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Laura Freeman
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VIA EMAIL
asktheboard@ccb.gov

COPYRIGHT CLAIMS BOARD
101 Independence Avenue SE
Washington, DC 20540

Re: Further Evidence of Bad Faith Conduct
Chalas v. Freeman, Docket No. 24-CCB-0060

Dear Copyright Claims Board:

I write this letter to the Board in reply to Claimant's Response to my Request for Reconsideration. In Claimant's Response, she provided correspondence between her and her attorneys as a defense to allegations of Claimant's bad faith conduct by missing her deadline to submit her evidence. By introducing these communications, Claimant has affirmatively placed her attorney's advice directly at issue in determining a finding of Claimant's bad faith conduct. Accordingly, Claimant has waived the attorney-client privilege with respect to all communications between her and her attorneys with respect to communications concerning a finding of bad faith. *See Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992).

In light of this waiver, I respectfully request that the Board order Claimant to produce all communications with her counsel regarding her counsel's opinion on the merits of this matter because these communications could be evidence of bad faith conduct. As the Board previously held in *Shocked v. Law Rocks*, 23-CCB-0024 (Final Determination on Aug. 22, 2024, Dkt. No. 48), counsel's advice that a claim lacks merit is evidence of bad faith conduct.

Also, responses to Discovery must be supplemented. *See* Copyright Claims Board Handbook, Discovery, Chapter 14 ("If you discover any additional information during the proceeding that would be responsive to . . . document requests, you must . . . produce the documents to the other parties as soon as possible."). Document Request No. 11 stated that Claimant should produce "[a]ll documents and communications (with anyone), referring to respondent(s)/counterclaim respondent(s) and their allegedly infringing work(s) or their use of your work(s)." Therefore, in accordance with the Claimant's wavier of attorney client-privilege, the Boards rules, and in response to Document Request No. 11, I request that the Board order Claimant to provide me with all correspondences between her and her counsel regarding counsel's opinion on the merits of this case.

As further evidence of bad faith, Claimant failed to abide by the Board's formatting rules in her Position Statement, which required the Position Statement to be written in double-spaced format and to be 7-pages or less. The Claimant's single-spaced Position Statement would therefore exceed the 7-page word limit by almost double if it were converted to the proper double-spaced format.

Claimant's bad faith is further demonstrated by defamatory statements in her Position Statement, wherein she alleges that I have infringed other intellectual properties, including, *inter*

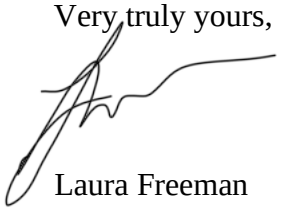
alia, "Friday the 13th," "Halloween/Michael Myers," and "The Nightmare on Elm Street." Regardless of the fact that these claims are irrelevant to the copyright issue at hand, these claims are knowingly false and harmful to my reputation as an artist and merchant. My works referencing these properties are parodies and protected under the fair use doctrine. *See Fisher v. Dees*, 794 F.2d 432 (9th Cir. 1986). For example, my Nightmare on Elm Street drawing of Freddie Kreuger shows Freddie smiling while riding a colorful unicorn with rainbow-colored stars surrounding him. *See* Exhibit D of Claimant's Position Statement, pg. 2. In the original work, Freddie Kreuger is a psychotic mass child murderer. Clearly my products are a fair use under 17 U.S.C. § 107.

Further, the Claimant presents specious arguments in her Position Statement in bad faith. For example, Claimant states that I must have had access to the copyrighted work prior to my creation of my products because Alchemy Merch has an online presence and is a "top supplier" of enamel pins. However, "a plaintiff must show a reasonable possibility, not merely a bare possibility, that an alleged infringer had the chance to view the protected work." *Art Attacks Ink, LLC v. MGA Ent. Inc.*, 581 F.3d 1138, 1143 (9th Cir. 2009). Also, mere availability of a work online is not enough to show access. *Morford v. Cattelan*, No. 23-12263, 2024 WL 3857453, at *2 (11th Cir. Aug. 16, 2024); *See also Lois v. Levin*, No. 2:22-C-V00926, 2022 WL 4351968, at *3 (C.D. Cal. Sept. 16, 2022). Additionally, Claimant also mischaracterizes the ideas of 2-dimensional merchandise and accessories, simple metal line work, and enamel in lapel pin form as forms of expression, when they are in fact uncopyrightable ideas.

Lastly, the Claimant's excuse about having to retain legal counsel for the separate trademark matter has no bearing whatsoever on this pending copyright matter before the Board. The trademark matter is unrelated to this pending copyright matter.

As Claimant continues to demonstrate bad faith conduct, I reiterate my request for an award of costs in this matter.

Very truly yours,



Laura Freeman

Proof of Delivery

I hereby certify that on Wednesday, January 22, 2025, I provided a true and correct copy of the Letter Regarding Further Evidence of Bad Faith Conduct to the following:

Lauren S Chalas, represented by Lauren Chalas, served via ESERVICE at lauren@rovinghouse.com

Signed: /s/ Laura S Freeman