COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0405
August 12, 2026

Karen Boeker, Karen Holmes, and Rebecca Estenssoro	*v.*	Maryann Nunes and Robert Nunes
CLAIMANTS		**RESPONDENTS**

PROPOSED DEFAULT DETERMINATION

Respondents, Maryann Nunes and Robert Nunes (collectively, "Respondents"), have 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 claimants, Karen Boeker, Karen Holmes, and Rebecca Estenssoro (collectively, "Claimants"), have 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 sufficient to support a finding in favor of Claimants and awards $3,000 in statutory damages. **Any determination against Respondents, including a monetary award for damages, will be enforceable in a court of law.**

I. Procedural History

This claim was initially filed on December 31, 2024. (Dkt. 1). Claimants filed an amended claim on January 17, 2025 (Dkt. 3) and a second amended claim on February 4, 2025 ("Claim"). (Dkt. 7). The Board found the Claim compliant and, on February 7, 2025, directed Claimants to serve Respondents within ninety days. (Dkt. 12). Claimants filed Proofs of Service on Robert Nunes and on Maryann Nunes on March 19, 2025. (Dkt. 15 and 16, respectively). The Board sent a Second Notice to Respondents by mail on April 2, 2025, and by email on April 4, 2025. (Dkt. 17 and 18). The Board did not receive an opt-out form from either Respondent.

On May 20, 2025, the Board notified the parties that the proceeding had entered the "active phase" because Respondents did not submit timely opt outs and ordered Claimants to pay the second filing fee and Respondents to register for eCCB, the Board's filing and docketing system. (Dkt. 19). The Board issued that order through eCCB

and also mailed and emailed it to Respondents. Claimants paid the second filing fee on May 20, 2025. (Dkt. 20). On June 4, 2025, the Board issued a Second Notice for Respondents to register for eCCB (Dkt. 22) and a Scheduling Order. (Dkt. 21). In the Scheduling Order, Respondents were ordered to submit a response by July 7, 2025, but they did not. Both parties were also ordered to attend an initial conference, which was held on August 18, 2025. (Dkt. 23). While Claimants attended the August 18 conference, Respondents did not.

On July 11, 2025, the Board issued its First Default Notice because Respondents had not met any of the mandatory deadlines set by the Board. (Dkt. 24). The First Default Notice gave Respondents another thirty days to file a response. *Id.* On July 28, 2025, the Board issued a Second Default Notice, which reminded Respondents of the August 11, 2025, deadline to cure the missed obligations. (Dkt. 25). These notices were issued through mail, email, and eCCB.

The Board has received no communication from Respondents in this proceeding. Accordingly, on August 22, 2025, the Board ordered Claimants to submit written direct testimony in support of a default determination. (Dkt. 26).

Claimants submitted the required written materials on October 2, 2025, which consisted of a party statement ("Claimant Party Statement")[1] (Dkt. 27), an evidence list (Dkt. 28), and evidence (Dkt. 29-32). This case is now ripe for a proposed default determination.

II. Factual History

Claimants are self-described experts regarding the small under-stuffed plush animal products produced by Ty Inc., known as Beanie Babies, the collection of which became a world-wide mania in the 1990s. Capitalizing on that mania and the continued interest in buying and selling Beanie Babies and related products, Claimants created several online guides, which provided three prices for each character and information about Ty hang tags, aspects of highly

[1] Rather than submitting a separate witness statement or setting forth their factual statements in a separate section of their Party Statement, Claimants intermixed their factual statements in their Party Statement and as explanatory text with their exhibits. However, Claimants signed their Party Statement and certified to the truth of that Statement and the submitted exhibits when filing them on eCCB, as is true of all filings on eCCB. In the interest of time as these circumstances do not affect this determination, the Board will accept the factual statements made by Claimants as true for the purposes of this determination.

collectible Beanies and origination, among other things. *See generally id.* at 8-10. The three guides at issue in this proceeding are the Beanie Buddies Price Guide and Beanie Babies Price Guide, both described as being created from monitoring and recording Beanies researched values both online and offline, as well as the Beanie Sports Commemoratives Checklist, described as a compilation of all sports giveaways of Ty Products (collectively, "Works"). Claim at 3-4.

Claimants sold their Works as digital eBooks, either individually priced between $5.95 and $9.95 or as "Combo Packs" priced between $13.95 and $15.95, through their online store Beanie Babies priceguide.com, **https://updatedbeaniebabiespriceguide.sellfy.store/** (last visited July 23, 2026); Claimant Party Statement at 1; Exhibits A, B, and D (Dkt. 32, 31, and 30). The platform Sellfy.com, on which Claimants sell the Works, stamps the bottom of each page of the purchased eBook with the buyer's email. Exhibit A at 11; Exhibit B at 9; Exhibit D at 10. The Terms of Use on Claimants' online store explicitly states that the buyer has a non-exclusive, non-transferable license to use the purchased Works for personal use only and prohibits the transmitting or creation of derivative works from the Works. *See, e.g.,* Exhibit A at 5; Exhibit B at 5.

Claimants registered the copyright in the Works with a group registration for unpublished works, under Reg. No. TXu002195630, with an effective date of March 7, 2020. Claim at 3-4; Claimant Party Statement at 1; Copyright Public Records System, TXu002195630, Beanie Babies Price Guide 3 in 1 and 9 Other Unpublished Works, March 7, 2020, https://publicrecords.copyright.gov/detailed-record/voyager_31561566.[2]

By submitting the order details and invoices, Claimants have clearly shown that Respondents purchased two separate combo packs that included one copy of the Beanie Buddies Price Guide on September 26, 2024, and one copy each of the Beanie Baby Price Guide and the Beanie Sports Commemoratives Checklist on August 18, 2024, through their email **richcryptojerk@gmail.com**. Claimant Party Statement at 1; Exhibit A at 3-4; Exhibit B at 3-4. Once purchased, Respondents uploaded the Works to their websites bestbarnfinds.com and beaniebay.com. Claimant Party Statement at 1; Exhibit A at 1-3; Exhibit B at 1-3. Respondents' customers were able to purchase

[2] The works that were copied by Respondents were updated versions of the 2020 Works that were included in Claimants' registration. Claimants have explained that the 2024 works at issue here include "substantial creative material" from their 2020 guides and submit evidence proving that point. *See* Exhibit A at 11-13; Exhibit B at 9-10; Exhibit D at 10-11.

the Works individually and in combination packs through Respondent's eBay store under the account of Robert and Maryann Nunes under seller ID "Best-Barn-Finds." *Id.* After their purchase through eBay, customers were sent to Respondents' websites where they were able to access the guides. Exhibit D at 1-3.

Claimants assert that the Respondents' eBay store is a duplication of Claimants' website and "reads as though they are the creators [of the Works]." Claimant Party Statement at 1. Claimants have submitted numerous screenshots comparing their Works to the guides being sold by Respondents and they appear to be identical but for the watermark Respondents added with their website name. *See, e.g.,* Exhibit A at 2, 6; Exhibit B at 2, 6; Exhibit D at 4, 8. In fact, Respondents' email address is stamped on the bottom of each page of the Works they purchased. *See, e.g.,* Exhibit B at 3-4. Claimants have also shown that Respondents have copied Claimants' sales pages by duplicating verbatim the images and descriptions on those pages. *See* Exhibit A at 6-7; Exhibit D at 4.

Claimants reported to eBay that Respondents were selling Claimants' Works on eBay, but before eBay could remove Respondents' content, Respondents took them down after "negotiations" with Claimants during which Respondents admitted they were selling the Works through their eBay store. Claimant Party Statement at 2. Prior to August 18, 2025, Respondents "parked" their websites so that the links to the guides were not accessible, and Claimants are not sure if Respondents plan to make their websites live again. Claimant Party Statement at 2; Exhibit D at 9. At the time Claimants filed their Party Statement, the Works were still viewable on bestbarnfinds.com. Claimant Party Statement at 1.

Claimants state that Respondents' activities have affected Claimants' sales, which was amplified by the fact that the links could have easily been shared or posted to social media. Claimant Party Statement at 1. Claimants are seeking an unspecified amount in statutory damages, but $5,000 is the maximum that the Board can award due to Claimants' election to proceed as a smaller-claims track proceeding when they filed their claim. Claim; Claimant Party Statement at 2; 17 U.S.C. § 1506(z).

III. 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); *see also Folkens v. Wyland Worldwide, LLC,* 882 F.3d 768, 774 (9th Cir. 2018); *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 984 (9th Cir. 2017). The Board has reviewed Certificate of Registration No. TXu2-195-630, effective as of March 7, 2020, for the Works, which were unpublished at the time the registration. A certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid, and that the registrant owns the copyright. *See* 17 U.S.C. § 410(c); *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 988 (9th Cir. 2017) (citing *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1110 (9th Cir. 1998)). This evidentiary presumption applies when the certificate of a registration is obtained before or within five years after first publication of the work. 17 U.S.C. § 410(c). As the Works were not published at the time of registration, the evidentiary presumption applies, and the Board need only consider whether the Respondents infringed the work.

Claimants have shown that Respondents purchased the Works, and therefore, Respondents clearly had access to the Works. To prove substantial similarity, the claimant must show that the allegedly infringing work is substantially similar to protectable elements of the infringed work. When "duplication is literal or verbatim, then clearly substantial similarity exists." *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065, 1074 (9th Cir. 2021) (quoting 4 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 13.03[A][1] (2019)).

Here, Claimants have submitted ample evidence to show that Respondents copied and sold virtually identical copies of their Works. *See* Exhibits A, B, and D. The Board concludes that, without Claimants' consent, Respondents reproduced, publicly displayed, and offered copies of the Works for sale. There is no question that in each instance the original Works and infringing guides are virtually identical, and thus both strikingly and substantially similar.

IV. Defenses

When reviewing the evidence provided by a claimant in support of a default determination, the Board must consider whether the respondent has a meritorious defense. 37 C.F.R. § 227.3(a). The Board has considered the facts in this case and finds that no such defense exists to this claim.

V. Damages

Claimants elect an unspecified amount of statutory damages, but $5,000 is the maximum the Board can award in a "smaller claims" proceeding. Claimant Party Statement at 2; 17 U.S.C. § 1506(z).

Courts have wide discretion to award statutory damages if they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231–32 (1952); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986); *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 143 (2d Cir. 2010). "[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); *see also Alouf v. Expansion Products, Inc.*, 417 F.2d 767, 769 (2d Cir. 1969); *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *F.W. Woolworth*, 344 U.S. at 232).

Furthermore, various courts have explained that (regardless of willfulness or lack thereof) statutory damages awards should significantly exceed the amount of unpaid license fees 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) (internal quotation marks and citation omitted). As the court noted in *F.W. Woolworth*:

> Such an approach is consistent with the Copyright Act's purpose of deterring copyright infringement. Indeed, as the Supreme Court has held, "a rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of copyright policy. The statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed to discourage wrongful conduct."

344 U.S. at 233; *see also Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018), *rev'd and remanded on other grounds*, *Philpot v. LM Commc'ns II of S.C.*, 776 F. App'x 906 (6th Cir. 2019) ("Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement would do little to discourage infringers").

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); *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. 1:09cv433, 2011 WL 3207024 (LMB/IDD), 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. A-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 assessed 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*, 807 F.2d at 1118. 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).

While Claimants have provided evidence of the sale price of each Work, they have not provided the Board with the number of sales for the Works or how the infringement affected those sales except to say, "[t]his has affected our sales and reputation, and anyone can/could have passed the links around, or posted it in a group, which has an enormous impact on our Beanie Babies Price Guide business." Claimant Party Statement at 1. Claimants are obviously hampered in their ability to show Respondents' profits attributable to infringement of their Works because Respondents have failed to appear in this proceeding; however, Claimants submitted limited evidence that shows that Respondents had at least eight sales of the infringing Works on eBay. Exhibit A at 8. However, it is not clear whether that is the full amount of Respondents' sales. Based on the limited record regarding damages before the Board, the Board concludes that an award near the bottom of the permissible range of statutory damages is appropriate.

However, in considering damages for a copyright infringement, courts are "guided by 'what is just in the

particular case, considering the nature of the copyright [and] the circumstances of the infringement.'" *Peer Int'l Corp.*, 909 F.2d at 1336 (quoting F.*W. Woolworth Co.*, 344 U.S. 228 at 232). This includes the "deterrent effect on others besides the defendant" and "the potential for discouraging the defendant." *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, No. 19-cv01356-VC (TSH), 2021 WL 1222492, at *1 (N.D. Cal. Apr. 1, 2021).

Here, the totality of the "circumstances of the infringement" justifies an increase from the minimum. Respondents were clearly deriving income directly from the infringing use of the Works. Due to the obvious commercial nature of Respondents' infringement and the fact that Respondents not only copied the Works verbatim but used the covers of Claimants' Works and Claimants' ad text to promote their guides that directly competed with Claimants' Works, the Board will increase the damage award from the minimum amount of $750 per Work in statutory damages. The length of the infringement as well as possibility of continuing infringement are other factors that the Board considered in its decision to increase the minimum amount. While it is unclear exactly how long Respondents have been infringing the Works, the evidence shows that Respondents first purchased the Works from Claimant on August 18, 2024 (Exhibit A at 4), made another purchase on September 26, 2024 (Exhibit B at 4) and that Respondents were still making sales in December 2024 (*See* Exhibit A at 8) and in January 2025 (*See* Exhibit B at 1). Claimants have stated that the infringing guides were likely taken down just before the Pre-Discovery Conference in this matter on August 18, 2025, so the infringement continued for almost a year. Because the Works were still "viewable" on Respondents' bestbarnfinds.com website at the time that Claimants submitted their default direct testimony, there is the potential that Respondents could reactivate that website as a point of sale for Claimants' Works. Claimant Party Statement at 1-2.

An increased award deters Respondents from continuing to violate the copyrights of these Works. On balance, the damages awarded should exceed the $750 minimum of the statutory range. Based on the record before it, the Board awards $1,000 per work.

VI. Conclusion

The Board's proposed default determination is to find that Respondents have committed copyright infringement and to award Claimants $3,000 in statutory damages.