COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0231
March 24, 2026

Custom Family Gifts, LLC	*v.*	Dominick Mattiello and Raymond Harper
CLAIMANT		**RESPONDENTS**

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board ("Board") finds that Respondents Dominick Mattiello ("Mattiello") and Raymond Harper ("Harper") (collectively, "Respondents") are liable for infringement of the copyrights in three of the four works at issue in this case and awards Claimant Custom Family Gifts LLC ("Claimant") $2,250 in statutory damages.

I. Procedural History

Claimant filed this copyright infringement claim before the Board on August 6, 2024 (Dkt. 1), and filed an amended claim ("Claim") on August 12, 2024. (Dkt. 3). Respondents filed separate responses (Dkt. 21-22) on December 31, 2024. Following discovery, the Board issued an order on March 11, 2025, which directed the parties to file written testimony. (Dkt. 23). On May 1, 2025, Claimant filed a party statement ("Claimant Statement") (Dkt. 81), a witness statement of Peter Chang, the owner, manager, and primary artist of Claimant's business ("Chang Statement") (Dkt. 82), an evidence list (Dkt. 27), and evidence (Dkt. 28-80). Respondents filed separate party statements for Harper ("Harper Statement") (Dkt. 84) and Mattiello ("Mattiello Statement") (Dkt. 85), as well as exhibit lists (Dkt. 94, 115) and evidence (Dkt. 86-93, 95-106).[1] Subsequent to the filing of Respondents' written testimony, Mattiello also filed submissions relating to alleged bad-faith conduct by Claimant. (Dkt. 132, 135-137). Finally, on July 1, 2025, Claimant filed a Reply Statement. (Dkt. 139). The case is now ripe for final determination.

[1] The respondents separately filed identical exhibit lists and evidence. Respondents also filed multiple copies of the statements filed by Harper and Mattiello, sometimes charactering them a witness statements and sometimes characterizing them as party statements. Each copy of Harper's statement was identical to the others and each copy of Mattiello's statement was identical to the others, apart from minor changes in formatting and pagination. In this final determination, we refer to the docket numbers of the first copy of each statement or exhibit that was filed by either Respondent.

II. Factual History

A. The Parties and their Businesses

Claimant is a company specializing in "personalized map art," which it sells on its own website and on Etsy. The "map art" sold by Claimant includes what Claimant calls "mountainscapes." Claimant Statement at 1. Two forms of mountainscapes are at issue in this proceeding: "angular mountains" and "circular mountains."[2] Respondents also operated a "shop" called MapGala on Etsy, an "online marketplace for creatives,"[3] where they also offered mountainscapes for sale. Claim; Harper Statement at 1.

The mountainscapes sold by Claimant and Respondents are customized based upon requests from the customers who order them. While neither party says much to describe the process by which the mountainscapes are prepared, it is apparent from the party statements and the evidence submitted by the parties, as well as the online order form at Claimant's website, *see* **https://customfamilygifts.com/products/milestones-map-bf?variant=42990497956067** ("Website"), that the mountainscapes are marketed to and prepared for persons (typically, couples and families) who wish to have, as a memento of their travels, a framed work of art that depicts favorite places where they have traveled. The mountainscape is created by using images from actual, publicly available maps of those places where the buyer has traveled and inserting images of those maps into the "mountain" shapes that are depicted, either in the form of triangles or of more realistically shaped mountains. Mattiello Statement at 10. The customer selects the frame, the size, the number of locations, the particular locations, and one to three lines of text to appear on the mountainscape. As Claimant's website explains:

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[2] In this determination, the Board adopts Claimant's term "mountainscape" to describe the "personal map art" at issue in this proceeding and also adopts the terms "angular mountainscape" and "circular mountainscape" to discuss the two kinds of mountainscapes that Claimant alleges have been infringed.

[3] Respondents also operated another Etsy shop called Travelbuffs. On the same day that it filed the claim in this proceeding, Claimant filed a separate claim against Respondent Harper and the son of Respondent Mattiello (Dominick Mattiello II) alleging that Harper and Mattiello II had infringed the same registered copyrights involved in this proceeding by promoting and selling designs in the Travelbuffs online shop. *Custom Family Gifts LLC v. Harper*, No. 24-CCB-0232 ("*Mattiello II*"). Claimant filed a request to withdraw that claim with prejudice on July 3, 2025, and the Board issued a final determination dismissing the claim on the same day. *Id.* (Dkt. 201, 203).

How it works

1. Give us a list of your meaningful locations

2. We source and select maps of your locations using our massive collection of high definition vintage maps, and compose them in a way that best tells your story.

3. We take your text and other requests, and arrange them artistically on the artwork.

4. We send you digital proofs for you to see, revisions are free and unlimited.

5. With your approval, your one-of-a-kind artwork will be printed, packaged, and shipped to you or a gift recipient.

Website (text that appears after clicking on "How it works"). *See also* Claimant Statement at 1, 5-6; Chang Statement at 1; Mattiello Statement at 7; Ex. U[4] at 1-2 (Dkt. 63); Ex. U.i (Dkt. 64); Ex. 8 (Dkt. 121).

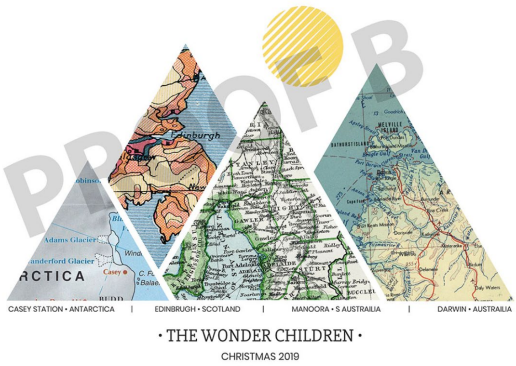
B. Claimant's Works

1. Angular Mountainscapes

Claimant's first mountainscape was sold in November 2019. Claimant Statement at 1; Ex. A (Dkt. 33); Ex. X (Dkt. 58). In Claimant's words, it "depict[s] an angular mountainscape" composed of sections "which I will refer to as 'Angular Mountains.'" Claimant Statement at 2. Respondents were already in the business of producing and selling mountainscapes at that time, having sold through their former company, Heirloom Prints LLC (Heirloom Prints), angular mountainscapes as early as January 2019. Claimant Statement at 2, 6; Ex. N.i (Dkt. 49); Ex. N.ii (Dkt. 47); Ex. N (Dkt. 50) at 2 (fifth entry).[5] The parties' angular mountainscapes share the following characteristics: each consists of several overlapping, equilateral, different-sized triangles in a row, with the bases of the triangles forming a single straight line. Within each triangle is an image, from a public domain map (selected by Claimant or Respondents, as the case may be), of one of the locations that the customer directed should be included in the mountainscape. Claimant's November 2019 mountainscape and Respondents' pre-existing January 2019 mountainscape each consisted of four triangles with the sun above and between the third and fourth triangles. Unlike Respondent's 2019 mountainscapes, Claimant's November 2019 mountainscape also labelled each map

[4] Claimant's exhibits are labelled alphabetically (Ex. A, Ex. B, etc.). Respondents' exhibits are labelled numerically (Ex. 1, Ex. 2, etc.).
[5] In this proceeding, Claimant does not assert that any of these early works by Respondents infringe Claimant's copyrights. Moreover, there is no evidence that the work depicted in Exhibits A and X ever received a copyright registration. The Board includes these images to illustrate the basic (and, as discussed below, unprotectable) shared characteristics of the angular mountain works at issue in this proceeding.

segment with the name of the location shown on that segment.



Ex. X (Claimant Nov. 2019)



Ex. N.i (Respondents Jan. 2019)

On December 19, 2019, Claimant published a mountainscape titled *R & M On the Road Together 1030* ("*R & M*"). Claimant submitted an application for copyright registration on May 4, 2021, which noted that the "material excluded from this claim" consisted of "map" and the "new material included in claim" was "2-D artwork, creative arrangement of shapes and spacing to create illusion of map and selection of maps." In January 2022, the Copyright Office issued Certificate of Registration No. VA 2-282-333, with an effective date of May 4, 2021, and a date of first publication of December 26, 2019. Ex. G (Dkt. 37); Claimant Statement at 2. The registered work shares the same characteristics that are described above regarding Exhibits X and N.i but has six rather than four triangles. *See* Ex. H (Dkt. 31, the deposit copy for the registered work).[6]

Claimant admits that *R & M* is a derivative work of Exhibit X shown above. Exhibit X, however, was refused registration by the Copyright Office because it lacked "sufficient creative authorship." Claimant Statement at 5.

2. Circular Mountainscapes

Claimant has also registered copyrights in three works featuring circular mountainscapes. Claimant Statement at 1. In an application for registration of a group of nine unpublished works, claimant included three works called *Wanderlust Map 3, Wanderlust Map 4,* and *Wanderlust Map 6*. Ex. I (Dkt. 30). *See* Ex. J, K, and L (the deposit copies of the works) (Dkt. 34, 32, and 29). The application and the certificate of registration note that the "material

[6] An image of Exhibit H appears below at page 10.

excluded" consisted of "partial map inserts." Ex. I. In September 2021, the Copyright Office issued Certificate of Registration No. VAu 1-444-074, with an effective date of registration of July 28, 2021. *Id.* The certificate of registration states that the registered works were unpublished and that they were created in 2021. *Id.*; Claimant Statement at 2. Claimant describes the three *Wanderlust Map* works as "variations on circle enclosed mountainscapes with [a] road to [the] center." Claimant Statement at 2. In their basic form (*Wanderlust Map 3*; Ex. J), Claimant's circular mountainscapes look like this:



C. The Alleged Infringements

Claimant alleges a series of acts of infringement by Respondents commencing on May 18, 2022, through their MapGala shop on Etsy. Claim. Claimant has introduced evidence that Respondents' former business, Heirloom Prints, offered sales of allegedly infringing copies of Claimant's angular mountainscapes as early as September 27, 2020. Claimant Statement at 2. Claimant has also submitted copies of Etsy postings by Respondents' other former business, MapGala, offering for sale what Claimant alleges are infringing copies of its angular mountainscapes, although the dates of those postings are unknown. Ex. U at 4; Ex. U.i.

Claimant has also introduced images, produced by Respondents, of circular mountainscapes posted on Etsy by MapGala that resemble Claimant's circular mountainscapes. Ex. Q (Dkt. 51); Ex. Q.i (Dkt. 46); Ex. 11 (Dkt. 100).

III. Legal Analysis

A. Copyright Infringement

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 absence of direct copying, a copyright infringement claim must allege that (1) the alleged infringer had access to the protected work and (2) the works are substantially similar in their protected

elements. *See Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006); *Benson v. Coca-Cola Co.*, 795 F.2d 973, 974 (11th Cir. 1986). However, such a showing may be rebutted by evidence that the alleged infringer independently created the allegedly infringing work. *Benson*, 795 F.2d at 974. On the other hand, a plaintiff can prove copying even without proof of access if he can show that the two works are not only similar, but are so strikingly similar as to preclude the possibility of independent creation. *See id.* at 975 n.2; *Biani v. Showtime Networks, Inc.*, 153 F.4th 957, 962 (9th Cir. 2025).

1. Copyright Registrations

Claimant has obtained two copyright registrations for some of the works that it asserts have been infringed. Certificate of Registration No. VA 2-282-333, for *R & M,* an angular mountainscape, has an effective date of registration of May 4, 2021, and was registered within five years of its December 26, 2019 date of first publication. Because the Certificate of Registration was effective within five years of the first authorized publication of the work, it is prima facie evidence of the validity of the copyright and of the facts stated in the certificate, including Claimant's ownership. 17 U.S.C. §§ 410(c), 1505(c). Certificate of Registration No. VAu 1-444-074, for a group registration of unpublished works with the group title of *Wanderlust Map and 8 Other Unpublished Works* that includes three circular mountainscapes, has an effective date of registration of July 28, 2021. Because the works were unpublished at the time of registration, the certificate carries similar prima facie weight. *Id.*

In this proceeding, Claimant is alleging infringement of the copyrights not only in works that were included in Claimant's copyright registrations, but also in works that were not included in those registrations. The angular mountainscape *R & M* is a single image consisting of six equilateral overlapping triangles of different sizes, arranged in a row, in a way that evokes a range of mountains, with a yellow circle that appears to represent the sun appearing above the triangles. Ex. H. Claimant alleges that Respondents have also sold an exact (but "flipped horizontally") copy of an eight-triangled "derivative" work that, as far as the record shows, is not the subject of a copyright registration. Claimant Statement at 3; Ex. U.i; Ex. U at 5.

Similarly, the deposits submitted with the application for registration of the "*Wanderlust Maps*" circular mountainscapes included nine images. Three are relevant to this proceeding, titled *Wanderlust Map 3, Wanderlust Map 4,*

and *Wanderlust Map 6*. The *Wanderlust Maps* are similar in general appearance, but each has a different number of mountains. Claimant alleges that Respondents have infringed the copyrights not only in those three registered *Wanderlust Maps* but also in a fourth, unregistered *Wanderlust Map* named *Wanderlust Map 8*. Exhibit U at 1 ("Infringe D and Infringe E"), 2 ("Wanderlust 8"), and 3 ("Infringe D and Infringe E").

Claimant cannot recover for infringement of copyrights in works that are not registered and that were not identified in the Claim as being among the "works infringed." 17 U.S.C. §§ 1505(a), (b)(1); 37 C.F.R. § 221.1(a). It is conceivable that some of Respondents' mountainscapes are sufficiently similar in protectable expression to one or more of the works included in Reg. No. VA 2-282-333 or Reg. No. VAu 1-444-074 to support a finding of infringement. But the comparison must be to the registered works, and not to other works created by Claimant that might be more similar to Respondents' works.

2. The Scope of the Claims

Claimant has introduced evidence regarding alleged infringements that go beyond the scope of what is in the Claim (which is limited to Respondent's postings on their MapGala shop on Etsy commencing on May 18, 2022) and beyond what the Board may consider as acts of infringement that are at issue in this proceeding. The following evidence relates to matters that are beyond the scope of this proceeding:

- Acts allegedly committed in Respondents' TravelBuffs shop that were the subject of another proceeding: *Mattiello II*, which was dismissed with prejudice on July 3, 2025. *See* Ex. P (Dkt. 45).

- Acts allegedly committed in Respondents' Heirloom Prints shop. *See* Claimant Statement at 1, 2, 8; Chang Statement at 2; Ex. N.vi, O.i, S, S.i, S.ii, S.iii, AB (Dkt. 39, 42, 44, 66, 65, 59, 57).[7]

- Alleged acts of infringement that took place, and of which Claimant was aware, more than three years before this proceeding was filed, including all acts by Heirloom Prints. *See* Ex. N.vi (alleged infringement on January 15, 2019); Ex. S.ii (October 23, 2020; *see* Claimant Statement at 3). Claimant received takedown notices in October 2020 alleging infringement of certain Respondent works, so Claimant was aware of

[7] Much of the evidence offered by Claimant in this proceeding relates to activities in the Heirloom Prints Etsy shop, s*ee id.,* but Claimant appears to acknowledge that this is not evidence of acts of infringement that are the subject of this proceeding. Rather, it is relevant "because direct connections exist between HeirloomPrints and MapGala through designs, participants and timeline" and "[e]vidence regarding HeirloomPrints therefore often establishes facts about MapGala." Claimant Statement at 1. *See also* Claimant Statement at 3 ("the lineage of the shop and designs means the present infringements on MapGala are a continuation of infringements begun by Mattiello II but perpetrated by Mattiello Sr.").

those works once the takedown notices were sent. Chang Statement at 2-3.[8] Any infringement claims based on those acts are barred by the statute of limitations, 17 U.S.C. §507(b), which requires that a copyright infringement claim be filed within three years after the claim accrued.

Thus, the only alleged acts of infringement that are actually before the Board involve the angular mountainscape shown in Ex. U and the circular mountainscapes shown in Ex. Q. They are discussed below.

3. Access

There is no question that Respondents had access to Claimant's works, but the relevant question is whether they had access before they created the allegedly infringing mountainscapes. With respect to the angular mountainscapes, it appears that Respondents created and marketed at least one very similar mountainscape, Ex. N (at 5), that includes all of the characteristics described in the "Angular Mountainscapes" section above, several months before Claimant's first angular mountainscape appeared. The Board does not agree with Claimant's assertion that Respondents' 2019 works "bear little to no similarity outside of subject matter when compared to my registered Angular Mountains" (i.e., to *R & M*), Claimant Statement at 6, as, apart from the differences in the number of triangles, a description of Respondents' 2019 angular mountainscapes would resemble a description of Claimant's.

In contrast, the evidence, while sparse, supports the conclusion that Claimant was the first to create and market circular mountainscapes. There appears to be no evidence in the record regarding when Respondents first marketed circular mountainscapes, but the only evidence of such marketing indicates that they were marketed and sold on MapGala, which opened its doors on May 18, 2022. Claimant Statement at 1; Ex. M at 2 (Dkt. 28). Respondents have not come forward with any evidence that they created any circular mountainscapes prior to that date. The certificate of registration for *Wanderlust Map 3* states that it was created in 2021. Moreover, Respondents had been aware that Claimant was competing on Etsy with similar products since 2020, when Mattiello sent a takedown notice to Claimant alleging infringement of the copyright in one of Respondents' works, and since March 2021, when Claimant sued Mattiello and Heirloom Prints for allegedly sending false takedown notices regarding the same product line.

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[8] *See also* Ex. P at 5 (Claimant contending that "since the infringer named Mattiello is known to us from Federal Court case 'Custom Family Gifts LLC v. Dominick Mattiello', 2:21-cv-02455 filed on 3/19/2021,[i]t can be deduced that the infringing party was aware of my work and had access"). By the same reasoning, it can be deduced that Claimant, having filed the federal court lawsuit in March 2021, was aware of Respondents' works.

a. Independent Creation

At least with respect to the basic characteristics of the angular mountainscapes, Respondents independently created those mountainscapes, *see* Ex. N.i and the discussion at pp. 3-4 above, and therefore, the preexisting mountainscapes could not be infringing. *See Biani,* 153 F.4th at 962. To the extent that Claimant's infringement claims regarding Respondents' subsequently created angular mountainscapes are based on the same characteristics found in their preexisting mountainscapes, those infringement claims have no basis. The Board therefore finds in favor of Respondents on the alleged infringement of the angular mountainscapes.

4. Substantial Similarity

In this case, the key issue to be resolved is whether any of Respondents' angular (if Respondents had not come first) or circular mountainscapes are substantially similar in protectable expression to *R & M, Wanderlust Map 3, Wanderlust Map 4,* or *Wanderlust Map 6*.

In determining whether two works are substantially similar, a court must determine whether the works are substantially similar in protected expression. If the similarities between the works concern only uncopyrightable elements of the allegedly infringed work, an infringement claim will fail. *Herzog v. Castle Rock Entm't*, 193 F.3d 1241, 1257 (11th Cir. 1999). Uncopyrightable elements include ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries. 17 U.S.C. § 102(b). Among such public domain elements are geometric figures, such as triangles and circles. *See Tufenkian Import/Export Ventures, Inc. v. Einstein Moomjy, Inc.*, 338 F.3d 127, 132 (2d Cir. 2003); *Yankee Candle Co. v. Bridgewater Candle Co.*, 259 F.3d 25, 35 (1st Cir. 2001); *Atari Games Corp. v. Oman*, 979 F.2d 242, 247 (D.C. Cir. 1992).

A particular arrangement of geometric shapes or of other public domain elements may be copyrightable as a compilation. *Lights Out Prods., LLC v. Triller, Inc.*, No. 2:22-cv-00416-MCS-MAA, 2022 WL 2159278, at *3 (C.D. Cal. Apr. 27, 2022). However, a mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003) ("[A] combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.").

a. Angular Mountainscape: *R & M On The Road Together 1030*

The Board has already found that Respondents created very similar angular mountainscapes prior to Claimant. Claimant's claim on angular mountainscapes fails on substantial similarity as well. Claimant has introduced two exhibits showing alleged similarities between *R & M* and mountainscapes produced and offered for sale by Respondents. *See* Ex. U, U.i.

A comparison to *R & M* Claimant's only registered angular mountainscape—(the only comparison relevant to Claimant's infringement claim), reveals similarities, but those similarities are limited to the common (and preexisting) features described above and there is no substantial similarity to Claimant's protected expression.



Respondent's *Dominick & Roberta*
(from Ex. U)



Claimant's *R & M On The Road Together 1030*
(Ex. H)

In addition, the differences between the two works are notable. *R & M* consists of six triangles; *Dominick & Roberta* has eight. The configuration of sizes in the two mountainscapes is not similar. Claimant's work appears to be a two-dimensional print, digitally created and printed on paper by a third-party vendor, but Respondent's work is three-dimensional, made by hand using wood cutouts. *See* Mattiello Statement at 7-8.

In any event, the idea of creating a mountainscape consisting of a row of differently-sized triangles (representing mountains) with the triangles filled with excerpts from public domain maps of places that the customer ordering the mountainscape has visited, with the sun appearing above the mountains, is just that—an idea. And ideas are not protected by copyright. *See Satava*, 323 F.3d at 807, 809. In *Satava*, the court concluded that "no copyright protection may be afforded to the idea of producing a glass-in-glass jellyfish sculpture or to elements of expression that naturally

follow from the idea of such a sculpture," and observed, "Satava's glass-in-glass jellyfish sculptures, though beautiful, combine several unprotectable ideas and standard elements. These elements are part of the public domain. They are the common property of all, and Satava may not use copyright law to seize them for his exclusive use." *Id.* at 811. Any resemblance between *R & M* and *Dominick & Roberta* relates to simple combinations of matter that is in the public domain.

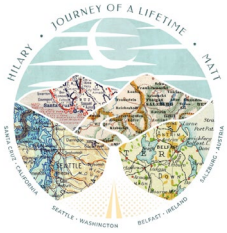
b. Circular Mountains: *Wanderlust Maps*

Claimant has submitted evidence that the Respondents created circular mountainscapes with identical configurations to those of *Wanderlust Maps 3, 4,* and *6*. Ex. Q.i; *see also* Ex. Q and Ex. 11. As Claimant asserts, Respondents produced "works with striking similarity, evident when my registered works are compared to respondent Harper's evidence," and "[t]hough medium and background were changed, virtually every bend and curve was preserved in the infringing reproduction." Claimant Statement at 2.

The similar configurations are apparent when the works are viewed together:



Wanderlust 3 – Ex. J



Wanderlust 4 – Ex. K



Wanderlust 6 – Ex. L



Ex. Q – p. 8



Ex. Q – p. 4



Ex. Q – p. 2

See also Ex. Q.i.

In contrast to the configuration of the parties' angular mountainscapes, which feature equilateral triangles arranged horizontally, the configurations of the mountains in both parties' circular mountainscapes consist of irregular, curved polygons. And the arrangements of the polygons are also irregular. The shapes of the polygons and their overall

configurations are identical in Claimant's and Respondents' circular mountainscapes. Identically configured roads appear at the bottom of each mountainscape. Respondents' copying of the circular mountainscapes easily crosses the line between idea and expression and the arrangement of the elements is far from simplistic. The Board has no difficulty concluding that Respondents have infringed the copyrights in *Wanderlust Maps 3, 4,* and *6*.

c. Conclusion Regarding Infringement

The Board finds Respondents liable for infringement of the copyrights in *Wanderlust Map 3, Wanderlust Map 4,* and *Wanderlust Map 6*. However, Respondents are not liable for infringement of the copyright in *R & M*.

B. Damages

Claimant elects statutory damages and requests "a maximum award of $30,000" based on "a 3x multiple for my lost profits." Claimant Statement at 4. The maximum amount of damages that the Board may award is $30,000. 17 U.S.C. § 1504(e)(1)(D). For each work that has been infringed, the Board may award no more than $15,000 in statutory damages. 17 U.S.C. § 1504(e)(1)(A)(ii). The minimum award is $750 for each of the works that have been infringed. *See id.*; 17 U.S.C. § 504(c). Although registered under the same registration, *Wanderlust Map 3, Wanderlust Map 4,* and *Wanderlust Map 6* are clearly three different works, which are typically sold separately. As a result, the Board concludes that three of Claimant's works were infringed, and therefore the minimum award is $2,250.

Courts have wide discretion to award statutory damages as long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231-32 (1952); *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990); *Top Tobacco, L.P. v. Star Importers & Wholesalers, Inc.*, 135 F.4th 1344, 1350 (11th Cir. 2025). "[T]he court's conception of what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like, is made the measure of the damages to be paid. . . . Within [the statutory] limitations the court's discretion and sense of justice are controlling[.]" *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919).

In deciding the appropriate amount of statutory damages to award, courts generally seek to establish a relationship between statutory damages and actual damages. *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'") (citation omitted); *Clever Covers, Inc. v. Southwest Florida Storm Defense, LLC,* 554 F. Supp. 2d 1303, 1313 (M.D. Fla. 2008) (statutory damages "'are not intended to provide a plaintiff with a windfall recovery'; they should bear some relationship to the actual damages suffered") (citation omitted); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) ("Undoubtedly these [statutory] damages should bear some relation to the actual damages suffered[.]"); *Seoul Broad. Sys. Int'l v. Young Min Ro*, No. 9-cv-433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011) ("After all, 'when awarded, statutory damages should bear some relation to the actual damages suffered.'") (citation omitted); *Aberle v. GP Clubs, LLC*, No. 19-cv-1066-RP, 2020 WL 4035074, at *4 (W.D. Tex. July 17, 2020) ("while there 'need not be a direct correlation between statutory damages and actual damages,' it has generally been held that 'the statutory award should bear some relation to actual damages suffered'") (citation omitted); *Bly v. Banbury Books, Inc.*, 638 F. Supp. 983, 987 (E.D. Pa. 1986) ("numerous courts have held that asserted statutory damages should bear some relation to the actual damages suffered") (citations omitted). Actual damages are primarily measured by "the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement." *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 807 F.2d 1110, 1118 (2d Cir. 1986). To secure actual damages, a claimant typically establishes impairment of market value by demonstrating 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. *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). Such amounts should be based on a "factual basis" and not "undue speculation." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 163 (2d Cir. 2001).

Claimant asserts that due to Respondents' infringement, it suffered "Lost retail revenue of $37,431.6 [sic], lost profits of $11,229.48 at an estimated 30% margin." Claimant Statement at 3. However, Claimant offers absolutely no explanation of where those figures come from, and not one of Claimant's 54 exhibits supports them and

therefore, the figures provided by Claimant have no credibility.[9] As a result, Claimant has not come forward with any evidence that would assist the Board in determining an award of damages.

There is, however, other evidence in the record that is relevant to an award of monetary relief. "As an alternative to actual damages, a prevailing plaintiff in an infringement action is entitled to recover the infringer's profits to the extent they are attributable to the infringement." *Frank Music Corp. v. MGM, Inc.,* 772 F.2d 505, 514 (9th Cir. 1985); 17 U.S.C. § 504(b). Respondents have submitted evidence of their receipts from the sales of circular mountainscapes. Ex. 8 (Dkt. 121); Ex. 5 (Dkt. 124). Respondents' records show six sales of their circular mountain products through the MapGala store, with prices (after discounts) ranging from $143.96 to $183.96. *Id.*; *see also* Mattiello Statement at 9 ("I have only sold a total of 7 circular mountain designs across both of my Etsy shops"). In most cases, shipping was included in the price but in two cases, an additional $79.95 was charged for shipping. Shipping charges (in those two cases) and taxes are not included in the prices. The total receipts from the six sales were $957.96 (not including taxes and, when applicable, shipping charges), for an average price of $159.66. *See* Ex. 8.

Of course, "a loss of revenue is not the same thing as a loss of profits," *Taylor v. Meirick*, 712 F.2d 1112, 1121 (7th Cir. 1983), and by the same token an infringer's revenues are not the same thing as the infringer's profits. Mattiello has testified that Respondents' profits from the sales of the seven circular mountainscapes (including one sold through TravelBuffs) totaled $715.38, and, based on that figure, the profit from the MapGala sales would have been approximately $613.18. Mattiello Statement at 10; Ex. 8. He did not, however, explain how he arrived at that figure. Nevertheless, the Board concludes that the information in the record regarding Respondents' profits supports an award of the minimum amount of statutory damages, $2,250. The Board takes into account the following considerations:

- Respondents' gross receipts from MapGala sales of infringing copies of all three circular mountainscapes combined were $957.96;
- Clearly, profits would have been lower than gross receipts;

[9] Claimant also makes other assertions that appear to be intended to build its case for damages, but the meaning or relevance of those assertions is unclear. *See* Claimant Statement at 3.

- Respondents submitted evidence of many expenditures that would be deductible from gross receipts, *see* Exhibits 9 and 10 (Dkt. 96 & 88), but they did not tie any particular expenses to any particular sales, which makes a calculation of net profits difficult; and,
- Based on the evidence in the record, it is reasonable to assume Respondents' net profits would have been no more than $900, and may well have been much less.

Therefore, the Board concludes that Respondents' net profits were between $750 and $900, likely closer to $750.

Across the country, courts typically award statutory damages in a range from approximately two to six times the lost licensing fee for the infringed work, with around three times the lost fee being most prevalent. *See, e.g.*, *BWP Media USA Inc. v. A.R. Commc'ns, LLC,* No. 6:14-CV-120-Orl-22KRS, 2014 WL 5038590, at *4 (M.D. Fla. Oct. 6, 2014); *Broadcast Music, Inc. v. Paden,* No. 5:11–02199–EJD, 2011 WL 6217414, at *5 (N.D. Cal. Dec. 14, 2011); *Barcroft Media, Ltd. v. Coed Media Group, LLC*, 297 F. Supp. 3d 339, 359 (S.D.N.Y. 2017); *Sixx Gunner Music v. The Quest, Inc.,* 777 F. Supp. 2d 272, 274 (D. Mass. 2011); *Broadcast Music, Inc. v. Amici III, Inc.,* No. 14-CV-5002, 2014 WL 7271915, at *1 (D.N.J. Dec. 16, 2014); *Broadcast Music, Inc. v. Eatnout, LLC*, No. 2:15cv254, 2015 WL 12803458, at *3 (E.D. Va. Dec. 29, 2015); *Broadcast Music, Inc. v. Ken V, Inc.,* 159 F. Supp. 3d 981, 990 (E.D. Mo. 2016); *Minden Pictures, Inc. v. Buzznick, LLC,* No. 2:22-cv-00369-RJS-CMR, 2023 WL 2243177, at *5 (D. Utah Feb. 27, 2023); *MOB Music Publ'g v. Zanzibar on the Waterfront, LLC*, 698 F. Supp. 2d 197, 207-08 (D.D.C. 2010). Such awards are justified because "the award 'should put infringers on notice that it costs less to obey the copyright laws than to violate them.'" *Broadcast Music, Inc. v. DFK Entertainment, LLC,* No. 1:10-CV-1393 GLS/DRH, 2012 WL 893470, at *4 (N.D.N.Y. Mar. 15, 2012) (citation omitted); *Philpot v. L.M. Commc'ns II of S.C., Inc.,* 343 F. Supp. 3d 694, 702 (E.D. Ky. 2018) ("Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement would do little to discourage infringers."). While it is less common for courts to apply a multiplier to the defendant's profits, there is precedent supporting such a practice. *See Bi-Rite v. Button Master,* 578 F. Supp. 59, 61-62 (S.D.N.Y. 1983).

Following that practice, the Board awards $2,250 in statutory damages, which represents an award of between 2.5 and 3 times the amount of Respondents' profits, within the typical range for statutory damages.

IV. Requests for Costs

Each party has asked that the Board grant relief against the other party for alleged bad-faith conduct. The Board's power to address bad-faith conduct is governed by the CASE Act (17 U.S.C. Ch. 15) and the Board's regulations. When all parties are self-represented, the Board may require a party who has engaged in bad-faith conduct in pursuing a claim or defense for a harassing or other improper purpose or without a reasonable basis in law or fact, to pay the other party's reasonable costs. 17 U.S.C. § 1506(y)(2). However, recoverable costs are narrow in scope, *see Rimini St., Inc. v. Oracle USA, Inc.,* 586 U.S. 334, 340 (2019), and it appears that (1) there are no costs that Respondents could recover, and (2) the only costs that Claimant might be able to recover would be the Board's $100 filing fee and the fees for service of process.

Neither party complied with the regulations governing a request for an award of costs due to bad-faith conduct, which require that a party that believes, in good faith, that a participant has engaged in bad-faith conduct may file a request, following the procedures set forth in 37 C.F.R. § 220.5(a)(2), for a conference with the Board regarding the alleged bad-faith conduct, after which the other party may file a response. 37 C.F.R. §§ 232.3(b)(2), 220.5(a)(2). Claimant's request was included in the body and conclusion of the Claimant Statement at 4, 6-7, 9. Respondents submitted three documents: (1) a statement from Respondent Mattiello asking that the Board include in the record a statement by his son in *Mattiello II,* (2) that statement by his son, and (3) a "Settlement Proposal" emailed by Chang to Respondents and Mattiello II. (Dkt. 135-137). None of those documents constituted a request for a conference regarding bad faith conduct as required under subsection 232.3(b)(2).

In any event, the Board has reviewed the filings described above and concludes that neither party has established that the other party has engaged in conduct that satisfies the requirements for an award of costs. *See* 17 U.S.C. § 1506(y)(2); 37 C.F.R. § 220.1(c).[10]

[10] The Board has reached a similar conclusion in *Mattiello II*. *See* Docket Note, *Custom Family Gifts LLC v. Harper, et al.*, No. 24-CCB-0232 (March 23, 2026).

V. Conclusion

The Board finds that Respondents, Dominick Mattiello and Raymond Harper, are not liable for the infringement of the copyright in *R & M On the Road Together 1030*, but that they are liable for infringement of the copyrights in *Wanderlust Map 3*, *Wanderlust Map 4*, and *Wanderlust Map 6*, and awards Claimant, Custom Family Gifts, LLC, $2,250 in statutory damages.

Copyright Claims Board