COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0401
August 25, 2025

Nathan Taylor	*v.*	Joseph Silvestro
CLAIMANT		**RESPONDENT**

PROPOSED DETERMINATION DISMISSING PROCEEDING

Respondent, Joseph Silvestro ("Silvestro" 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, Nathan Taylor ("Taylor" 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 insufficient to support a finding in favor of Taylor against Silvestro and proposes a dismissal of the claim without prejudice.[1]

Claimant now has thirty days, ending on **September 24, 2025**, from the issuance of this proposed default determination to submit a statement of no more than seven pages, that follows the requirements of 37 C.F.R. § 220.5(b) and is limited to an opposition to the proposed dismissal. 37 C.F.R. § 227.3(a)(2). If Claimant submits such an opposition, the Board will evaluate it before issuing a final determination. *Id.*

I. Procedural History

This claim, seeking a declaration of noninfringement, was initially filed on December 26, 2024. Claim (Dkt. 1). The Board found the Claim compliant and, on January 6, 2025, directed Taylor to serve Silvestro within ninety days. (Dkt. 4). Taylor served Silvestro (Dkt. 5) and the Board did not receive an opt-out form from Silvestro.

[1] Dismissals in default cases are without prejudice because the applicable regulations provide: "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).

On April 1, 2025, the Board notified the parties that the proceeding had entered the "active phase" because Silvestro did not submit a timely opt out, and it ordered Taylor to pay the second filing fee and Silvestro to register for the Board's online docketing system (eCCB). (Dkt. 7). The Board issued that order through eCCB and also mailed and emailed it to Silvestro. Taylor paid the second filing fee on April 1, 2025. (Dkt. 8). On April 16, 2025, the Board issued a Second Notice for Silvestro to register for eCCB (Dkt. 10) and a Scheduling Order. (Dkt. 9). In the Scheduling Order, Silvestro was ordered to submit a response by May 16, 2025, but Silvestro did not. Both parties were also ordered to attend an initial conference to be held on May 21, 2025. While Taylor attended the May 21 conference, Silvestro did not.

On May 21, 2025, the Board issued its First Default Notice because Silvestro did not meet any of the mandatory deadlines set by the Board. (Dkt. 11). The First Default Notice gave Silvestro another thirty days to file a response. *Id.* On June 6, 2025, the Board issued its Second Default Notice, which reminded Silvestro of the June 20, 2025 deadline to cure the missed obligations. (Dkt. 12). These notices were issued through mail, email, and eCCB.

Silvestro failed to file a response or register for eCCB by June 20, 2025. Furthermore, the Board has received no communications from Silvestro in this proceeding. Accordingly, on June 24, 2025, the Board ordered Taylor to submit written direct testimony in support of a default determination. (Dkt. 13).

Taylor submitted limited written materials on August 3, 2025. He submitted one document (Dkt. 14), which comprises a Party Statement (with evidence images pasted into the statement) and his own witness statement ("Taylor Statement"). This case is now ripe for a proposed default determination.

II. Factual History

As best as the Board can tell from the limited evidence, Taylor has a YouTube channel where he posts videos. At least some of these videos involve Taylor entering a "virtual world" community and recording his interactions with others in the room and causing disruptions until the denizens of the community get upset enough to kick him out. Taylor then posts the resulting recording.

Taylor attached a document to his Claim called "Evidence of Noninfringement." Claim, Attachment 6. In that document, he submitted a link to the video he posted that is the subject of the Claim.

https://drive.google.com/file/d/16_wr63V0JtoxifqPwmX7XvxHEO5yzxb3/view (the "Video").[2] The Party Statement includes the same link. (Dkt. 14 at 1). The link shows an edited, approximately 12-minute video of Taylor and a friend of his entering a virtual world community called "The Furry Keys," where each person has an avatar that is an animal of some sort. Taylor walks around the community pretending to be interested in participating, but eventually antagonizes various people, presumably to get reactions out of them. After multiple escalations, Taylor and his friend are banned from the community. Taylor then posted his Video to YouTube.

III. Changed Allegations

The Claim was originally accepted against this Respondent, Silvestro, because the Claim stated that Silvestro filed a takedown notice with YouTube resulting in the removal of the Video and a copyright strike against Taylor. As stated in the Claim, "Alan Lubeski did not like being in my YouTube video. **Joseph Silvestro** who is a friend of Alan Lubeski was **told to copyright strike my video** by Alan Lubeski." Claim (emphasis added). The Claim also went through the supposedly five images in the Video that caused the takedown notice and specifically stated that **Silvestro** claimed to YouTube that he owned the images. *Id.* That allegation of a takedown notice and evidence was the basis of Taylor showing that there was an actual controversy between him and Silvestro including Silvestro threatening an infringement suit.

At the initial conference, the presiding Copyright Claims Officer ("CCO") informed Taylor that, if he won, there would be no damages. *See* 17 U.S.C. § 1504(e)(1)(A), CCB Handbook, *Damages*, at 1 ("Damages are available for a claim of copyright infringement or misrepresentation but not for a declaration of noninfringement"). The CCO further informed Taylor that any decision he might get, if it were in his favor, would be very narrowly tailored to a finding that his use of the specific images he stated were in the takedown notice was a fair use, and not that the overall Video did not infringe any other works or images in the Video that Silvestro (or anyone else) might own. Taylor stated that, given that understanding and that the case was in default, he was considering dropping the

[2] The Board's practice is to not take links into account as evidence since information residing at the link can be removed or changed. In this case, the Board refers to the Video only because it is helpful to get an idea of the issues in this proceeding. However, the Board's determination is not in any way based on its review of the content in the Video for which Taylor provided the link.

case (which would have been without prejudice). However, the Board did not hear further from Taylor until he submitted his papers in support of a default determination.

The Party Statement and Taylor Statement dramatically change the facts from what was in the Claim and previously presented to the Board. In contrast to prior statements that the takedown notice was submitted by Respondent, Taylor now says, and submits a screenshot to show, that the takedown notice was submitted by third-party Alan Lubeski ("Lubeski"). Party Statement, at 1 ("The takedown was initiated by Alan Lubeski"); Taylor Statement ¶ 2. Taylor claims (in a single line in his party statement and witness statement without evidence) that Lubeski has since transferred ownership of the images at issue in the takedown notice to Silvestro and that is why Taylor seeks a declaration of noninfringement against Silvestro. Party Statement, at 1 ("Per YouTube, disputes must be addressed with the current copyright owner, which is now Joseph Silvestro."); Taylor Statement ¶ 3.

Taylor gives evidence to suggest that the five images he says resulted in the takedown notice are significantly derived from other stock images, apparently seeking to indicate that Silvestro cannot own the images; he also states that Silvestro does not have a copyright registration for any of the images. Party Statement, at 3-4. He claims that his use of those images was also "transformative." *Id.*, at 5. Taylor further states that: Silvestro has acted in bad faith; Taylor has a misrepresentation claim; and, Silvestro has abused the "copyright strike system"; he therefore asks for $5,000 in "statutory damages." *Id.*

IV. Declaration for Noninfringement

A claim for a declaration of noninfringement asks the Board to find that certain actions do not amount to an infringement of a respondent's copyrighted work. 17 U.S.C. § 1504(c)(2). However, to have a valid claim allowing a declaration of noninfringement, there must be an "actual controversy" between the parties over whether Claimant infringed Respondent's copyright. 28 U.S.C. § 2201(a). *See* 17 U.S.C. § 1504(c)(2); 37 C.F.R. §§ 222.2(c)(8)(i) & (iii)-(v); *Shahani v. Moctezuma*, No. 16-cv-03862-JSC, 2017 WL 264063, at *2 (N.D. Cal. Jan. 20, 2017) ("To allege a sufficient case or controversy in a copyright declaratory relief action, a plaintiff must demonstrate a real and reasonable apprehension that he will be subject to liability as a result of the defendant's actions."). In this case, it is possible that Taylor's use of the five images subject to the takedown notice (at least according to Taylor) amounted to fair use.

However, that is not a determination the Board can make against this Respondent, who did not send the takedown notice that was the basis of this suit. There is no evidence that Silvestro owned the images in question when the Video was posted, owns the images now, or is actively threatening Taylor with an infringement suit. *See Shahani*, 2017 WL 264063, at *2 ("Since Defendant does not have standing to sue Plaintiff for copyright infringement under the Copyright Act, Plaintiff cannot allege facts sufficient to show that there is a 'real and reasonable apprehension' that he may be sued for copyright infringement by Defendant.").

Finally, Taylor states that he had to sue Silvestro because YouTube told him so, based on an assumption that Lubeski eventually transferred the images in question to Silvestro. Party Statement, at 1. Even to the extent an ownership transfer occurred, Taylor's theory would still be incorrect under the law. There is no evidence that Lubeski—even if Lubeski did indeed transfer ownership of the images after he sent the takedown notice—also transferred the right to sue for past infringements. Without an explicit transfer of that right in addition to copyright ownership, Lubeski, not Silvestro, would still own the right to sue on the posting of the Video, which took place at a time when Lubeski owned the copyright. *See*, *e.g.*, *Righthaven, LLC v. Majorwager.com, Inc.*, No. 2:10-cv-00484-GMN, 2010 WL 4386499, at *2 (D. Nev. Oct. 28, 2010) (while an assignor can transfer ownership, "the assignee only has standing to sue if the interest in the past infringement is expressly included in the assignment") (citing *Silvers v. Sony Pictures Entm't Inc.,* 402 F.3d 881, 889 (9th Cir. 2005)).[3]

V. Conclusion

The Board's proposed default determination is to dismiss the Claim against Respondent Joseph Silvestro without prejudice.

[3] Although Taylor does not reference them in his papers, Board records show that Silvestro has filed two Board proceedings in the past alleging copyright infringement against Taylor, both of which are closed. The first claim was closed because Silvestro withdrew his application for copyright registration of the allegedly infringed works, which are the same ones Taylor raises in the present proceeding. Order Dismissing Claim Without Prejudice, *Silvestro v. Taylor*, 24-CCB-0368 (May 2, 2025). Silvestro's actions suggest a lack of a current controversy and buttress the fact that the only evidence presented by Taylor is that Silvestro has no ability to sue Taylor for infringement for actions taken by Taylor at a time when third-party Lubeski owned the copyright in the works at issue here. The second claim, which involved artwork different from that in the current proceeding, was closed because Silvestro did not amend it in response to an order that it was noncompliant. Order Dismissing Claim Without Prejudice, *Silvestro v. Taylor*, 24-CCB-0395 (Mar. 21, 2025).