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COPYRIGHT CLAIMS BOARD

Dr. Keith F. Bell,	)	
	)	
Claimant	)	
	)	
v.	)	
	)	**24-CCB-0031**
Chris A Lewis,	)	
	)	
Respondent	)	

CLAIMANT DR. KEITH F. BELL'S REPLY TO RESPONDENT CHRIS A. LEWIS'S PARTY STATEMENT

According to Respondent Chris A. Lewis's Party Statement (the "Response"), Claimant Dr. Keith F. Bell ("Dr. Bell" or "Claimant) is a serial litigant, a professional litigant, a copyright troll, a "shakedown" artist— but the Response misses an important title that Dr. Bell has earned— he is an author. And Dr. Bell deserves the same copyright protections afforded all authors, no matter how distasteful Respondent Chris A. Lewis ("Mr. Lewis" or "Respondent") paints Dr. Bell's efforts to protect and enforce his rights through the years.

Mr. Lewis spends much of the Response maligning Dr. Bell and his efforts to enforce his copyrights, concluding the Dr. Bell deserves to be sanctioned for seeking relief from the Copyright Claims Board for Mr. Lewis's admitted publication of Dr. Bell's copyrighted prose on LinkedIn. Mr. Lewis repeatedly highlights that Dr. Bell took one year from discovering Mr. Lewis's infringement to serving Mr. Lewis with a cease-and-desist letter, but there is no statute of limitations issue here. Dr. Bell timely sought enforcement of his rights.

A. Mr. Lewis's post of the WIN Passage on LinkedIn does not constitute fair use.

There is no dispute that the WIN Passage was a copyrighted work that was posted by Mr. Lewis to his LinkedIn without Dr. Bell's authorization. Mr. Lewis argues, however, that because federal courts have recently found that Facebook posts made by a high school athletics account

and a Twitter/X post by a state college football coach were fair use, that any use of Dr. Bell's work by anyone on any social media platform is therefore fair use. This is the wrong takeaway from these cases, as Mr. Lewis's LinkedIn post is distinguishable from these federal cases in a number of important ways. Indeed, in this matter, each of the four factors in determining fair use weigh in Dr. Bell's favor.

Since the Fifth Circuit's opinion in *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.*, 27 F.4th 313 (5th Cir. 2022), the Supreme Court has significantly clarified the first prong of fair use:

> In this Court, the sole question presented is whether the first fair use factor, "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," § 107(1), weighs in favor of AWF's recent commercial licensing to Condé Nast. On that narrow issue, and limited to the challenged use, the Court agrees with the Second Circuit: The first factor favors Goldsmith, not AWF.
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> …
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> Taken together, these two elements—that Goldsmith's photograph and AWF's 2016 licensing of Orange Prince share substantially the same purpose, and that AWF's use of Goldsmith's photo was of a commercial nature—counsel against fair use, absent some other justification for copying. That is, although a use's transformativeness may outweigh its commercial character, here, both elements point in the same direction.

Andy Warhol Found. for the Visual Arts v. Goldsmith, 143 S. Ct. 1258, 1266, 1280 (2023). Here, Mr. Lewis did not make his post on a business networking site in furtherance of a non-profit's cause, or as part of a review or educational treatise on Dr. Bell's work. He posted it to benefit his professional profile, a commerce-based activity.

1. LinkedIn is a commercial platform.

Unlike every other major social media platform, LinkedIn is a platform that exists for professional career development. In his initial statement, Dr. Bell quoted language from LinkedIn's "About" section that highlighted the commercial nature of LinkedIn at its very core. In the

Response, Mr. Lewis offers no evidence or argument countering that the very purpose of LinkedIn, according to the platform's own Vision Statement, is to "**Create economic opportunity** for every member of the global workforce." (about.linkedin.com (emphasis added)). Instead, he simply calls Dr. Bell's argument that posting on LinkedIn is intrinsically commercial, built off the very vision statement of the very website Mr. Lewis used to make his post, as "unsupported assertions" and "a self-serving statement." (Response at p. 4.) Mr. Lewis argues that this situation is an exact mirror of Dr. Bell's separate lawsuit involving a post on Twitter/X by a football coach. It is not. Mr. Lewis does not, and cannot, justify his post of the WIN Passage on a website that exists for the sole purpose of career networking under any non-commercial use permitted by a fair use analysis.

2. Mr. Lewis's good faith analysis is not particularly useful here.

Mr. Lewis next argues his post was made in good faith. "Good faith does not excuse infringement." *Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.*, 27 F.4th 313, 322 (5th Cir. 2022) (citing *Nunez v. Caribbean Int'l News Corp.* , 235 F.3d 18, 23 (1st Cir. 2000)). "[F]air use presupposes good faith and fair dealing." *Id.* Mr. Lewis argues he was under no obligation or duty to perform an internet search to determine whether the WIN Passage was copyrighted. It is hard to fathom that if Mr. Lewis posted a copyrighted photograph, movie clip, musical sample, or painting, that his infringement could be considered innocent. He essentially argues that prose is less worthy of protection than works from the other creative arts.

Further, that Dr. Bell took time to enforce his rights is not indicative of bad faith on Dr. Bell's part. Indeed, if Dr. Bell were the troll Mr. Lewis alleges he is, he would be sending multiple cease and desist letters on a daily basis to every infringer he finds. Mr. Lewis's bald accusation that the delay was evidence of bad faith, based solely on the *Eagle Mountain* court's holding according to the *Eagle Mountain* facts, is not supported by any facts in this record. It makes just

as much sense, if not more, that despite the fact Dr. Bell's rights to the WIN Passage are violated prolifically, he brings forth legal actions based on his own limited bandwidth. Regardless, it is counter to the rule of law to suggest that someone that brings an action within the statute of limitations has acted in bad faith. *See, e.g., Sperling v. Hoffmann-La Roche, Inc.*, 24 F.3d 463, 467 (3d Cir. 1994) (describing "the goals of any statute of limitations" as "to provide notice to defendants of claims against them and to discourage plaintiffs from sleeping on their rights").

Thus, while there is limited evidence on the record to suggest Mr. Lewis was not acting in good faith (see Section B, below), there is no evidence Dr. Bell acted in bad faith, and this factor is not useful in the assessment of Mr. Lewis's fair use defense.

3. The post was not transformative.

Mr. Lewis's framing of the WIN Book and WIN Passage as solely about swimming is a creative but flawed argument. Mr. Lewis argues that Dr. Bell's Exhibit G demonstrates "virtually all sales have been to schools, athletic departments and sports teams." (Response, at p. 6.) While this assumption can hardly be divined from the various sales documents found in Exhibit G, it runs counter to the Supreme Court's critical *Goldsmith* holding. (*See also,* Exhibit I, BELL_000070, excerpt from Dr. Bell's website: "The how-to guide on what takes to win. Easily applied to all sports, fine arts, academics and business.") Even if Dr. Bell *did* only sell the WIN Book and license the WIN Passage to swimmers, Mr. Lewis's use of the WIN Passage to promote his insurance business is still commercial in nature. There is nothing transformative about reposting copyrighted material verbatim to a different audience. *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 548 (1985) ("We need not reach these issues, however, as The Nation has admitted to lifting verbatim quotes of the author's original language…")

4. The entirety of the copyrighted WIN Passage was posted. This is also the climax of the WIN Book.

Mr. Lewis completely ignores the fact that the WIN Passage is copyrighted itself. Indeed, for the very reason Dr. Bell sells the WIN Passage on posters and t-shirts and licenses its use, Dr. Bell has an interest in limiting its unpermitted use. "Professor Latman, in a study of the doctrine of fair use commissioned by Congress for the revision effort, summarized prior law as turning on the 'importance of the material copied or performed from the point of view of the reasonable copyright owner. In other words, would the reasonable copyright owner have consented to the use?'" *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 549-50 (1985) (internal citations omitted). The proliferation of the WIN Passage on the internet is anathema to Dr. Bell's ability to sell books and merchandise, which is the very reason Dr. Bell has brough forth so much litigation to protect his rights. (*Compare* Response, p. 1, n.2, outlining the amount of successful settlements Dr. Bell had reached over a 16-year timeframe).

5. Dr. Bell does not need to show a diminished market.

The fact that U.S. copyright law permits statutory damages belies Mr. Lewis's next argument that Dr. Bell does not deserve damages because he has not showed a diminished market.

> According to the Supreme Court, a statutory damages award is proper "[e]ven for uninjurious and unprofitable invasions of copyright." *F.W. Woolworth* , 344 U.S. at 233. And Circuit Courts have determined that a statutory damages award is appropriate even when the copyright owner cannot show evidence of actual damages or lost profits. For example, the Ninth Circuit stated that "[a] plaintiff may recover statutory damages 'whether or not there is adequate evidence of the actual damages suffered by plaintiff or of the profits reaped by defendant.'" *L.A. News Serv.* , 149 F.3d 987, 996 (quoting *Harris v. Emus Records Corp.* , 734 F.2d 1329, 1335 (9th Cir. 1984)).

Energy Intelligence Grp., Inc. v. CHS Mcpherson Refinery, Inc., 300 F. Supp. 3d 1356, 1379-80 (D. Kan. 2018). To be clear, United States copyright law protects creators, not only creators with adequate bookkeeping. Dr. Bell has provided adequate proof that he still earns revenue from the

WIN Book and WIN Passage, and his creative prose is worthy of being protected regardless of whether he maintains adequate records to show, let alone has suffered from, diminished sales.

B. Mr. Lewis's infringement induced Scott Perry to infringe.

As noted in his initial party statement, Dr. Bell discovered Mr. Lewis's infringing post through Lewis's colleague Scott Perry's repost of Lewis's original infringing post. (Claimant's Ex. E.) Importantly, Scott Perry praised Mr. Lewis for his "great post" and stated Mr. Lewis was "absolutely right!" Curiously, and against his argument of good faith, Mr. Lewis took no effort to disavow Scott Perry or any of Scott Perry's viewers that Mr. Lewis had not, in fact, authored the post, as credited by Scott Perry. Thus, because Mr. Lewis posted the WIN Passage without any attribution (in direct contrast to the attributed infringement in *Eagle Mountain*), he emboldened Scott Perry to further infringe upon Dr. Bell's rights. Had Mr. Lewis acted in good faith to correct Scott Perry that he was not the actual author of the WIN Passage, that may have encouraged Scott Perry to prudently avoid the potential infringement that Mr. Lewis cavalierly ignored at his peril.

Further, Dr. Bell has provided Exhibit J, in which he collated further posts stemming from Mr. Lewis's post. Again, had Mr. Lewis responded to Scott Perry's praise by pointing out that he had not actually authored the post, it may have prevented much of this rampant further infringement. However, Mr. Lewis was content to receive Scott Perry's praise and an expanded footprint in the professional career-based network of LinkedIn.

This second act of encouraging further infringement by accepting ownership of the WIN Passage is the basis for Dr. Bell seeking an additional $15,000.00.

C. Dr. Bell is defending his copyright, and there is no basis for sanctions.

Finally, Mr. Lewis encourages the Copyright Claims Board to sanction Dr. Bell, calling this claim part of a "pattern of frivolous litigation simply intended to exact a high settlement."

(Response, at p. 11.) As Dr. Bell seeks this Board to weigh in on the unique facts of this claim, this matter is not frivolous. Further, the jurisdictional limits of the Copyright Claims Board are reasonable, countering the claim Dr. Bell continues to seek excessive settlement. Each of Dr. Bell's matters before the Copyright Claims Board rely on unique sets of facts, separate from those adjudicated in federal courts (particularly the recent *Kiffin* case relied on so heavily by Respondent, which is highly distinguishable from this matter, and was decided after the close of discovery in this matter). While Mr. Lewis and some courts may find Dr. Bell's initial settlement salvos to be unreasonable, copyright laws do not only protect creators with adequate negotiating skills. That Dr. Bell is not as skilled at the art of negotiating does not make his creative output any less worthy of protection.

D. Conclusion

It is respectfully requested that judgment be issued in Dr. Bell's favor, and that he be awarded damages for Mr. Lewis's infringement of his copyrights. To the extent the Board feels it will be helpful to clarify his position, Dr. Bell would be happy to participate in a hearing.

Respectfully Submitted,

/s/ Seamus T. Kelly

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Proof of Delivery

I hereby certify that on Thursday, March 13, 2025, I provided a true and correct copy of the Reply to the following:

Chris A Lewis, represented by Chris A Lewis, served via MANUALEEMAIL

Signed: /s/ Seamus T Kelly