages suffered.'") (citation omitted); *Aberle v. GP Clubs, LLC*, No. A-19-cv-1066-RP, 2020 WL 4035074, at *4 (W.D. Tex. July 17, 2020) ("while there 'need not be a direct correlation between statutory damages and actual damages,' it has generally been held that 'the statutory award should bear some relation to actual damages suffered'") (citation omitted); *Bly v. Banbury Books, Inc.*, 638 F. Supp. 983, 987 (E.D. Pa. 1986) ("Numerous courts have held that assessed statutory damages should bear some relation to the actual damages suffered.") (citations omitted).

Actual damages are primarily measured by "the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement." *Fitzgerald*, 807 F.2d at 1118. To secure actual damages, a claimant typically establishes impairment of market value by demonstrating lost sales or other lost profits that would have been obtained from the sale or license of the infringed work but for the respondent's infringement. *See Stevens Linen Associates v. Mastercraft Corp.*, 656 F.2d 11, 15 (2d Cir. 1981); *Baker v. Urban Outfitters, Inc.*, 254 F. Supp. 2d 346, 356 (S.D.N.Y. 2003). Such amounts should be based on a "factual basis" and not "undue speculation." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 165 (2d Cir. 2001).

Across the country, courts typically award statutory damages in a range from approximately two to six times the lost licensing fee for the infringed work, with three times actual damages being most prevalent. *See, e.g.*, *Barcroft Media, Ltd. v. Coed Media Group, LLC,* 297 F. Supp. 3d 339, 359 (S.D.N.Y. Nov. 2, 2017); *Broadcast Music, Inc. v. Paden*, No. 5:11–02199–EJD, 2011 WL 6217414, at *5 (N.D. Cal. Dec. 14, 2011); *Sixx Gunner Music v. The Quest, Inc.,* 777 F. Supp. 2d 272, 274 (D. Mass. 2011); *Broadcast Music, Inc. v. Amici III, Inc.,* No. 14-CV-5002, 2014 WL 7271915, at

*1 (D.N.J. Dec. 16, 2014); *Broadcast Music, Inc. v. Eatnout, LLC*, No. 2:15cv254, 2015 WL 12803458, at *3 (E.D. Va. Dec. 29, 2015); *Philpot,* 343 F. Supp. 3d at 702; *Broadcast Music, Inc. v. Ken V, Inc.*, 159 F. Supp. 3d 981, 990 (E.D. Mo. 2016); *Minden Pictures, Inc. v. Buzznick, LLC*, No. 2:22-cv-00369-RJS-CMR, 2023 WL 2243177, at *5 (D. Utah Feb. 27, 2023); *Broadcast Music, Inc. v. Entertainment Complex, Inc.*, 198 F. Supp. 2d 1291, 1296 (N.D. Ala. 2002); *MOB Music Publ'g v. Zanzibar on the Waterfront, LLC*, 698 F. Supp. 2d 197, 207-08 (D.D.C. 2010).

Walters has provided the Board a license agreement in an attempt to establish her lost license fee in this proceeding. Walters Decl. ¶ 12; Exhibit AM. The license was for the placement of the Work on inserts to be used with pieces of jewelry to be sold by the licensee. The licensee was charged £1,500 (approximately $1,850 at the time of the license) for a one-year license. The infringement was also placed on jewelry box inserts. Therefore, this is the type of apples-to-apples comparison that is useful to the Board in determining actual damages.[3]

It is unclear exactly how long the Respondent has been infringing the Work, but that is not material to the Board's determination in this "smaller claims" proceeding. Even if Respondent has only been infringing for the past year, the lost license fee for just a one-year license is enough to get Walters to the amount she is requesting. A one-year license would be approximately $1,850. Applying a three times multiplier to the actual damages in this case would be appropriate. Therefore, even using $1,850 as Walters' lost license fee, when multiplied by three, statutory damages would exceed both the amount that Walters has requested and the maximum amount permitted in this proceeding.

VI. Conclusion

The Board's proposed default determination is to find that Spring Pet has committed copyright infringement and to award Walters $5,000 in statutory damages.

[3] Walters also suggests that considering the prices at which Spring Pet sells the products with the infringements, Spring Pet very likely made well more than $5,000 in revenues. Walters Decl. ¶¶ 73-75. While that is possible and logical, there is no evidence of Spring Pet's actual sales.