Electronically Filed
Docket: 22-CCB-0263
Filing Date: 01/24/2024 02:19:22 PM EST

COPYRIGHT CLAIMS BOARD

Michelle Shocked	*Docket No.*
CLAIMANT	***22-CCB-0263***
v.	
Gavin McInnes	*CLAIMANT'S*
RESPONDENT	*REPLY TESTIMONY*

1. The Respondent never requested nor obtained — and the Claimant never granted the Respondent — direct, synchronized-use licenses for the sound recording and musical composition of the Claimant's original Work, the song "Anchorage," which the Respondent commercially broadcasted to the Respondent's Censored.tv customers-subscribers while screening the Respondent's "Get Off My Lawn" audiovisual program.

2. While the Respondent's Party Statement raises an affirmative fair-use defense, the Respondent fatally neglects to address — and fails to supply the burden of proof for — the CCB's determination of fair-use under the four factors:

- FACTOR 1: The Respondent commercially purposed the unlicensed sync-use of the infringed, copyrighted Work.

- FACTOR 2: The infringed, copyrighted Work's creative nature — an original published song — would not support the Respondent's fair-use defense.
- FACTOR 3: The copyrighted Work, "Anchorage," is 3:32 in length. The Respondent commercially broadcasted a substantial amount — four entire verses of the six-verse Work — which wouldn't support a fair-use defense.
- FACTOR 4: The Respondent diverted web traffic away from the Claimant's web-store by falsely claiming to his viewers, "*That song is gone*," "*Nowhere*," "*deleted from the world*." Further, the Respondent misleads the Respondent's viewers to multiple platforms — YouTube, Vimeo, Rumble, Daily Motion — to discover where the Claimant's original Work is currently un-marketed while simultaneously and commercially publishing an unlicensed sync-use of the Claimant's original Work on the Respondent's audiovisual program. The Respondent's claim, "*my use of the Work can only have enhanced its market value*" is an anemic overreach. It's the Claimant's position that the original Work's exposure on "Get Off My Lawn" is a "hatejacking" action, which inspired the Detroit Red Wings to announce that the

hockey team is exploring legal action against the Respondent's followers'-customers'-subscribers' misappropriation[1].

---

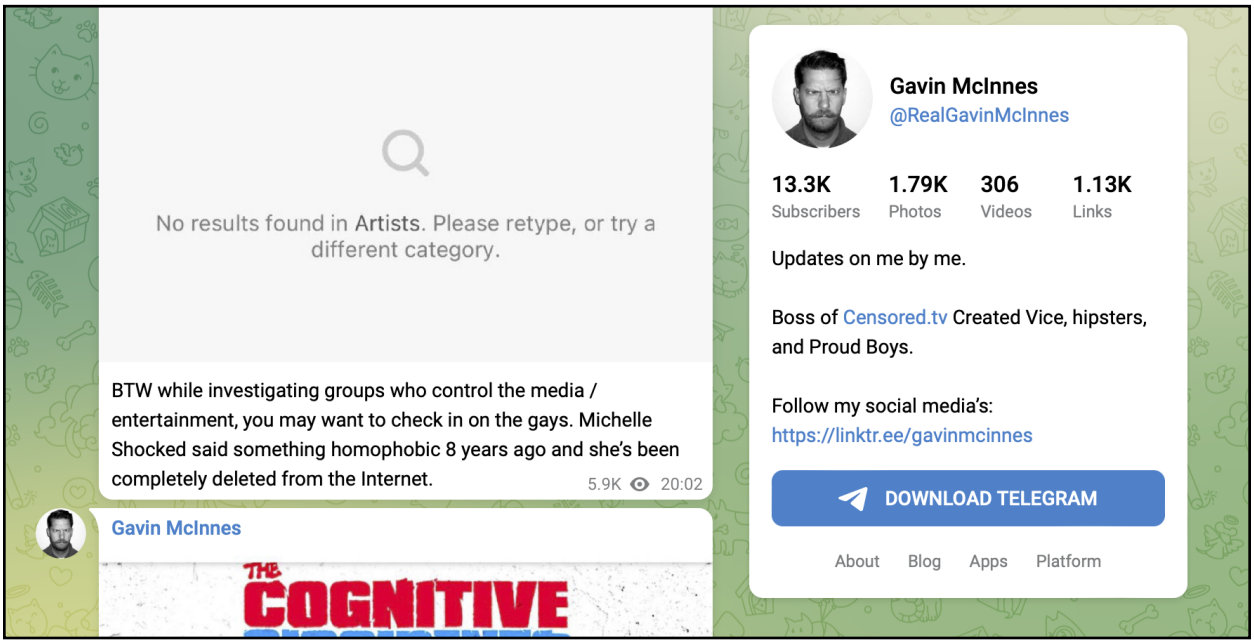
[1] *Proud Boys Have 'Hatejacked' a Cartoon Beaver to Mask Themselves*
The far-right extremist group has a long history of using specific, often goofy brands as markers to identify each other without the risk of public scrutiny
As we've seen with other Pride events, the far-right extremist machine was ready to pounce when a public library in the Texas town of McKinney announced it would hold a Pride-themed family storytime event on June 25th.
First to descend on the scene were the mainstream Trumpers, groaning about the indoctrination of children. Then came a handful of Three Percenters and Proud Boys, the latter dressed in body armor, their distinctive black-and-yellow polo shorts, baseball caps and a uniquely garish accessory: Bright red gaiter masks emblazoned with the grinning face of a cartoon beaver.
The beaver is the face of Buc-ee's, the chain of country stores, gas stations and rest stops that's beloved across Texas. Get on any highway in the state and odds are, it won't be long before you spot that iconic smile on the roadside, beckoning travelers to experience "America's Best Restrooms" and a huge array of food and merch. That includes all manner of clothes and souvenirs emblazoned with the Buc-ee's logo, which has achieved a cult level of fame as a signifier of Texas pride.
There's nothing new about this kind of symbolic hijacking by extremist groups, or "hatejacking," as some researchers call it. As we've seen with slogans like "Let's Go Brandon" or the okay hand sign, America's far-right adores subverting seemingly innocuous language and symbols to serve as group identifiers and in-jokes. But the value of hatejacking goes further: It's a tool to disrupt major businesses and turn the spotlight onto extremist groups, simultaneously building their perceived legitimacy, aiding recruitment and forcing the mainstream to confront their presence.
Leveraging something as goofy as a cartoon beaver known to all in Texas is a blend of ironic shitposting and strategic maneuvering — a way to confuse observers about the seriousness of Proud Boy violence, while also demonstrating their ability to remain fluid as they're under increasing scrutiny. "The use of specific brands, often covertly, allows hate groups to have identity markers without the social stigma ascribed to historical hate symbols," researchers Bond Benton and Daniela Peterka-Benton noted in a 2020 study. "The covert, hide-and-seek nature of the hatejack also allows extremist groups to identify with each other without public or legal scrutiny."
Historical examples of hatejacking abound, whether it's neo-Nazi skinhead embrace of Dr. Martens in the 1980s or the adoption of Lonsdale garb as a signifier of far-right sympathies in the early 2000s. Most infamously, the Proud Boys have caused a massive headache for British menswear company Fred Perry, which found itself unprepared to deal with the group's mass adoption of its signature black-and-yellow polo shirts. Ultimately, the company had to release a statement in 2020 disavowing the Proud Boys and announcing it would stop sales of the black-and-yellow polo in the U.S.
In similar fashion, far-right agitators and neo-Nazis tried to co-opt New Balance after a 2016 interview in which the brand's vice president of public affairs said that the Obama administration had turned "a deaf ear" to the company and that president-elect Donald Trump would shift things "in the right direction."
The fairly innocuous statement went widely viral on social media, leading to a swath of performative demonstrations of people trashing and burning their shoes — and, on the flip side, a call from the far-right to embrace New Balance as the brand for conservatives everywhere. Neo-Nazi propagandist Andrew Anglin, founder of the website Daily Stormer, even trumpeted that "New Balance just became the official shoes of white people" in a headline, claiming the VP's comments were a "gesture to support white people" and urging people to buy in.
A similar story unfolded after John Schnatter, founder of the pizza chain Papa John's, uttered a racist slur on a corporate call and was forced to resign. Schnatter had a history of provocative language around racial issues, and was a major supporter of Trump; in the aftermath of his firing, the Daily Stormer once again seized the opportunity to name Papa John's the "official pizza" of the alt-right. Far-right agitator Jack Posobiec even joined in, literally serving Papa John's at his wedding rehearsal dinner as some kind of bizarre lib-owning demonstration.
Brands don't have an obvious playbook on how to deal with such disruptions: Fred Perry and the aforementioned Lonsdale, for example, tried to stay quiet at first, hoping the attention would die down. Others, such as the Detroit Red Wings, have played hardball from the get-go, threatening legal action against the far-right actors who appropriated their logo.

— *EDDIE KIM, MEL Magazine, Jul 8, 2022. https://melmagazine.com/en-us/story/buc-ee-beaver-logo-proud-boys*

3. The Claimant cites two previous examples of granting direct, sync-use licenses to support the Claimant's statutory-damages fair-market calculation of $15,000 per infringed work:

- EXAMPLE 1: Claimant granted Disney a sync-use license for a brief, 20-second clip of a performance of her 2002 musical work "Why Do I Get the Feeling?" for a fair market value rate of $20,000.
- EXAMPLE 2: Claimant granted Kaiser Permanente a sync-use license for a brief, 30-second clip from her 1988 Grammy-nominated Mercury-released sound recording "Short Sharp Shocked," of her musical work, "When I Grow Up," for a fair market value rate of $150,000.

4. Since examining the Respondent's Jan. 4, 2024, Party Statement, it has come to the Claimant's attention that the Respondent appears to have created multiple versions of the Censored.tv broadcast. An undeleted Telegram post indicates the Respondent created an alternative 20-minute edition of the Respondent's "Get Off My Lawn" episode that reached more than 5,000 commercial views and was paired with the following descriptive kicker, which is still live: "*BTW while investigating groups who control the media / entertainment, you may want to check in on the gays. Michelle Shocked said something homophobic 8 years ago and she's been completely deleted from the Internet.*"



RESPONDENT'S COMMERCIAL EXPOSURE: 13.3k subscribers — 5.9k views.

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

MICHELLE SHOCKED, *Claimant.*

Dated: Jan 24, 2024

Proof of Delivery

I hereby certify that on Wednesday, January 24, 2024, I provided a true and correct copy of the #21 22-CCB-0263 MCI Claimant's Written Reply Testimony to the following:

Gavin McInnes, represented by Gavin McInnes, served via MANUALEEMAIL

Signed: /s/ Michelle Shocked