COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0060
March 2, 2026

Lauren S Chalas	*v.*	Laura Freeman
CLAIMANT		**RESPONDENT**

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board ("Board") finds in favor of Respondent Laura Freeman ("Respondent" or "Freeman") and dismisses the claim against her with prejudice.

I. Procedural History

Claimant Laura S Chalas ("Chalas" or "Claimant") filed her copyright infringement claim on February 26, 2024, and selected a smaller claims proceeding ("Claim"). (Dkt. 1). The Board found the Claim compliant, and on March 7, 2024, directed Claimant to serve Respondent. (Dkt. 4). On June 12, 2024, Respondent filed her Response to the Claim. (Dkt. 12). Discovery closed on November 6, 2024. (Dkt. 16). The parties were directed to file their statements and evidence by December 24, 2024. *Id.* On December 10, 2024, Respondent submitted a position statement ("Respondent's Position Statement") (Dkt. 18), an evidence list (Dkt. 17), and evidence (Dkt. 19, 20). Claimant requested a stay of the proceedings ("Stay") on December 26, 2024 (Dkt. 21, 22), and Respondent objected to the Stay. (Dkt. 24). The Board denied the Stay but granted an extension of time to Claimant until January 10, 2025. (Dkt. 23). On January 7, 2025, Respondent filed a Request for Reconsideration (Dkt. 26), which the Board denied on January 16, 2025. (Dkt. 40). Claimant submitted a position statement ("Claimant's Position Statement") (Dkt. 29), a witness statement from Greg Herr (Dkt. 28), an evidence list (Dkt. 38) and evidence ("Claimant Evidence") (Dkt. 30-37, 39) on January 10, 2025, as ordered.

Pursuant to 37 C.F.R. § 226.1, a Merits Conference was held on January 23, 2025. At the Merits Conference, Claimant and Respondent testified. Merits Conference transcript (on file with the Board) ("Conference Tr."). Chalas re-filed Exhibit I at the direction of the Board during the Merits Conference (Dkt. 43) and filed an amended

witness statement on January 24, 2025. (Dkt. 44).

The Board issued a Proposed Statement of Facts on June 26, 2025 ("Proposed Facts"). (Dkt. 45). No timely objections to the Proposed Facts were submitted. The case is now ready for final determination.

II. Factual History

For an understanding of the facts underlying this proceeding, the reader is referred to the Findings of Fact, attached to this determination.[1]

III. Legal Analysis

A. Merits

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). In the present case, there is no question that Chalas owns the Work at issue. Claimant Exhibit A (Dkt. 34); Conference Tr. at 16:10-16:18, 17:08-17:39.

B. Defenses

Freeman does not contest Chalas's ownership of the Work but asserts other defenses to Chalas's claim. In particular, Freeman contends that Chalas does not have a valid copyright infringement claim and is not entitled to damages because (1) Freeman did not have access to the Work before she created the Respondent Design (Respondent's Position Statement at 2-4) and (2) the Work and Respondent's Design are not substantially similar. *Id.* at 4-7. Because there is no dispute that Chalas owns the Work, the Board need only consider whether Freeman infringed the Work.

1. Access

Freeman asserts that her work was independently created and that she did not have access to Chalas's Work before the alleged infringement occurred. Respondent's Position Statement at 2-4. In the absence of direct evidence, copying is proved by circumstantial evidence of access to the copyrighted work and substantial similarities as to

[1] All defined terms in the Findings of Fact are incorporated in this Final Determination, except as noted

protectible material in the two works. *See, e.g., Boisson v. Banian, Ltd.*, 273 F.3d 262, 267-68 (2d Cir. 2001); *Armour v. Knowles*, 512 F.3d 147, 152 (5th Cir. 2007); *Soc'y of the Holy Transfiguration Monastery, Inc. v. Archbishop Gregory of Denver, Colo.*, 689 F.3d 29, 48-49 (1st Cir. 2012); *Reader's Digest Ass'n, Inc. v. Conservative Digest, Inc.*, 821 F.2d 800, 806 (D.C. Cir. 1987). Copying can also be inferred without additional evidence of access if the allegedly infringed work and the allegedly infringing work are "so strikingly similar as to preclude the possibility of independent creation[.]" *Lipton v. Nature Co.*, 71 F.3d 464, 471 (2d Cir. 1995) (internal quotation marks and citation omitted). *See also Unicolors v. Urban Outfitters, Inc.,* 853 F.3d 980, 985(9th Cir. 2017); *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910, 915 (7th Cir. 2007). Here, the two works at issue are not substantially similar, much less strikingly similar. As stated in the Findings of Fact, "[b]ased upon all of the evidence and testimony submitted, Chalas has not sustained her burden of proving Respondent's access to the Work."

2. Substantial Similarity

Chalas argues that Freeman's hobo snail design, which she uses on products such as pins and stickers, is substantially similar to Chalas's snail design, which she uses as a logo for her business and on products such as enamel pins, stickers and accessories. Claimant's Position Statement at 3-4. Respondent, on the other hand, asserts that Chalas cannot claim ownership of the idea of a snail, or any animal, holding a bindle because such ideas are commonplace and constitute a *scènes à faire.* Respondent's Position Statement at 5.

In order to prove substantial similarity, the claimant must show that the allegedly infringing work is substantially similar to protectable elements of the infringed work. *See Zalewski v. Cicero Builder Dev., Inc.*, 754 F.3d 95, 101 (2d Cir. 2014) ("[T]he term 'substantial similarity' is properly reserved for similarity that exists between the protected elements of a work and another work."); *Sam Carrell v. Origami Owl, LLC*, No. 1:18-cv-00694, 2019 LEXIS 49522 (S.D.N.Y. March 25, 2019). In other words, copyright protects the expression of an idea, not the idea itself. *See Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 18 (2021)*; Herbert Rosenthal Jewelry Corp. v. Kalpakian*, 446 F. 2d 738, 742 (9th Cir. 1971). "Otherwise, the first person to express any idea would have a monopoly over it. Degas can't prohibit other artists from painting ballerinas." *Mattel, Inc. v. MGA Entm't, Inc.,* 616 F.3d 904, 913 (9th Cir. 2010). The *scènes à faire* doctrine, which holds that unprotectible elements of a work that flow logically from that work's theme rather than from the

author's creativity, is routinely applied to elements of pictorial or sculptural works that are no more than an embodiment of an animal's appearance. *Carrell*, 2019 S.D.N.Y. LEXIS 49522 at *5 (citations omitted)(photo of a dog not substantially similar to defendant artist's rendition of a similar breed of a dog). When confronted with claims of copyright infringement involving mere depictions of animals, courts typically find no infringement despite similarities in the designs of the two works at issue unless those similarities are virtually identical. *See, e.g., Id; Herbert Rosenthal Jewelry Corp. v. Honora Jewelry Co.*, 509 F. 2d 64(2d Cir. 1974); *Herbert Rosenthal v. Kalpakian*, 446 F. 2d at 742 (no infringement where two gold pins shaped like bees were encrusted with jewels). *See also Tomelleri v. DMB Assocs, Inc.*, et al., No. 2:20-cv-01035-TLN-KJN, 2021 LEXIS 187445 (E.D. Cal. 2021) (realistic depictions of animals are first depicted by nature, so artistic choices and variations are narrow unless they are not governed by the animal's physiology). Indeed, the relevance of a similarity is less significant if the similarity amounts to "stock elements" within a genre such that the non-protectible elements "must be so novel that coincidence could reasonably be ruled out." *Feuer-Goldstein, Inc. v. Michael Hill Franchise Pty. Ltd.,* No. 16-cv-9987 (PKC), 2019 LEXIS 51980 at *24 (S.D.NY 2019) (citations omitted).

Here, as Claimant stated, her Work and Respondent's Design are non-anthropomorphic and depict the natural features of snails:

> Their tentacles are realistically depicted stalks with round, pupilless, non-human eyes, in the accurate number and placement….Unlike many depictions of snails in media and art, both works have no human-like mouths, smiles or other human features….Both snails featured speckled or textured bodies….The ends of both snail's bodies stretch only slightly behind the shell, and each snail's foot is flat on the ground….Both snails have flat-coiled shells….Both snails also feature striations perpendicular to the movement of the spiral….In both shells, the first whorl dips slightly below the mouth of the shell, over the snails's body….

Claimant's Position Statement at 3. The vast majority of the similarities between the two designs deal with the basic positioning and features of actual snails. The elements of Chalas's Work, which are no more than an embodiment of a snail's appearance, flow materially from the theme of a snail.

In this case, the two designs are not virtually identical and, therefore, the features in Chalas's design are not novel enough to rule out coincidence as to any similar features in Respondent's Design. As Chalas admits, Respondent's Design differs in several ways, including the positioning of the body of the snail partially off the ground, the difference

in shell coiling, the visibility of all four tentacles and the scalloping on the edge of the snail body. Conference Tr. at 1:09:48-1:13:17. Freeman testified to additional differences including the fact that her design has: antennas with no stippling which are darkened at the end; a visible, mouth; a "u" shaped fringe on the visible body of the snail; and a thick shell with fully formed segments separated by black lines where the spiral ends near the middle of the shell as well as the fact that it faces in a different direction (right). *Id. at* 2:26:41-2:27:53.

However, Chalas claims that the addition of the bindle to her snail design is unique, and demonstrates that Freeman copied her Work. But even the addition of that feature neither makes her design unique nor proves that Freeman copied her Work. First, the designs vary in appearance as Respondent's Design depicts an actual branch with a detailed leaf growing out of it instead of a non-textured stick and is tied with a large visible knot in a polka dot fabric instead of fabric with patches or blemishes. *Id. at* 2:09:06-2:10:10; 2:26:41-2:27:53. *Compare* Claimant Ex. A with Respondent Ex. B.

Second, as demonstrated in the testimony and the evidence submitted by Respondent, the portrayal of different species of animals, including snails such the "Gary the Snail" in the famed "Spongebob Squarepants" works, with bindles is common and constitutes *scènes à faire*. Respondent's Position Statement at 5; Respondent Exs. H and I (images of animals carrying bindles from the U.S. Patent & Trademark website). (Dkt. 20). In addition, Freeman credibly testified that she came up with the idea of adding the bindle because she thought it was funny and was inspired to use the red and white polka dot material on the bindle based on a "classic design" reminiscent of old Hummel figurines she had seen. Conference Tr. at 2:06:56-2:07:05; 2:09:06-2:10:10. Thus, Chalas's inclusion of the bindle does not make her overall design unique such that Freeman infringed her copyright in the Work and, therefore, the Board finds that Freeman did not infringe Chalas's Work.

IV. Conclusion

The Board dismisses the claim against Respondent Laura Freeman with prejudice.

Copyright Claims Board

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CLAIMANT		**RESPONDENT**

FINDINGS OF FACTS

Based on the parties' submissions and the witness testimony at the conference, the Board finds the following facts as established.

1. Chalas, a Massachusetts-based visual artist and co-owner of The Roving House, Inc. ("Roving House"), sells enamel pins, stickers, and accessories featuring her nature-themed artwork on Shopify, Faire, and at various tradeshows. Claimant Position Statement at 1 (Dkt. 29); Merits Conference Testimony ("Conference Tr.") at 12:23-12:53.

2. Laura Freeman, a Washington-based visual "hobby artist" and sole member of Thruhalia, LLC, which was created at the beginning of 2022, sells pins, stickers, and keychains featuring animals such as slug and snail artwork on Etsy, Faire, and at local Washington retailers. Respondent Position Statement at 1 (Dkt. 18); Conference Tr. at 1:42:36-1:45:17.

3. Chalas is the author and owner of an image titled "The Roving House Snail," which was registered by the United States Copyright Office, effective as of January 13, 2022 (Reg. No. VA0002289642) (the "Work"). Claimant Exhibit A (Dkt. 34). The date of first publication of the Work is May 4, 2009. *Id.*

4. The Work was hand drawn by Chalas in 2009 and inspired by the backpacking travels of Chalas and her husband while following the band The Cure. Conference Tr. at 16:10-16:18, 17:08-17:39.

5. The Work, as accurately described by Chalas, is a drawing of a left-facing snail with non-anthropomorphized features including globular eyes, four tentacles (one of which cannot be seen), a flat foot, a globular shell with striations perpendicular to its curvature situated near the end of the foot, and a speckled body. The snail is carrying a bi-colored bindle, consisting of a

cloth with patches and X marks, tied to the end of a long, wooden stick. *Id.* at 18:25-25:45; Claimant Exhibit A. The overall concept/idea of the Work is to depict a snail as a hobo. Claimant Exhibit A.

6. Chalas explained that her rendition of a snail was closer to a natural depiction of a real snail as opposed to a cartoonish rendition. Conference Tr. at 18:25-18:56, 21:50-22:19. Chalas was aware of other images of snails but not any with bindles. However, she was aware of depictions of other animals carrying bindles. *Id.* at 30:55-31:25.

7. In 2018, Chalas began using the Work as a logo for her business on enamel pins, stickers, tote bags and other merchandise. Claimant Position Statement at 1. In 2018, Chalas began selling stickers and pins featuring the Work on Shopify. Conference Tr. at 32:23-32:58.

8. Chalas sourced her pins from Alchemy Merch (formerly Pin Game Strong). She believes that Alchemy Merch works directly with "trustworthy" factories in China to manufacture her pin designs, manage the import process and tariffs, and handle quality control. *Id.* at 33:56-35:15.

9. In February 2024, Chalas became aware of Freeman's allegedly infringing work after it was posted by a third party on "Pin & Art Collector Marketplace," a private Facebook group for pin collectors and enthusiasts. *Id.* at 55:05-55:35; Claimant Exhibit H (Dkt. 36).

10. On February 22, 2024, Chalas sent a DMCA takedown notice to Etsy alleging that Freeman's pin was infringing the Work. Claimant Position Statement at 1; Claimant Exhibit C (Dkt. 37). On February 23, 2024, Freeman submitted a counternotice to Etsy. *Id.*

11. After receiving the counternotice, and sending Freeman a cease and desist letter on February 23, 2024, Chalas filed this claim on February 26, 2024. Claimant Position Statement at 1; Claim (Dkt. 1).

12. Sometime before January 2021, Freeman created a hobo snail design ("Respondent Design") using Procreate, a digital art program, after being inspired by the slugs and snails in her yard in Washington. Conference Tr. at 1:45:18-1:45:25, 1:52:04-1:52:34. Prior to that, 80% of her designs were created digitally with the remainder designed in hand drawings. *Id.* at 1:48:01-1:48:08. Freeman was also aware that bugs, slugs and snails were popular themes used in consumer merchandise. *Id.* at 2:23:28-2:23:37.

13. Before her creation of the Respondent Design, Freeman had created slug designs such as a slug wearing a cowboy hat, another wearing a babushka, and another with a sunflower hat. *Id.* at 1:48:26-1:49:00, 1:56:58-1:57:48, 2:00:55-2:01:08. Freeman created five different animal designs for enamel pins – three slug designs, one snail design and one raccoon design. *Id.* at 2:38:51-2:39:01.

14. The Respondent Design was a "natural outgrowth" of Freeman's prior slug designs. *Id.* at 1:53:26-1:53:29. In particular, Freeman attested that she used one of her slug designs to create the snail design by first adding a shell that she created in a separate file to make it look like a snail. She used Getty images and other photographs of slugs and snails as reference material when creating the image and added an archetypal American hobo bindle imagery to the design because she thought it was funny. *Id.* at 2:05:22-2:06:17, 2:06:56-2:07:05, 2:09:06-2:09:08. Freeman submitted evidence showing various images depicting snails holding bindles, including the popular character "Gary the Snail" from the iconic SpongeBob SquarePants (Respondent Exhibit H (Dkt. 20)) as well as images of other animals carrying bindles compiled from the U.S. Patent & Trademark website to show that the depiction of animals as a hobo is a common concept. Respondent Exhibit I (Dkt. 20). She was inspired to use a red and white polka dot material on the bindle because she wanted to use a "classic design" which was reminiscent of old Hummel figurines she had seen. Conference Tr. at 2:09:06-2:10:10. Respondent's testimony and evidence on this point is credible.

15. Chalas believes that Freeman had access to her work via the Instagram page of Alchemy Merch, which Freeman follows. *Id.* at 1:00:15-1:02:43. She further testified that Alchemy Merch regularly features her art, including the Work, on their Instagram and website. Claimant Position Statement at 1; Claimant Exhibit B (Dkt. 31). However, Freeman started following Alchemy Merch in November of 2021, after she created the Respondent Design. Respondent Position Statement at 3; Conference Tr. at 2:17:55-2:18:06. Freeman followed Alchemy Merch because she was interested in producing washi tape, another product Alchemy manufactures. Conference Tr. at 2:17:11-2:18:49.

16. While Chalas provided evidence and testimony about the extent of her sales, distribution and customers of the Work as well as Roving House's promotion of the Work on social media and otherwise (*see, e.g., id.* at 36:33-37:41, 37:49-38:11, 39:39-39:51, 41:34-44:59, 45:09-45:13, 47:27-47:35, 48:32-50:17, 50:29-52:44; Claimant Exhibit I (Dkt. 43)), Freeman has never followed or been aware of Roving House on any social media platforms and was unaware of Chalas or

Roving House until receiving the DMCA takedown notice from Etsy. Respondent Position Statement at 4; Conference Tr. at 2:23:59-2:24:06.

17. Based upon all of the evidence and testimony submitted, Chalas has not sustained her burden of proving Respondent's access to the Work.

18. On January 25, 2021, Freeman placed an order for 100 pins featuring the Respondent Design from her enamel pin manufacturer, Stadri Emblems. Conference Tr. at 1:52:09-1:52:22, 2:19:39-2:19:44. Between 2021 and 2023, Freeman placed several orders for stickers embodying the Respondent Design from her sticker manufacturer Sticker Mule. *Id.* at 2:45:08-2:45:18; Respondent Exhibit K (Dkt. 20).

19. Freeman sold pins and stickers on Etsy, Faire, and through a Washington store that features the work of local artists. She earned a total profit of $411.40 on items bearing the Respondent Design. Respondent Position Statement at 7; Respondent Exhibit K (Dkt. 20).

20. Chalas attempted to say that the works at issue are substantially similar by testifying that:

> "In both cases, the snail is non-anthropomorphic. Their tentacles are realistically depicted as stalks with round, pupilless, non-human eyes, in the accurate number and placement...Unlike many depictions of snails in media and art, both works have no human-like mouths, smiles, or other human features. Both snails are viewed straight on from their side, with their shell whorls visible, and are looking forward rather than at the viewer. Both snails feature speckled or textured bodies. The ends of both snail's bodies stretch only slightly behind the shell, and each snail's foot is flat on the ground. Both snails have two-toned, teardrop-shaped bindle bags tied over the end of their stick with two ends of the fabric pointing upwards. Both snails have flat-coiled shells (round, tightly coiled, and largely flat across the coil) as opposed to the many other kinds of snail shells found in nature (discoidal, turreted, globular, pupiform, slipper-shaped, or other forms). Both snails also feature striations perpendicular to the movement of the spiral. In both shells, the first whorl dips slightly below the mouth of the shell, over the snail's body. The spiral in both snails takes exactly four turns."

Claimant Position Statement at 3. While this seems like a lengthy description, most of the description is of basic positioning and features of a snail found in nature and not much in terms of specific creative expression that goes beyond the idea of a snail as a hobo.

21. Chalas admitted the following differences in the two designs. In the Respondent Design:

- the stick looks more like a branch and has a leaf attached to it;
- the body of the snail is partially off the ground;
- the shell is coiled differently;

- all four tentacles are visible;
- the scallop design on the edge of the snail body is visible; and
- the fabric used in the bindle the snail is carrying has polka dots.

Conference Tr. at 1:09:48-1:13:17.

22. Freeman testified, and the Board agrees, that while there are a few similarities between the works, the overall style of each is different:

> "Besides for the idea of a snail holding a bindle, there are few similarities between these two works…The Copyrighted Work is a minimalistic, black-and-white sketch of a snail with a thin-line drawing technique and the Chalas' house mark "THE ROVING HOUSE." Respondent's design is bright, colorful artwork that uses a cartoon-style technique and does not employ the Chalas's house mark. Overall, the Copyrighted Work is aimed toward a more realistic, simplistic design of a snail, whereas Respondent's work has a cartoon-like aura to it."

Respondent Position Statement at 5-6.

23. In addition to describing the stylistic differences between the two designs, Freeman described the specific differences between the two designs and submitted a chart detailing the differences. *Id.* Based on the record, the Respondent Design displays at least the following differences:

- faces the right;
- has four visible antennas with no stippling, which are darkened at the end;
- has a visible mouth;
- its bindle has no patches, tears or blemishes but has polka dots;
- its bindle has a large visible knot tied around a naturalistic branch, which has a detailed leaf protruding from it, and the lower end of the branch is visible;
- the snail is in an upright, "standing" position;
- the body of the snail is visible and has fringe in a "u" shape throughout it;
- the underside of the snail is scalloped; and
- its shell is thick with fully formed segmented components separated by black lines where the end of the spiral is located near the middle of the shell.

Id; Conference Tr. at 2:26:41-2:27:53.

24. Based on the foregoing testimony and the Board's observation of both works, the Board finds that although there is a common theme of an animal (here a snail) as a hobo in both works, the creative expression is such that the works are not substantially similar.

Copyright Claims Board