COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0180
August 19, 2026

Ping Lau	*v.*	Roselinde Skievaski
CLAIMANT		**RESPONDENT**

PROPOSED DETERMINATION DISMISSING PROCEEDING

Respondent Roselinde Skievaski ("Skievaski" 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, Ping Lau ("Lau" or "Claimant"), has submitted testimony that 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 Lau and that the case must be dismissed without prejudice.[1]

I. Procedural History

Lau filed this copyright infringement claim on June 13, 2024 (Dkt. 1) and then amended the now-operative claim on July 14, 2024 ("Claim") (Dkt. 3). The Board found the Claim compliant, and on July 18, 2024, directed Lau to serve Skievaski. (Dkt. 6). The Board emailed and mailed to Skievaski both the Scheduling Order and Second Notice to Register at the email address and address provided in the claim. An initial conference was held on January 8, 2025, and Skievaski did not attend. Also on January 8, 2025, the Board filed the First Default Notice when the Respondent failed to register for the eCCB or file a response to the claim ("First Default") (Dkt. 17), and a Second Default Notice on January 24, 2025, when Respondent failed to respond to the First Default by the deadline ("Second Default") (Dkt. 18). Claimant filed a Default Direct Party Statement ("Party Statement") (Dkt.

[1] "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 CFR § 227.3(a)(2).

20), an evidence list (Dkt. 21-22), evidence (Dkt. 25-48), and witness statements by Lau ("Lau Statement") (Dkt. 23) and Esther Newmark Orlando ("Orlando Statement") (Dkt. 24) on March 26, 2025. The case is now ready for final default determination.

II. Factual History

Lau created twenty-six doll sculptures (the "Works") between 2018 and 2023, and registered the sculptures with the U.S. Copyright Office in thirteen different registrations with effective dates ranging from December 13, 2020, to April 23, 2023:

December 13, 2020

- Reg. No. VAu001420788 - Ping Lau Doll Kit "Meili," including "Daphne," "Min-Min," and "Lyra"
- Reg. No. VA0002239714 - Ping Lau Doll Kit "Leonie"

January 21, 2021

- Reg. No. VA0002240850 - Ping Lau Doll Kit "Adele"
- Reg. No. VA0002240846 - Ping Lau Doll Kit "Mila"

March 9, 2021

- Reg. No. VAu001428701 - Ping Lau Doll Kit "Shanthi," including "Dimples" and "Rea"

July 20, 2021

- Reg. No. VAu001438425 - Ping Lau Doll Kit "Asha," including "Bae," "Jameelah," and Annerose"

October 12, 2021

- Reg. No. VAu001453570 - Ping Lau Doll Kit "Millicent," including "Devi"

March 31, 2022

- Reg. No. VAu001466611 - Ping Lau Doll Kit "Sakari," including "Kalidah"

May 2, 2022

- Reg. No. VAu001469082 - Ping Lau Doll Kit "Machiko," including "Emmeline"

May 16, 2022

- Reg. No. VA0002304122 - Ping Lau Doll Kit "Grace"
- Reg. No. VA0002304121 - Ping Lau Doll Kit "Teegan"

July 20, 2022

- Reg, No. VAu001476622 - Ping Lau Doll Kit "Delphi," including "Crybaby Calia"

April 26, 2023

- Reg. No. VAu001499306 - Ping Lau Doll Kit "Shakira," including "Ying"

Lau and Skievaski entered a verbal agreement in 2016 for Skievaski to produce doll kits from the Works. Party Statement at 1-2. Although the parties' original agreement was verbal, Lau provided a series of messages in which a 10% royalty payment was discussed between the parties. Exhibits A2-A4, A6-A7 (Dkt. 29, 34, 36-38). Skievaski paid to produce the doll kits at a factory in Germany and sold them through a third-party distributor in the United States, Irresistables.com. Party Statement at 1; Orlando Statement ¶ 2. Skievaski sold the doll kits for between $110.00 to $130.00 per kit. Exhibit F1 (Dkt. 41). Skievaski signed an Asset Purchase Agreement with Irrestibles.com, executed on August 12, 2017, making Irresistibles.com the exclusive distributor for twelve years of any dolls Skievaski produced, including those doll kits based on the Works. Exhibits H1, H2 (Dkt. 40, 45).

According to Lau, Skievaski's license to sell doll kits based on the Works was on the condition that Skievaski would pay Lau a 10% royalty on each doll kit. Party Statement at 1. Lau provided evidence of two royalty payments: one of $2,675.00 in March of 2023 and one of $1,580.00 in April 2023. Exhibit A1 (Dkt. 35). Lau requested that Skievaski make the royalty payments after Lau provided the sculptures instead of Skievaski paying in advance. Claim Exhibit "LBT agreement5.png." Skievaski sold doll kits and made these payments until May 2023, when she cancelled the distribution agreement with Irrestibles.com and ceased making payments to Lau. Party Statement at 1-2.

Skievaski established a new website, Wishingwellreborns.com, on which she sold the Works starting in approximately July 2023. Party Statement at 2-3; Exhibit B1, B2 (Dkt. 28, 32). In an email dated August 1, 2023, Lau expressly demanded that Skievaski stop selling the Works. Party Statement at 3; Exhibit C1 (Dkt. 26). The original distributor Irresistible.com filed suit against Skievaski in August 2023 (Exhibit I1 (Dkt. 43)), at which time Skievaski disabled her new website and began to sell the Works through eBay under the store name "Wholesale Reborns." Party Statement at 3; Exhibits D1-D5 (Dkt. 27, 31, 33, 47, and 46). Lau reported Skievaski's store to eBay, which removed the listings. Party Statement at 3-4. In August 2024, Skievaski reopened her store on eBay, Lau reported to eBay again, and eBay removed the listings again. *Id.* at 4. Skievaski continued to advertise the Works for sale on Facebook. Party Statement at 4; Lau Statement at ¶ 8; Exhibits B1 and B2.

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). Lau claims that Skievaski infringed the Works in the following ways:

> Skievaski broke the condition precedent in May of 2023 as she stopped paying me while continuing to sell my work and use my name. She has not paid me since May 2023. Skievaski went beyond her scope by establishing a new website called Wishing Well Reborns, Inc. to use and sell my work without my permission and barred the distributor and myself from all involvement in the sales from this website around July of 2023.

Party Statement at 2-3. Skievaski has failed to respond to these claims. The facts presented demonstrate that Skievaski has been selling doll kits based on the Works. Exhibit D1. Without a valid defense, Skievaski's actions in copying and distributing copies of the Works constitute copyright infringement.[2]

b. License

Lau admits that Skievaski had a license to distribute the Work. Party Statement at 1. A license is a defense against a claim of infringement. *See Oddo v. Ries,* 743 F.2d 630, 634 n. 6 (9th Cir. 1984); *Keane Dealer Services, Inc. v. Harts,* 968 F. Supp. 944, 947 (S.D.N.Y. 1997); Melville B. Nimmer & David Nimmer, 4 Nimmer on Copyright § 13D.28 (2026). A copyright owner's transfer of any of their exclusive rights in copyright to another person must be in writing. 17 U.S.C. §§ 101, 204(a); *see also Effects Assocs. v. Cohen,* 908 F.2d 555, 557-58 (9th Cir. 1990), *cert. denied,* 498 U.S. 1103 (1991). In this case, Lau claims the parties had an agreement, but it was not in writing. Party Statement at 2. However, 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

[2] For the purposes of this proceeding, the Board is treating the doll kits as copies of the Works, not derivative works. The Party Statement and Lau Statement seem to indicate the Works were copied directly in creating the doll kits at issue, and Skievaski did not participate or present any evidence as to whether the doll kits were direct copies or derivative works. If the doll kits were derivative works, any infringement would apply only to the portions copied from Lau's Works.

license and is not required to be in writing." *I.A.E., Inc. v. Shaver,* 74 F.3d 768, 775 (7th Cir. 1996) (quoting 3 Nimmer on Copyright § 10.03[A] (1995)).

In determining whether the parties created an implied license, "[w]hen an owner's conduct 'clearly' manifests 'a consent to . . . use' of copyrighted material, the owner impliedly grants a nonexclusive license." *Midlevelu, Inc. v. ACI Info. Grp.,* 989 F.3d 1205, 1216 (11th Cir. 2021) (citing *De Forest Radio Tel. Co. v. United States,* 273 U.S. 236, 241, 47 S. Ct. 366, 71 L. Ed. 625, 63 Ct. Cl. 677 (1927); *see also License,* 2 *Bouvier's Law Dictionary* (14th ed. 1874) ("An implied license is one which is presumed to have been given from the acts of the party authorized to give it."). Here, Lau's own admission and the facts indicate that Skievaski had an implied license to produce and sell doll kits based on the Works, so the Board may find in Lau's favor only if one of the following is true: (1) Lau effectively revoked the implied license; (2) Skievaski did not meet a condition precedent of the implied agreement; or, (3) Skievaski's actions went beyond the scope of any implied license to use the Works.

c. Revocation

In the case of an implied license, a licensor can, in certain circumstances, provide evidence of a clear revocation of the license. *See Asset Marketing Systems, Inc. v. Gagnon,* 542 F.3d 748, 756 (9th Cir. 2008). Lau argued that although there was an implied license between the parties, she revoked the license when she sent an email to Skievaski demanding that she stop selling the doll kits based on the Works. Party Statement at 3; Exhibit D1. That revocation, however, was not valid. "Implied licenses are revocable absent consideration and, thus, are irrevocable if supported by consideration." *Kid Stuff Mktg., Inc. v. Creative Consumer Concepts, Inc.,* 223 F. Supp. 3d 1168, 1183 (D. Kan. 2016) (citing *Asset Mktg. Sys., Inc. v. Gagnon,* 542 F.3d 748, 757 (9th Cir. 2008); *Carson v. Dynegy, Inc.,* 344 F.3d 446, 451-52 (5th Cir. 2003); 3 Nimmer on Copyright § 10.02[B][5] at 10-28.6 (2013).

The evidence demonstrates that Skievaski promised Lau a sculptor's fee and a 10% royalty for sales of the doll kits based on the Works. The contingent nature of a promise does not vitiate its status as consideration. "Consideration exists if 'something *is promised,* done, forborne or suffered by the party to whom the promise is made as consideration for the promise made to him.'" *Van Bortel v. Ford Motor Co.,* 621 F. Supp. 3d 380, 386 (W.D.N.Y. 2022) (emphasis added) (quoting *Alessi Equip., Inc. v. American Piledriving Equip., Inc.,* 578 F. Supp. 3d 467, 500 (S.D.N.Y. 2022)). The Board concludes that the sculptor's fee and royalty payments constitute adequate consideration to create a contract as to licensing of the Works that render the implied license irrevocable.

d. Condition Precedent

Lau argues that a payment of 10% of the royalties from selling the doll kits based on the Works was a condition precedent of their implied license agreement. Party Statement at 1. Condition precedents may exist in implied licenses and verbal agreements as a general matter, but courts presume that terms are covenants rather than conditions precedent, "unless it is clear that a condition precedent was intended." *4DD Holdings, LLC v. United States,* 159 Fed. Cl. 337, 347 (2022) (citing *Bitmanagement Software GmBH v. United States,* 989 F.3d 938, 950 (2021)). A condition precedent requires something to occur before there is a right to performance under the agreement. *See, e.g., Rocket Software, Inc. v. CollegeNET, Inc.,* No. 3:22-cv-00327-AR, 2025 LX 96880, at *64-65 (D. Or. Mar. 14, 2025) (citing *Platt Pac., Inc. v. Andelson,* 6 Cal. 4th 307, 313, 24 Cal. Rptr. 2d 597, 862 P.2d 158 (Cal. 1993); *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 939 (9th Cir. 2010). Additionally, courts have consistently found that payment terms serve as contract terms or covenants and not as conditions precedent. *See, e.g.*, *Graham v. James,* 144 F.3d 229, 237 (2nd Cir. 1998) ("We think that the payment of royalties . . . are to be considered covenants, not conditions."). To prove whether a contract term is a condition precedent, courts look to the entire course of the dealing, 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); *Bitmanagement Software GmBH v. United States,* 989 F.3d 938, 950 (2021). "Conditions precedent are disfavored and will not be read into a contract unless required by plain, unambiguous language." *Rocket Software, Inc.*, No. 3:22-cv-00327-AR, 2025 LX 96880, at *65 (citing *Effects Assocs., Inc.*, 908 F.2d at 559 n. 7).

While communications between the parties and third-party partners acknowledge that Skievaski committed to paying a royalty of 10% on sales of the doll kits, it does not appear that it was required before there was a right to performance. Exhibits A2-A6, A8. In fact, the evidence demonstrates that Skievaski needed to produce and sell the doll kits to calculate the 10% royalty and pay it to Lau, and Lau stated a preference that Skievaski pay the royalty *after* she performed the work, instead of in advance. Claim Exhibit "LBT agreement5.png." The Board concludes the royalty payments were a covenant of the oral agreement, not a condition precedent.

e. Scope

A licensor may also sue for copyright infringement by providing evidence the licensee acted outside the scope of the license. *Sun Microsystems, Inc. v. Microsoft Corp.,* 188 F.3d 1115, 1121 (9th Cir. 1999) (internal citation omitted). Here, Lau seems to indicate that the implied agreement with Skievaski was for Skievaski to produce the dolls and sell them through the third-party website Irrestibles.com. Party Statement at 1; Lau Statement ¶¶ 1-2; Orlando Statement ¶¶ 1-3. As noted, an implied license does not need to be in writing. *I.A.E., Inc.*, 74 F.3d at 775 (quoting 3 Nimmer on Copyright § 10.03[A] (1995)). However, courts have recognized limitations on the scope of an implied license to a specific use generally "only if that limitation is expressly conveyed when the work is delivered." *Karlson v. Red Door Homes, LLC,* 611 F. App'x 566, 571 (11th Cir. 2015) (citing *Latimer v. Roaring Toyz, Inc.,* 601 F.3d 1224, 1235 (11th Cir. 2010) (internal citation omitted)). "[W]hen the contested issue is the scope of a license, rather than the existence of one, the copyright owner bears the burden of proving that the defendant's copying was unauthorized under the license." *Neu Prods. Inc. v. Outside Interactive, Inc.,* No. 23-cv-4125 (LAK), 2024 U.S. Dist. LEXIS 105311, at *4 (S.D.N.Y. June 13, 2024) (citing *Graham,* 144 F.3d at 236 (internal citations omitted)).

According to Lau, when Skievaski breached the written agreement with Irrestistible.com and began selling the doll kits through her own website and eBay, she went beyond the scope of the parties' implied agreement. Party Statement at 2-3; Lau Statement ¶ 3; Orlando Statement ¶¶ 3-4; Exhibits B1, B2; D1-D5. However, Lau does not provide any evidence that she conveyed such a limitation to Skievaski when she delivered the Works. Moreover, Lau indicated that she and Skievaski "have been working together since around 2016 producing doll kits from my original sculptures," which is when any implied agreement between the parties was initiated. Party Statement at 1. The distributorship agreement with Irresistibles.com was not executed until August 12, 2017, which indicates that the parties' implied agreement did not contemplate a specific distributorship. Exhibits H1, H2.

f. Conclusion as to Copyright Infringement

With limited exception, Lau's claim is essentially one of breach of contract. Skievaski's actions would have constituted copyright infringement, except that she has a defense of an implied license. Lau was unable to revoke the implied license because adequate consideration was provided, making the implied agreement irrevocable. The payment of royalties was a covenant under the implied agreement, not a condition precedent. Lau also failed to provide any evidence that she expressly conveyed any limitations on the scope of the implied license when she

delivered the Works. Lau may have a perfectly cognizable breach of contract claim for Skievaski's failure to pay the royalties, but that is beyond the Board's subject-matter jurisdiction to redress. 17 U.S.C. § 1504(c); 37 C.F.R. § 222.2(c)(1)(i-iii). The Board finds Skievaski is not liable for copyright infringement for the copying and distribution of the Works for the reasons stated above.

IV. Conclusion

The Copyright Claims Board finds Respondent Skievaski is not liable for infringement of the Works, because she had an implied license to produce and sell doll kits based on the Works.

Copyright Claims Board