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COPYRIGHT CLAIMS BOARD

DR. KEITH F. BELL,	)	
	)	
Claimant	)	
v.	)	**24-CCB-0031**
	)	
CHRIS A. LEWIS,	)	
Respondent	)	

PARTY STATEMENT OF RESPONDENT CHRIS A. LEWIS

I. INTRODUCTION

The Copyright Claims Board should find for Respondent Chris A. Lewis ("Lewis" or "Respondent") and dismiss this action, brought by serial litigant, Claimant, Dr. Keith F. Bell ("Bell" or "Claimant"). This is the latest in the many attempts by Bell to exact a payment that is outside of the bounds of copyright law for an incidental re-post from his book *Winning Isn't Normal*, where the complained of post was immediately removed upon notice.

Bell, characterized by the Fifth Circuit as a "serial litigant" for his enforcement scheme relating to use of a passage from his book,[1] again, seeks an extraordinary settlement from the use of a quote from his book that was in fact removed well before the institution of this action. Having been sanctioned in federal court for similar tactics, Bell now focuses on the Copyright Claims Board to justify his enforcement scheme.

"[P]rofessional litigant"[2] Bell has now targeted Chris Lewis, an individual, who mistakenly re-posted an unattributed post on LinkedIn, and removed it when Bell notified him. Despite the fact that Lewis removed the quote immediately on request, Bell maintains without any factual or legal support that he is entitled to monetary relief. Citing only basic kernels of copyright law, but offering no actual support for any legitimate bases for damages, or explanation of why this incidental re-post is not fair use, Bell contends that Lewis was "reckless" to initially post, and that he is also liable for induced copyright infringement by Lewis's former LinkedIn network contacts who "liked" or shared the post.[3]

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[1] *See*, *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist.*, 27 F. 4th 313, 326 (5th Cir. 2022).

[2] *Bell v. Bd. of Educ.*, 645 F. Supp. 3d 1177, 1183 (D. Kan. 2022). The Kansas district court noted that Bell had filed over 26 copyright infringement suits and obtained settlements from at least 90 different alleged infringers between 2006 and the date of its decision in 2022.

[3] *See* Witness Statement of Claimant Dr. Keith Bell at ¶ 21, (hereafter "Wit. St. K. B.").

Without any factual or legal support for his allegations, Bell professes in his opening party papers that he is damaged by a long-deleted post on LinkedIn, that he acknowledges he waited more than a year to object to. Bell's identical tactics have been held to constitute "shakedown lawsuits" and an "abuse of the judicial process which . . . the federal courts have an obligation to prevent."[4]

The Fifth Circuit, in sustaining a lower court's monetary sanctions against Bell for a suit based on the same work, stated that Dr. Bell "makes exorbitant demands for damages in hopes of extracting disproportionate settlements."[5] Bell has been called a copyright troll by courts[6] as one who brings strategic infringement claims of dubious merit to exact prompt settlements. Bell's actions are far removed from "the goals of the Constitution's intellectual property clause to 'promote the Progress of Science and useful Arts.'"[7] This is not a legitimate enforcement scheme to protect intellectual property rights but an illegitimate attempt to exact licenses far beyond the market value for the work. Simply put, Bell has made a business of suing.

This case should be dismissed, and Bell sanctioned, as he has been sanctioned in federal court. First, Respondent Lewis's re-posting of what Bell has named "The WIN Passage" was a de minimis and fair use. The post was removed, and there is no basis for monetary relief. Lewis should be deemed an innocent infringer because Lewis had no idea that the quoted language was protected since there was no attribution on the post or copyright notice. There is no basis for monetary relief at all, electing actual damages as a basis; Bell has presented no evidence of either actual damage to him or profits to Chris Lewis resulting from the long-deleted LinkedIn post.

II. RELEVANT FACTS

Bell's "WIN Passage," which he separately seeks to monetize is one page in the 72-page book titled *Winning Isn't Normal* that is self-published. It is a book on motivation for competitive swimmers.[8] Claimant no longer actively markets the book,[9] ostensibly relying on settlement dollars as revenue.[10] The book is passively marketed by his wife through Bell's own publishing house.[11] Sales are typically made to

[4] *Bell v. Lane Kiffin*, 2024 WL 5125159 at *9 (N.D. Miss., Dec. 16, 2024) and *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist.*, 27 F. 4th 313, 319 (5th Cir. 2022) ("Yet Bell waited almost a year. . . to notify the school district that two of its social media accounts had infringed his copyrights.").

[5] 27 F.4th at 326.

[6] *Bell v. Milwaukee Bd. of Sch. Dirs.*, No. 22-C-0227, 2023 BL 495280 (E.D. Wis. Feb. 15, 2023).

[7] *Design Basics, LLC v. Lexington Homes, Inc.*, 858 F.3d 1093, 1097 (7th Cir. 2017) *quoting* U.S. Const. art. I, § 8, cl. 8.

[8] *See* BATES NUMBER BELL_000013.

[9] *See* Wit. St. K. B. at ¶ 7.

[10] *See Bell v. Kiffin*, No., 2024 WL 5125159, at *3 (N.D. Miss. Dec. 16, 2024) ("Bell instead lies in wait and springs lawsuits on school districts whose employees retweet the passage, hoping that the school district will choose to settle rather than incur the costs of litigation.").

[11] *See* Opening Party Statement of Claimant Dr. Keith F. Bell at 3, (hereafter "Op. Party. St. K. B.").

college athletic departments and other schools with swim teams.[12] The "WIN Passage" also appears publicly on a poster and tee-shirts available on Bell's website.[13]

In November 2021, Respondent, Chris Lewis, an individual, and an employee of Bankers Life in Texas, re-posted an inspirational quote he found on social media.[14] The quote he re-posted had no attribution and appeared to be a public domain "old adage" about success.[15] He thought no further about it. He recalls that several people in his network may have "liked" the quote but he would have no independent recollection of who liked it or even shared it.[16] Two years later, in January 2023, Lewis received at his work email a lengthy cease and desist letter from Bell, informing him that:

- Bell learned of Lewis's November 2021 post no later than February 2022, a few months after Lewis created the post on LinkedIn.
- Bell considered the post to constitute "willful" copyright infringement, for which he threatened Lewis could be found liable for actual damages, which Bell calculated would be the $32.95 price of the book, plus 8.95 shipping and handling, or statutory damages plus violations of the DMCA.
- Bell demanded that Lewis provide information on all of the LinkedIn contacts who "liked" or shared his post.
- Bell accused Lewis of a violation of the DMCA, but did not explain the basis for this asserted violation, or the basis for how Bell "conservatively" calculated damages to be "more than $200.477."
- Bell demanded that Lewis pay him $150,000 in settlement and release of the "dispute" "only for known infringements" no later than 3 p.m. Central time on February 13, 2023, or he "shall be forced to seek all remedies provided by law, including injunctions; actual damages; statutory damages; DMCA damages; full costs; and reasonable attorney's fees."

Bell waited at least a year before he sent his demand letter, he learned of Lewis's LinkedIn post on February 23, 2022, but Bell cannot recall how he learned of the post, it was either through a Google search or Google alert.[17]

III. ARGUMENT

A. Lewis's Re-Post on LinkedIn Constitutes Fair Use

In determining whether a use is a fair use, the Copyright Claims Board is guided by the Copyright Act's four factors: "1. The purpose and character of the use, 2. The nature of the copyrighted work, 3. The amount and substantiality of the portion used in relation to the

[12] *See* Bell Exhibit G.

[13] *See* Bell Exhibit H, BATES NUMBER BELL_000206-BELL_000208 and Bell Exhibit I, BATES NUMBER BELL_000049-BELL_000050.

[14] *See* Declaration of Respondent Chris A. Lewis at ¶ 2-3, (hereafter "Lewis Decl.").

[15] *Id.* at ¶ 9.

[16] *Id.* at ¶ 11.

[17] Wit. St. K. B. ¶ 16, See Bell Exhibit K, Bell Interrogatory Response 12.

copyrighted work as a whole, and 4. The effect of the use upon the potential market for or value of the copyrighted work."[18] Courts reviewing identical claims raised by Bell against other defendants, on facts that are not substantively distinguishable from the claims presented here, have found for the named defendant based on the defense of fair use.[19] So should the Copyright Claims Board find for Respondent here.

1. *Factor One: The Purpose and Character of Lewis's Post*

(i) The Use Was Not Commercial

The LinkedIn post was not commercial, weighing in favor of Lewis. A commercial use is one where the defendant has benefited financial, for example, by monetary remuneration through a paid license.[20] Lewis was not using social media for any commercial purpose.[21] His now deactivated LinkedIn account was his own, he used it solely to keep up with what his contacts were doing.[22]

Contrary to the Claimant's unsupported assertions, Chris Lewis did not benefit financially from re-posting on LinkedIn what he believed to be an old adage.[23] The quote was akin to "winners never quit, and quitters never win." Not only did Lewis delete the post, but he also deactivated his LinkedIn account - an act that certainly cuts against Bell's argument that: "Lewis, like most users of LinkedIn, actively used the platform to network and build business connections and enhance his reputation."[24] To the point, Lewis has not had a LinkedIn account since 2023.[25] Lewis has worked at his current employer since the early 1990s and has held his current job since 2002.[26] There is no evidence he used LinkedIn at any time to "drive his personal brand and advance his personal network." [27]

Bell's unsupported argument that a re-post on LinkedIn benefits the poster commercially is simply a self-serving statement of Bell, which has been disregarded in other forums. A federal court in Mississippi, in ruling in favor of a defendant athletic coach Kifflin, shot down Bell's identical argument in *Kifflin*, that athletic coach's tweet, of Bell's passage benefited the defendant coach by bolstering his personal and professional reputation.[28]

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[18] *See*, 17 U.S.C. § 107.

[19] *See*, *e.g. Bell v. Eagle*, 27 F.4th at 323.

[20] *Andy Warhol Found. for the Visual Arts*, *Inc. v. Goldsmith*, 598 U.S. 508, 537 (2023) (defendant's receipt of financial benefit through licensing arrangements are commercial uses).

[21] *Cf. Griner v. King*, 104 F.4th 1, 9-10 (8th Cir. 2024) (social media use of copyrighted work by political campaign where purpose of use was to fund campaign, found commercial uses).

[22] Lewis Decl. at ¶ 3.

[23] Lewis Decl. at ¶ 9.

[24] Op. Party. St. K. B. at 2.

[25] Lewis Decl. at ¶ 15.

[26] *Id.* at ¶ 2.

[27] Op. Party. St. K. B. at 2.

[28] *Bell v. Kiffin*, No. 3:24-CV-231-MPM-RP, 2024 BL 458648, at *6 (N.D. Miss. Dec. 16, 2024).

Moreover, there is no legal support for the proposition that enhancement of a person's reputation is a "commercial use" under the Copyright Act. To the contrary, courts have held that there must be more to characterize a use as commercial: the use must displace the work or a derivative work in the market. "[T]he commerciality of a use is troubling primarily when the use displaces the work or derivative works in the market."[29] Then, the use might frustrate the objectives of copyright by reducing the incentive to create new works.[30] That has not and cannot be shown here.

(ii) Chris Lewis's actions were in good faith.

The second consideration under the "purpose and character" factor is whether the act was in good faith. This factor weighs in Lewis's favor. As Lewis has stated, he was not aware that the re-posted quote was a copyrighted work that would be attributed to an author, and once notified, Lewis removed the quote from his LinkedIn page and deactivated his account.[31] Before receiving Bell's letter in January 2023, Lewis had not heard of Bell or his book.[32] Without any proof whatsoever, Bell contends that he "believes Lewis acted with reckless disregard for the consequences of his actions when he posted this prose without conducted a search to ensure that it was not somebody's protected intellectual property."[33] Although Bell states that a Google search would pick up Bell's name, that statement is unsupported by any record evidence that was true now, or in 2021, and is further unsupported by any caselaw suggesting such a duty.

Bell's one-year delay in notifying Lewis mirrors the facts of the *Eagle* action, where Bell also waited nearly a year before alerting the defendant that the post was an infringement.[34] The *Eagle* court found that Bell's delay coupled with the defendant's removal supported the defendant's good faith under the fair use analysis.[35] The same is true here. As soon as Chris Lewis received Bell's demand letter, he, not only removed the post, but also deactivated his LinkedIn account.[36] The immediate removal upon notice weighs in favor of the "purpose and character" factor of fair use.[37]

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[29] *Designworks Homes, Inc. v. Columbia House of Brokers Realty, Inc.*, 126 F.4th 589, 597 (8th Cir. 2025).
[30] *Id.*
[31] Lewis Decl. at ¶ 8.
[32] *Id.* at ¶ 6.
[33] Op. Party. St. K. B. at 4.
[34] *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist.*, 27 F. 4th 313, 323 (5th Cir. 2022) ("Bell . . . waited nearly a year before telling the school he disapproved of them.").
[35] *Id.* ("[T]he first factor weighs for Eagle Mountain because its use was in good faith and did not produce a commercial benefit.").
[36] Lewis Decl. at ¶ 8.
[37] *See* 27 F. 4th at 323.

Indeed, the manner in which Bell litigates is in bad faith. Agreeing with earlier federal court decisions, one court commented that Bell "has also attained a level of notoriety within federal courts for his 'business model of litigation.'"[38] Courts also look at the propriety of the plaintiff's conduct when assessing good faith.[39] Bell waited a year to notify Lewis, only as an excuse to gin up litigation. Not only did he threaten Lewis with litigation, but as apparent from the enforcement chart submitted as Claimant's Exhibit J, Bell has a plan to attack each former LinkedIn contact of Lewis's who "liked" the post, claiming Lewis induced acts of infringement.

(iii) The re-posted content was transformative

Bell's book is used by swim teams and swim team coaches.[40] "A use that has a further purpose or different character is said to be transformative."[41] Lewis's re-post was not intended or reviewed by anyone on a swim team, or a colleague, or conceivably any of Bell's typical customers. Courts have found such a difference to constitute a transformative use that weighs in favor of fair use.[42]

As Bell himself characterizes Lewis's post, the LinkedIn post is a transformative use. . A transformative use results from a new work that supersedes the objects of the original creation or instead adds something new with a further purpose or different character.[43] The re-post by Lewis was not intended as a tip for competitive swimmers. Lewis posted a heartwarming statement of motivation he found on social media as a social greeting. "A transformative use may also be justified because 'copying is reasonably necessary to achieve the user's new purpose.' … This kind of 'independent justification' is 'particularly relevant to assessing fair use where . . . wide dissemination of a secondary work would otherwise run the risk of substitution for the original or licensed derivatives of it.'"[44]

(iv) The amount and proportion of the quote is minimal compared with the underlying work.

The quote is not "the heart" of the book, as Bell argues, it is the heart of his enforcement plan. He puts the quote on posters and tee shirts, in a manner that make the quote readily accessible, countering Bell's argument that "[w]hy by a book or obtain a license when the heart of the message is free online?"[45] Although he claims that by putting the quote on LinkedIn, Lewis is damaging the value of Bell's licenses,

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[38] *Bell v. Bd. of Educ.*, 645 F. Supp. 3d 1177, 1179 (D. Kan. 2022).

[39] *See*, *Field v. Google Inc.*, 412 F. Supp. 2d 1106, 1122-1123 (D. Nev. 2006) (considering both defendant's good faith in promptly removing the infringing content and plaintiff's bad faith in ginning up the litigation); *Rubin v. Brooks/Cole Pub. Co.*, 836 F. Supp. 909, 918-919 (D. Mass. 1993).

[40] *See* Bell Exhibit G (shows that virtually all sales have been to schools, athletic departments and sports teams).

[41] *Designworks Homes*, 126 F.4th 589 at 596.

[42] *See*, *e.g. Id.* at 596-598 (Eighth Circuit, affirming the district court held that a real estate agency's use of copyrighted architectural floor plans was a transformative use when used by a real estate company because the real estate company using the floorplans as the copyright owner intended.).

[43] *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 528, 143 S. Ct. 1258, 215 L. Ed. 2d 473 (2023) (internal citations omitted).

[44] *Am. Soc'y for Testing & Materials v. UpCodes, Inc.*, No. 24-1895, 2024 BL 349446, at *9 (E.D. Pa. Oct. 2, 2024) (internal citations omitted).

[45] Op. Party. St. K. B. at 9.

licenses are simply part of the spurious enforcement plan and there are no licenses of record that support the monetary claim that Bell made in his initial cease and desist letter, or in the proceeding.[46] The quote is one page in the 70 plus page book. Claimant would have the Board believe that the incidental use of the short quote is analogous to the facts of *Harper & Row*, *Publishers*, *Inc. v. Nation Enters*., 471 U.S. 539, 541 (1985), wherein *The Nation* magazine printed unpublished selections from the manuscript of President Ford, in advance of the negotiated pre-publication subsidiary right license given to *Time Magazine*. In that case, the 300-word excerpt was not considered fair use because there was a clear and direct loss of revenue from the express and unauthorized usurpation of the pre-publication right that had been negotiated by the publisher. Not so here. Bell widely circulates the quoted language. There is no evidence that the LinkedIn post had any affect positive or negative on the market for the book. Further, this exact argument was previously found unavailing. A district court considering the identical argument by Bell found it entirely unpersuasive – to compare an unpublished work with one that was widely published for over thirty-five years . . . concluding, that a newspaper's reprint of Bell's WIN Passage was a fair use."[47]

(v) The market for the book has not been diminished.

As noted above, there is no record evidence that the long-deactivated LinkedIn post reduced the market for the book, in its current form or the speculative, yet unreleased new edition that Bell claims, without evidentiary support, is in the works. As courts have already opined, the excerpted "WIN Passage," is publicly available on tee-shirts and posters, all of which are available on Bell's own website, and by Bell's own logic those uses would also reduce the market for the book. Not only is that argument nonsensical, but it cuts against Bell's intended position that people are interested in his book for swimming tips which are in the other pages of the book.[48] Further, the evidence of record does not support a loss in sales at all, much less a loss attributable to Lewis' long removed LinkedIn post. There is also no evidence that the passage is the sole reason that purchasers buy the book. Bell promotes the book for its tips on competing and winning swimming races.

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[46] Notably, the licenses that have been put into evidence do not support any market value for the book, since they are simply settlement agreements, and have not been identified in evidence for the purpose of supporting the market value of a license.

[47] *See Bell v. Magna Times*, *LLC*, No. 2:18CV497DAK, 2019 WL 1896579, at *5 (D. Utah Apr. 29, 2019) ("Bell describes the nature of the copyrighted work in his Amended Complaint as a widely published and successful sports psychology book, published in 1982. The *Harper & Row* Court acknowledged that 'briefer quotes from the memoirs are arguably necessary adequately to convey the facts.' 'While even substantial quotations might qualify as fair use in a review of a published work or a news account of a speech that had been delivered to the public or disseminated to the press.' Even if the article could be considered to have a substantial size quotation from the book, it is just a small portion of a much more substantial work that has been widely published for over thirty-five years. This factor, therefore, weighs in favor of fair use.") (internal citations omitted).

[48] *See* LEWIS EXHIBIT C, BATES NUMBER CL0000031-CL0000033; LEWIS EXHIBIT E BATES BELL000013-14; *Bell v. Worthington City Sch. Dist*., No. 2:18-CV-961, 2020 WL 2905803, at *8 (S.D. Ohio June 2, 2020) ("Plaintiff focuses on the genre of the WIN book, arguing [it is based on] 'observations of competition generally, a result of his many years as a **successful swimmer and sports psychologist**.'"); *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist*., 27 F. 4th at 319 ("Bell published *Winning Isn't Normal*, a 72-page book that **provides strategies for success in athletics . . ..**"); Emphasis added.

Lewis's re-post in November 2021 had no effect at all on the potential market for the book. There is no evidence that there was a decline in purchases in the year that Lewis had the post up, or that any decline would be attributable to Lewis's post. Typically, evidence of an effect on the market can require evidence such as an "actual market harm . . . [that] 'would result in a substantially adverse impact on the potential market,'" a deprivation of significant revenues to the rights holder, a drop in sales that is tied to the infringing act, or some kind of "a plausible economic rationale to support . . . [an] assertion."[49] Actual market harm was not found in Bell's assertion in the *Eagle* case, nor is it found here.[50] Even Bell says that the market for the book is low, since he does not market the book aggressively since he retired in 2007.[51] However, the evidence that has been submitted does not show that there is either a drop in sales, or other support that the LinkedIn post undermined Bell's work.[52] Bell has submitted evidence that the book is in fact sold. He has submitted **no evidence** of a drop in sales resulting from Lewis's post.

The two arguments that Bell makes in support of its potential market damage are easily challenged. First, Bell claims without any support that the LinkedIn post was available to "more than 5.3 billion persons and entities that have access to the internet, and certainly accessible to Lewis's followers in excess of 170,000 individuals"[53] and that that Bell "took efforts to track how often Lewis's infringing post was reposted, and it was significant."[54] However, nothing in the record supports that "more than 5.3 billion persons" reviewed the post, or that the likes or shares of the LinkedIn re-post caused a drop in sales.[55] The number of likes and shares to Lewis's post (73) is far fewer than the number of 1000 "shares" of online followers that a district court in *Eagle Mountain* found insignificant.[56] Additionally, if Bell's point is that a LinkedIn post would damage sales of his book, it begs the question why Bell waited a year before sending Lewis a demand letter asking him to remove the post. Without question, Respondent's fleeting post did not create a market substitution for Bell's book.

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[49] *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist.*, 27 F. 4th at 324; *Lombardo v. Dr. Seuss Enterprises*, L.P., 279 F. Supp. 3d 497, 512 (S.D.N.Y. 2017), aff'd, 729 F. App'x 131 (2d Cir. 2018) ("whether the copy brings to the marketplace a competing substitute for the original, or its derivative, so as to deprive the rights holder of significant revenues because of the likelihood that potential purchasers may opt to acquire the copy in preference to the original.").

[50] *Bell v. Eagle Mtn. Saginaw Indep. Sch. Dist.*, 27 F. 4th at 324

[51] Op. Party. St. K. B. at 3.

[52] *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.*, 27 F.4th at 324 ("Bell does not allege that he actually lost any revenue due to the school's use of the passage[;] . . . [w]e do not see a plausible economic rationale to support Bell's assertion that widespread tweeting of the WIN passage would undermine the value of his copyright.").

[53] Op. Party. St. K. B. at 4.

[54] *Id.*

[55] *Id.*

[56] Lewis Decl. at ¶ 11; *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.*, 27 F.4th at 326 ("The school shared a single page of Bell's work with fewer than 1,000 online followers and immediately removed the posts upon request.").

Bell's position that Lewis's quote was available to "5.3 billion persons with access to the internet" thus creating some secondary market is equally illogical.[57] It should also be noted that the number of people with access to the internet have access to Bell's own website, where the entire quote appears on merchandise on that site, available for all to see without payment of a license.[58]

Bell's additional argument that Lewis's post, which was taken down in 2023 damages Bell's ability to publish a new edition or book is equally unconvincing as there is no evidence to support the proposition that the no-longer-existing post from a no-longer-existing LinkedIn account has any effect on a speculative to be published new edition of *Winning Isn't Normal*.

2. *Factor Two: The Nature of the Copyrighted Work*

Fair use is more often found in works of a factual nature, rather than fictional works. Here, the Fifth Circuit characterized the underlying work as a "nonfiction study of athleticism, 'based on psychological principles'" derived from Bell's work in the field.[59] Bell admits that the book is "factual in nature."[60] In upholding a motion to dismiss on grounds of fair use, the Fifth Circuit characterized the passage in question as largely consisting of "well-worn truisms: 'Every competition only has one winner. . . . You can't just be one of the crowd. . . . You have to train more and train better.' Athletes will be familiar with them all."[61] Nike recently has made similar statements in their summer 2024 campaign "Winning Isn't for Everyone." .[62] Dr. Brian K. Perkin, a professor of Educational Leadership published an article entitled "Winning Isn't For Everyone" on LinkedIn[63] The common theme of winners differentiating themselves is not unusual. Neither the Nike ad campaign or Dr. Perkin's article were deemed by Bell to have created any damage to him, or his book.

The Fifth Circuit further found that while the second factor "narrow[ly]" fell in Bell's favor since "Bell is entitled to the inference that the school chose the WIN Passage because it combines and condenses these principles in a particularly inspiring way," this was a "meager victory" because this factor is "widely considered **the least significant** fair-use factor," and even on a motion to dismiss where the burden was in favor of Bell, not only was fair use found, but the district court still sanctioned Bell, which was affirmed by the Fifth Circuit.[64]

3. *Factor Three: The Amount and Substantiality of the Portion Used*

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[57] Op. Party. St. K. B. at 4.
[58] Wit. St. K. B. at ¶ 9; *Id*. at 6; *See also* Exhibit Claimant Ex. H; *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist*., 27 F.4th at 319.
[59] *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist*., 27 F.4th at 323.
[60] *Id*.
[61] *Id*.
[62] *See* LEWIS EXHIBIT A, BATES NUMBER CL0000036-CL0000041.
[63] *See* LEWIS EXHIBIT B, BATES NUMBER CL0000042-CL0000049.
[64] *Id*. at 320 and 323.

As explained on page 6 *infra*, the use of less than one page of a 72-page book weighs in Lewis's favor.

4. *Factor Four: The Adverse Impact on The Work.*

There is no evidence that Lewis's post in 2021 created an adverse effect at all on book sales or would harm the as yet to be published new edition. Since Lewis's post is no longer available, it is illogical altogether to say that there could be damage from the 2021 post. Further Bell has not presented any evidence that Lewis's post in 2021 had any effect on the market for Bell's book. As the *Eagle* court opined, generally, when viewers are able to witness the quoted language "free of charge, the fact that the entire work is reproduced ... does not have its ordinary effect of militating against a finding of fair use."[65]

B. There is No Basis for an Inducement of Infringement Claim

There is no basis to claim that Lewis's post constituted infringement at all, or that he is liable for inducement of the infringement of others. Nothing in the record supports such a claim. A claim for inducement cannot lie where the underlying work said to constitute the basis for the secondary liability claim is a fair use.[66] Further, inducement, which is a form of contributory infringement, requires "knowledge of the infringing activity, induces, causes or materially contributes to infringing conduct of another."[67] No facts alleged support this claim for secondary liability.

C. There is No Basis for a Damages Award

Given Lewis's fair use defense, no damages should be awarded against him. Under any theory, Bell has no rational basis for a damages award. Lewis is an innocent infringer under 17 U.S.C. § 504(c)(2) because he "was not aware and had no reason to believe that his acts constituted an infringement of copyright."[68] "The innocent infringer defense gives the district court discretion to reduce the minimum statutory damages to $200 per infringed work if it finds that the infringer 'was not aware and had no reason to believe that his or her acts constituted an infringement of copyright.'"[69] Moreover, Bell has not proffered any evidence of 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.[70] Nor is there a basis for statutory damages.[71]

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[65] 27 F.4th at 324.

[66] *Brown v. Netflix, Inc.*, 462 F. Supp. 3d 453, 464 (S.D.N.Y. 2020), *aff'd*, 855 F. App'x 61 (2d Cir. 2021).

[67] *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 790 (5th Cir. 1999).

[68] *Bobby Goldstein Prods., Inc. v. Habeeb*, No. 3:21-CV-1924-G, 2022 BL 358378, at *3 (N.D. Tex. Oct. 6, 2022).

[69] *Id.*

[70] *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).

[71] *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'"); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) *Seoul Broad. Sys.*

The only evidence in the record is the price paid for a book and that despite Lewis's removed LinkedIn post, there is still a market for the book. There is nothing to support a decrease in sales at all, much less a drop attributed to Lewis's removed post. Although a few licenses have been submitted as Bell Exhibit H, identified as "Various Licenses granted by Dr. Bell over the Years" (Bell Exhibit H), the evidentiary purpose of these agreements is unclear, as there is no description of how these agreements relate to Bell's claims, as required by the CCB Handbook. These agreements have not be offered into evidence to support the fair market value of a hypothetical license, and they could not be offered into evidence for that purpose if described as such. Bell Exhibit H includes a cross-collaboration license with no copyright materials exchanged; two school sport team school litigation settlement agreements, which should not be in evidence at all, because their public distribution here requires the approval of the agreements' signatory, which counsel for Claimant admits was not obtained, because "they are irrelevant to [Claimant's] claims or [Respondent's] defenses."[72] Other agreements in Exhibit H seem incomplete or cobbled together, because of different typefaces, and redacted paragraphs. In any event, nothing contained in this Exhibit H is relevant, or for an amount even close to what Bell had demanded in his letter or demands here. Supporting evidence of damages should be based on a "factual basis" and not "undue speculation."[73]

Finally, Claimant has doubled its requested award to $30,000 without explanation. A single act of infringement is alleged, and that is capped at $15,000.[74]

D. Bell Should be Sanctioned by the Copyright Claims Board.

As explained, Bell's suit follows a pattern of frivolous litigation simply intended to exact a high settlement. After a series of negative rulings in various district courts, Bell now has brought a series of actions here, all based on similar allegations. These claims should not be permitted in this forum. It is respectfully requested that attorney's fees should be awarded to Chris Lewis, and that Bell be banned from filing new claims for a year, in accordance with the rules of this forum.

IV. CONCLUSION

It is respectfully requested that judgment be issued in Chris Lewis's favor and that this action be dismissed.

Int'l v. Young Min Ro, No. 1:09cv433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011); *Aberle v. GP Clubs*, *LLC*, No. A-19-cv-1066-RP, 2020 WL 4035074, at *4 (W.D. Tex. July 17, 2020); *Bly v. Banbury Books*, *Inc*., 638 F. Supp. 983, 987 (E.D. Pa. 1986).

[72] LEWIS EXHIBIT D, Email from Seamus Kelly to Jacqueline Lesser, dated February 19, 2025.

[73] *On Davis v. The Gap*, *Inc*., 246 F.3d 152, 165 (2d Cir. 2001).

[74] *See* H.R.2426 - CASE Act of 2019 § 1504. Nature of proceedings (e)(1)(a)(ii)(I) ("With respect to works timely registered under section 412, so that the works are eligible for an award of statutory damages in accordance with that section, the statutory damages may not exceed $15,000 for each work infringed.").

Dated: February 20, 2025

Respectfully submitted,
ICE MILLER LLP

/s/ Jacqueline M. Lesser

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Chris A. Lewis

Proof of Delivery

I hereby certify that on Thursday, February 20, 2025, I provided a true and correct copy of the Party Statement of Respondent Chris A. Lewis to the following:

Keith F. Bell, represented by Keith F. Bell, served via ESERVICE at drkeithbell@gmail.com

Signed: /s/ Jacqueline M. Lesser