COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0126
August 7, 2026

Richard Gideons	*v.*	Chris Buechner
CLAIMANT		**RESPONDENT**

FINAL DETERMINATION

On July 6, 2025, the Copyright Claims Board (Board) issued the below Proposed Dismissal Determination, proposing a finding that the evidence submitted by Claimant Richard Gideons is not sufficient to support a finding in favor of Claimant. The Board proposed a dismissal of the claim without prejudice. More than thirty days have passed, and Claimant has not submitted a statement objecting to the proposed dismissal. 37 C.F.R. § 227.3(a)(2). Therefore, the Board issues the below Proposed Default Determination as a Final Determination. The Board finds the evidence submitted by Claimant is not sufficient to support a finding in favor of Claimant and against the Respondent, Chris Buechner. The Board therefore dismisses the claim without prejudice.

* * * * * * * * * * * * * * *

Respondent, Chris Buechner ("Buechner" 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 shall require the claimant to submit written direct testimony. 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a). The claimant, Richard Gideons ("Gideons" or "Claimant"), has submitted testimony, which the Board has reviewed, and now the Board issues this proposed determination dismissing the proceeding. 37 C.F.R. § 227.3(a)(2). For the reasons below, the Board finds that the presented evidence is insufficient to support a finding in favor of Gideons and that the case must be dismissed without prejudice.

I. Procedural History

Richard Gideons filed this claim on April 24, 2024. (Dkt. 1). The Board found the claim compliant and, on April 30, 2024, directed Gideons to serve Buechner. (Dkt. 4). Gideons then filed an amended claim on June 3, 2024. Amended Claim ("Claim") (Dkt. 5). On June 7, 2024, the Board found the Claim compliant and directed

Gideons to serve the Claim on Buechner. (Dkt. 4). On July 19, 2024, Claimant requested that Respondent's contact information be updated (Dkt. 9), and as a result, the Board issued another Notice of Compliance on July 24, 2024, which required Gideons to serve the Amended Claim at the updated address for Respondent. (Dkt. 12). After service at the updated address, the Board did not receive an opt-out form from Respondent.

On October 8, 2024, the Board notified the parties that the Claim had entered the "active phase" because Buechner did not opt out, ordered Gideons to pay the second filing fee, and ordered both parties to register for the Board's online docketing system (eCCB). (Dkt. 15). Buechner did not file a response or register for eCCB. On October 23, 2024, the Board issued a Scheduling Order (Dkt. 17) and a second notice directing Buechner to register for eCCB. (Dkt. 18). In the Scheduling Order, Buechner was ordered to submit a response by November 22, 2024, but he did not. Both parties were also ordered to attend an initial conference to be held on December 10, 2024, which Buechner did not attend. (Dkt. 17).

On December 11, 2024, the Board issued a First Default Notice because Buechner did not meet any of the mandatory deadlines set by the Board. (Dkt. 19). The First Default Notice gave Buechner another thirty days to file a response and register for eCCB. *Id.* On December 26, 2024, the Board issued a Second Default Notice, which reminded Buechner of the January 10, 2025, deadline to cure the missed obligations. (Dkt. 20).

Buechner failed to file a response or register for eCCB by January 10, 2025. To date, the Board has received only two communications from Buechner in which he updated his contact information. Accordingly, on January 23, 2025, the Board ordered Gideons to file his written testimony. (Dkt. 21). For his written testimony, Gideons filed evidence (Exhibits A-FFF) (Dkt. 22-25, 27-36, 38, 40-82), an evidence list (Dkt. 39) as well as his own Witness Statement ("Gideons Decl.") (Dkt. 26) and Party Statement (Dkt. 37). On May 5, 2025, the Board issued an Order to Submit Additional Evidence ("Order") (Dkt. 83). On June 16, 2025, Gideons filed a Response to the Order (Dkt. 88), additional evidence (Exhibit GGG) (Dkt. 86), and an Amended Evidence List (Dkt. 87). The Board required Gideons to submit the complete conversation threads of the texts that he previously submitted (Dkt. 89), which he eventually did on April 6 and 7, 2026. Claimant Text Messages 1-131 (Dkt. 94-225). This case is now ready for a proposed determination.

II. Factual History

Gideons, aka Fifty Eleven Media, is the creator of two graphic works titled "2 Many" and "Sober Skull." Gideons Decl. ¶¶ 3, 9 (Dkt. 26) (collectively, "Works"). "Sober Skull" was registered (Registration No. VA0002367130) effective August 4, 2023, with a first publication date of December 2, 2021. Gideons Decl. ¶ 9; Claim, supplemental document titled "(c) Registration.pdf ." "2 Many" was registered (Registration No. VA0002399628) effective March 28, 2024, with a first publication date of January 31, 2022.[1]

Gideons, a veteran and visual artist in Louisville, Kentucky, states that in mid-2021, he contacted Buechner, a musician, to discuss mutual life experiences and later met with him at a concert on November 19, 2021, to "talk 'business.'" Gideons Decl. ¶ 2-3. Gideons and Buechner communicated frequently over the next few months during which Respondent asked Gideons to create artwork for use on merchandise and other promotional materials. *Id;* Claimant Ex. P (Dkt. 62); Claimant Ex. Q (Dkt. 60); Claimant Ex. CC (Dkt. 76). Gideons agreed to create artwork for Buechner's use and sent Buechner several drafts and completed versions of the Works. Claimant Ex. CC (screenshot of a draft of "2 Many" sent to Respondent on December 14, 2021); Claimant Ex. O (Dkt. 46) (screenshot of a draft of "Sober Skull" sent to Respondent on December 14, 2021).

After Gideons sent the initial drafts, Buechner requested a series of edits, which Gideons agreed to, and he subsequently sent new drafts of the Works to Buechner. Claimant Ex. BB (Dkt. 43); Claimant Ex. W (Dkt. 65); Claimant Ex. R (Dkt. 68); Claimant Ex. CC. On December 29, 2021, Gideons confirmed in a text that he sent the files of the images for Buechner to use: "Yeah those are just the files to use, I'll send you the! [sic] with a white background too so you can see them . . . Emailed them to you." Claim, supplemental document titled "Screenshot_20240311_122836_Voice.jpg."

[1] While Claimant submitted a number of versions of the "Sober Skull" artwork, none of them is labeled as the deposit copy at issue here; it appears that Claimant Exhibit CCC (Dkt. 29) may be a copy of the deposit. Although Claimant submitted several versions with his testimony, none of them appear to be a copy of the deposit for "2 Many." For the avoidance of doubt, the Board attaches as Schedule A as a copy of the deposit for "Sober Skull" and as Schedule B a copy of the deposit for "2 Many" that are in Copyright Office Records. The Board also includes in Schedule B a copy of the registration for "2 Many" that appears in the Copyright Public Records System.

Although Gideons testifies that he "made it clear to Respondent that I would not be creating artwork for Respondent to use for free," there is no evidence that specific payment was discussed before Gideons agreed to create the Works for Respondent or, importantly, that Gideons put any restrictions on the use of the Works before payment was received. Gideons Decl. ¶ 4. Gideons initially proposed a 30% royalty, which Buechner rejected and countered "5- 10% is what people are getting." Claimant Ex. Y (Dkt. 55). Instead of demanding a specific royalty as a requirement before beginning work, Gideons agreed to continue work based on Respondent's "good word." *See* Claimant Ex. U (Dkt. 63). Claimant wrote that he was "not worried about the payment, I know it will come, and Respondent replied "I'll give you my word is [sic] a Man." Claimant Ex. U. Gideons then replied "100% and I give you mine." *Id.* Gideons ultimately agreed to Respondent's proposed lower commission rate of 10% to which Gideons responded "Then im [sic] good with 10% this is going to be an ongoing relationship and I want to do right by them …i'm [sic] still way new to this side of things so im [sic] gonna let you be my guide." Claimant Ex. AA (Dkt. 70); Claimant Ex. Z (Dkt. 69); Claimant Ex. X (Dkt. 50) ("just let me know what you're thinking on the % so we're in [sic]the same page."). In sum, Gideons and Buechner agreed that Buechner could use the Works and that Buechner would pay Gideons a 10% rate, but there was no specific term agreed upon stating that the license would not exist without payment.

After exchange of the foregoing messages, neither party discussed payment until February 18, 2022, when Gideons asked Buechner if he "…could send me some cash . . . It would help out a lot" to which Buechner replied, "I can do something for you for sure." Claimant Ex. DD (Dkt. 40). Several months later, on August 5, 2022, Gideons asked Buechner for cash and Buechner sent $100. Claimant Text Message 30 (Dkt. 185); Claimant Text Message 34 (Dkt. 171). Gideons testifies that Respondent paid him a total of $250 for "approximately 62 hours of work." Gideons Decl. ¶ 6.

Despite the lack of supposed response and payment from Buechner, in October 2022, Gideons appears to have again provided him with a version of the Sober Junkie artwork and additional artwork including an image of a new design that is not at issue in this claim. Claimant Text Messages 72, 75, 88 and 114 (Dkt. 210, 154, 186, and 189).

Gideons claims that Buechner exceeded the scope of their agreement by licensing the Works for use on non-concert product packaging and on goods never contemplated in the agreement. Gideons Decl. ¶ 13. However, none of the evidence supports that assertion. Gideons states that he and Respondent "talked frequently" and that Respondent had him perform "significant amounts of work on art" (Gideons Decl. ¶ 5) but fails to provide any detail about limitations on the scope of the license he gave Respondent prior to delivering or revising the Works he sent to Buechner. Many of the strings of text messages submitted by Claimant discuss revisions to the Works and personal matters, but none indicated that there was any limit placed on the license given to Respondent.

Further, even when shown the use of his Works on non-concert merchandise or packaging, Gideons neither objected nor indicated that Respondent did not have permission to use the Works in the manner that he did. When Respondent posted a picture of push-ups bars bearing the Sober Junkie artwork, Gideons approved it in a comment under the post. Claimant Ex. M (Dkt. 44). Gideons also indicated his approval of the possible use of Sober Junkie artwork on exclusive merchandise for official members (Claimant Ex. P (Dkt. 62)) and liked a post displaying packaging for marijuana bearing the Sober Junkie artwork. Claimant Ex. I (Dkt. 75). Again, on October 30, 2022, Buechner messaged Gideons about creating merchandise with "Junkie across the chest . . . also going to do trucker hats all black with the white Sober Junkie" to which Gideons did not object: "Yeah, I'm not sure how to vector it but let me look into it." Claimant Text Message 114.

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 Gideons owns the Works and that Respondent used those Works on album covers, concert merchandise, and social media as well as other goods and product packaging. Gideons Decl. ¶ 9-14.

B. Defenses

1. Lack of Condition Precedent

A license is a defense to a claim of infringement. E.*g.*, *Keane Dealer Services, Inc. v. Harts*, 968 F. Supp. 944, 947 (S.D.N.Y. 1997) (citing *Oddo v. Ries*, 743 F.2d 630, 634 n. 6 (9th Cir. 1984)). *See also* Melville B. Nimmer & David Nimmer, 4 Nimmer on Copyright § 13D.28 (2025). "While exclusive licenses must be in writing, 'a nonexclusive license may be granted orally, or may even be implied from conduct . . . . In fact consent given in the form of mere permission or lack of objection is also equivalent to a nonexclusive license and is not required to be in writing.'" *Keane Dealer Services*, 968 F. Supp. at 947 (*quoting I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th Cir. 1996)). "When the totality of the parties' conduct indicates an intent to grant such permission, the result is a nonexclusive license." 3 Nimmer on Copyright § 10.03[A][7] (2025). Here, Claimant admits that he gave Respondent a verbal or implied license to use the Works. Claimant *now* alleges that Respondent failed to fulfill a condition precedent that "Respondent would have to first pay [Claimant] to acquire said rights to the artwork." Gideons Decl. ¶ 4. However, there is no evidence to support Claimant's argument.

Condition precedents serve as terms that must be met *prior* to contract performance. *See United States v. Livar*, 108 F.4th 738, 745 (9th Cir. 2024). While condition precedents can exist in implied licenses and verbal agreements as a general matter, there is a presumption that terms are covenants rather than condition precedents absent specific language or circumstances supporting showing that a condition precedent was intended. *See Bitmanagement Software GmBH v. United States*, 989 F.3d 938, 950 (Fed. Cir. 2021). Condition precedents differ from covenants in that covenants do not require a condition in order to determine when an obligation arises. *See Langley v. FDIC*, 484 U.S. 86, 90-91 (1987).

Courts have consistently found that payment terms serve as contract terms or covenants and not as condition precedents. *See, e.g.*, *Graham v. James*, 144 F.3d 229, 237 (2d Cir. 1998) ("the payment of royalties . . . are to be considered covenants, not conditions."). To determine whether a contract term is a condition precedent, courts look to the entire course of the dealing between the parties as evidence including text messages, emails, and other kinds of documentation, depending on the context surrounding contract formation.

See Grant Union Co. v. Cord Meyer Dev. Co., 761 F.2d 141, 147 (2nd Cir. 1985). *See also Bitmanagement*, 989 F.3d at 950.

In the present case, besides the fact that payment terms rarely constitute conditions precedent, it is evident from the more than 100 text messages between the parties, which continued for nearly a full year after the December 2021 delivery of the Works, that the agreement between Gideons and Buechner contained a disputed covenant (lack of payment) and not a condition precedent. The texts show that Gideons and Buechner negotiated a payment percentage (ultimately agreeing to ten percent of an unspecified funding source) with no further terms discussed or payments made prior to Gideons sharing his artwork with Buechner. *See, e.g.*, Claimant Ex. Y. Instead of demanding a specific royalty as a requirement before beginning work, Gideons created the Works, sent the Works to Buechner, edited the Works, agreed to Buechner's uses, and then continued to work based on Respondent's "good word" that Gideons would be paid. Claimant wrote that he was "not worried about the payment, I know it will come," and Respondent replied "I'll give you my word is [sic] a Man." Gideons then replied, "100% and I give you mine." Claimant Ex. U. *See also* Claimant Ex. AA; Claimant Ex. Z; Claimant Ex. X. Indeed, even though Respondent failed to pay the agreed-to amount and "quit responding to Claimant after he delivered the Sober Skull artwork" (Claim; *see* Gideons Decl. ¶ 6), Gideons never stopped corresponding and working with Respondent. Claimant Text Messages 48, 94 (Dkt. 218, 211). Almost a year after delivery of the Works and Respondent's failure to fulfill Claimant's alleged condition precedent, Gideons was still providing Respondent with a version of the Sober Junkie artwork and additional artwork including an image of a new design that is not at issue in this claim. Claimant Text Messages 72, 75, 88 and 114. The foregoing are not the actions of a party who believed Respondent could not use the Work until after Claimant was paid.

2. Scope of the License

Claimant also asserts that Respondent exceeded the scope of the license. When the scope of a license, implied or explicit, is exceeded, courts will generally look to written documentation that defines the usage parameters of the copyrighted material and the overall totality of the parties' conduct. *See Latimer v. Roaring Toyz, Inc.*, 601 F.3d 1224, 1235 (11th Cir. 2010) ("Courts focus on objective evidence revealing the intent of the

parties to determine if an implied license exists, and this inquiry also reveals the scope of that license."). As a general matter, "[i]mplied licenses may be limited and a defendant who exceeds the scope of an implied license commits copyright infringement." *Id.* However, the copyright owner must specifically express intent to restrict the scope of a work's license during creation and upon delivery of the work to the licensee. *See Corbello v. Devito*, 777 F.3d 1058, 1067 (9th Cir. 2015); *Asset Marketing Systems, Inc. v. Gagnon*, 542 F.3d 748, 756 (9th Cir. 2008); *Wilson v. Brennan*, 666 F. Supp.2d 1242, 1261 (10th Cir. 2009) (scope of the license must be determined *prior* to the delivery of the copyrighted work).

Here, Gideons claims that the scope was exceeded because Respondent used the Works on non-concert merchandise and product packaging. Gideons Decl. ¶ 13. However, none of the evidence supports that assertion. Other than his bare allegation, Gideons fails to provide any detail about the scope of the license he gave Respondent during the creation and delivery of the Works and his text correspondence does not indicate that there was any limit placed on the license given to Respondent. In fact, just the opposite is true. Gideons repeatedly showed approval of Respondent's use of the Works on non-concert merchandise and packaging and neither objected nor indicated that Respondent did not have permission to use the artwork in the manner that he did. *See, e.g.*, Ex. M (approval of picture of push-ups bars bearing the Sober Junkie artwork); Ex. P (approval of the possibility of using Sober Junkie artwork on exclusive merchandise for official members); Ex. I (approval of a post displaying packaging for marijuana bearing the Sober Junkie artwork); Claimant Text Message 114 (acquiescence to the possibility of Buechner creating trucker hats bearing Sober Junkie artwork). In short, Gideons failed to meet the requirement imposed by the courts that the bounds and parameters of the license be established during the creation and upon delivery of the Works to claim that the use went outside the license's scope.

While Claimant may have a valid claim in federal or state court for failure to pay the royalties agreed-to in his license with Respondent, he does not have a valid claim for copyright infringement and thus, his claim must be dismissed.

IV. Conclusion

For the foregoing reasons, the Board finds that Claimant has not established that Respondent infringed his copyrights and, therefore, dismisses this claim without prejudice.[2]

[2] 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).

SCHEDULE A


NDN 1491
Memphis

SCHEDULE B


SOBER JUNKIE
2MANY

Copyright

Registration Number / Date:
VA0002399628 / 2024-03-28

Type of Work:
Visual Material

Title:
2 many.

Application Title:
2 many.

Date of Creation:
2021

Date of Publication:
2022-01-31

Copyright Claimant:
Richard Gideons. Address: 815 Monroe Street, Charlestown, IN, 47111, United States.

Authorship on Application:
Richard Gideons; Citizenship: United States. Authorship: 2-D artwork.

Rights and Permissions:
Richard Gideons, Fifty11 media, 815 Monroe St, Charlestown, IN, 47111, United States, (502) 759-7068, (502) 759-7068, fifty11.media@gmail.com

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