COPYRIGHT CLAIMS BOARD

DOCKET NO. 22-CCB-0182

Tom Schirmacher	*V.*	Bellisimo European Day Spa, LLC
CLAIMANT		RESPONDENT

ORDER EXTENDING OPT-OUT PERIOD

PLEASE READ CAREFULLY

This claim was filed on September 30, 2022. The Board found the amended claim compliant, and claimant was directed to serve within ninety days of the Notice of Compliance dated November 23, 2022. Claimant filed a proof of service on January 17, 2023, stating that respondent was served on January 10, 2023 under the laws of Massachusetts. As a respondent has sixty days from service to opt out, if the respondent wished to opt out, the opt out was due no later than March 13, 2023. The Board sent a Second Notice to respondent by mail and email on February 2, 2023. The Board did not receive an opt-out. On March 17, 2023, the Board notified the parties that the claim had entered the "active phase" because respondent was served and did not submit a timely opt-out, and ordered the claimant to pay the second filing fee and the respondent to register for eCCB.

The respondent in this claim, 22-CCB-0182, Bellisimo European Day Spa ("Bellisimo"), had a second claim, Sommet v. Bellisimo European Day Spa (22-CCB-0181), filed against them on the same day, September 30, 2022. Although 22-CCB-0182 involved a different claimant and a different work, both claims were filed by the same representative, and both claims were served on respondent on January 10, 2023. For Claim 22-CCB-0182, the Board received a timely opt out on January 24, 2023.

On March 29, 2023, the Board received an email from Bella Krashenny, owner of Bellisimo, stating that Bellisimo just received the Second Notice sent by the Board. More importantly, Krashenny states that they did not know that Bellisimo was subject to two different claims before the Board and believed they had successfully opted out of all legal proceedings that had been filed before the CCB against Bellisimo. Given that the initial notices for Claims 22-CCB-0181 and 22-CCB-0182 were served at the same time by the same process server, this confusion seems plausible.

Under these exceptional circumstances and due to the intent of the voluntary nature of proceedings before the Board, the Board is extending the opt-out period for the respondent in Claim 22-CCB-0182 until April 14, 2023 in the interests of justice. 17 U.S.C. § 1506(i); 37 C.F.R. § 223.1(f). If the respondent opts out via eCCB by that time, the opt out will be considered valid and this case will be dismissed without prejudice.

Date: March 31, 2023

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