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COPYRIGHT CLAIMS BOARD

MARY A. OAKES Claimant. v. ANGEL JAMESON; and HEART OF GOLD PAGEANT SYSTEMS INC. Respondent.	Case No.: 22-CCB-0046 **RESPONSE TO RESPONDENT'S REQUEST TO VACATE FINAL DETERMINATION**

Pursuant to the Order to File Documents of the Copyright Claims Board dated February 1, 2024, (Case Doc. #60), Petitioner Mary A. Oakes submits the following Response to Respondents Angel Jameson and Heart of Gold Pageant System Inc's ("Respondents") Request to Vacate the Final Determination, entered on January 24, 2024.

I. STATEMENT OF FACTS

This matter was commenced on July 7, 2022 and involves two images – the Abby Image and the Michalea Ad Image (collectively, the "Images"). *See* Doc. #1. On February 17, 2023, the Board sent an email notification for a Pre-Discovery Conference in this matter. *See* Doc #32 at ¶ 6. Respondent Jameson responded directly to the Board's email indicating that she was aware of the action but failed to appear at the conference. *Id* at ¶7-9. Respondents never responded to the Claim and the Board initiated default procedures on March 2, 2023. *See* Doc. #25-27. On May 26, 2023, Claimant Oakes submitted her Default Direct Party Statement and supporting documents. *See* Doc. #41. Subsequently, the Board requested additional documentation from Claimant Oakes, which she filed on the docket on August 1, 2023. *See* Doc. #46.

On December 21, 2023, the Copyright Claims Board entered a Proposed Final Default Determination in this action, giving Respondents 30 days, until January 22, 2024 to object to the determination. *See* Doc. #48. On January 24, 2024, the Board entered its Final Determination. *See* Doc. #55. On January 29, 2024, after Respondents' time to object to the Proposed Final Default Determination had passed and after the Board had entered its Final Determination, Respondent Jameson filed a Request for Dismissal, indicating that she had a signed release as evidence of a license. *See* Doc. #58. On February 1, 2024, the Board subsequently ordered Respondent Jameson to file "the specific documents referred too…that is, ***actual releases*** showing permission to use the two images at issue in this case and ***correspondence showing such permission***." *See* Doc #60 (emphasis added). On February 9, 2024, Respondents filed nineteen documents on the docket in response to the Court's February 1, 2024 Order.

II. RESPONDENTS HAVE FAILED TO PROVIDE EVIDENCE OF AN ACTUAL RELEASE OR CORRESPONDENCE SHOWING PERMISSION TO USE THE IMAGES AT ISSUE IN THIS CLAIM.

The Board was clear in its February 1, 2024 order that Respondent needed to provide evidence of "***actual releases*** showing permission to use the two images at issue…and ***correspondence showing such permission***". *See* Doc. #60 (emphasis added). Respondents, despite providing nineteen documents to support their Motion to Vacate, failed to provide what the Board specifically requested. Instead, Respondent merely provided evidence trying to disparage Ms. Oakes' character to distract from their lack of license or permission to use the Abby Image or Michalea Ad Image for promotional and marketing purposes. Each piece of "evidence" provided by Respondents is directly addressed in this Response as it relates to the Board's February 1, 2024 Order.

A. Document #61 "Proof of Registration AFTER Submission".

The CCB is aware of the registration dates for the Images at issue, as Claimant provided registration certificates for each of the Images as part of Claimant's Direct Party Default Statement as Exhibit B and Exhibit D. *See* Doc. #30, Doc. #39. Further, Claimant is entitled to recover damages even if the infringement occurred after registration. *See* 17 U.S.C. § 1504(e)(1)(A)(ii)(II).

Document #61 does not provide an actual release or correspondence showing permission to use the Images as requested by the Board.

B. Document #62 "Mary Registers her Daughter and Submits Photos"

Ms. Oakes does not deny that the Michalea Ad Image was provided as part of her daughter's admission to a Heart of Gold pageant. *See* Witness Statement of Mary A. Oakes ("Oakes Statement") at ¶ 3. In 2018, Ms. Oakes signed her daughter, Michalea Oakes, up to participate in a Heart of Gold pageant. *Id.* The Michalea Ad was only given to Respondent for use in the pageant that Michalea was participating in at that time. *Id* at ¶4. Ms. Oakes did not give permission to Respondents to use the Michalea Ad Image in any promotional or marketing material. *Id* at 7. Respondent appears to miss the point of this infringement claim – Heart of Gold and Angel Jameson did not have permission to use the Michalea Ad or the Michalea Photograph to *advertise* Heart of Gold or Ms. Jameson's services *in marketing materials* as evidenced in Claimant's Claim, filed as Doc. #1 and Claimant's Direct Party Statement and supporting exhibits, filed as Doc #41, Exhibits E-H. Claimant Oakes has already provided screenshots showing the manner in which Respondents utilized the Michalea Image as marketing materials. *Id*.

Further, Respondents' document actually serves to disprove Respondents' claims. Ms. Oakes at one point says "I'd be happy to do some design work…" in reference to creating ads for other pageant participants at Heart of Gold, to which Respondent Jameson responds with "They

have been paying me $5 and I pay Fiverr". After seeing the low rate at which Respondents charge for graphic design work, Ms. Oakes responded with "Ok well I cant beat that..". If anything, Respondents' document evidences that she was aware that Ms. Oakes charges a higher rate for her service than Respondents would be willing to pay for it.

Thus, Document #62 does not provide an actual release for Respondents' infringing uses of the Michalea Ad Image, nor does the correspondence between the Parties grant a license or permission to use the Michalea Ad Image as part of Respondents' marketing materials.

C. Document #63 "Notarized Letters From Those Willing to Testify

Claimant Oakes is not familiar with the person who wrote and swore to this document. *See* Oakes Statement at ¶9. Regardless of whether Ms. Ward is familiar with this matter or Ms. Oakes, the document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Ward and Claimant Oakes about the Images. While Respondents may have contestants sign a photo release, Respondents have failed to provide actual evidence of a release for the Images at issue in this claim.

D. Document #64 "Mary Gets Mad"

Upon discovering Respondents' use of her Images, Claimant Oakes reached out to Respondents in an attempt to be paid for the use of her work. *See* Oakes Statement at ¶10. All this document shows is that Ms. Oakes attempted to resolve this matter without involving a federal court or the CCB. This document does not provide an actual release and the correspondence that took place in this document does not provide a license or permission to Respondents to use the Images.

E. Document #65 "Mary Oakes Removal from HoG"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

F. Document #66 "Notarized Letters from Those Willing to Testify"

The document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Richard and Claimant Oakes about the Images. While Respondents may have contestants sign a photo release, Respondent has once again failed to provide actual evidence of a release.

G. Document #67 ""Notarized Letters from Those Willing to Testify"

Claimant Oakes is not familiar with the person who wrote and swore to Document #67. *See* Oakes Statement at ¶67. Regardless of whether Ms. Garcia is familiar with this matter or Ms. Oakes, the document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Garcia and Claimant Oakes about the Images. While Respondents may have contestants sign a photo release, Respondent has once again failed to provide actual evidence of a release.

H. Document #68 "Intimidation"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

Moreover, Ms. Oakes, in response to Respondents' unwillingness to pay her for the value of her Images, retained counsel. *See* Oakes Statement at ¶ 12. Prior to Ms. Oakes initiating this claim with the CCB, Higbee & Associates reached out to Respondents to try to resolve the matter.

See Witness Statement of Taryn R. Murray ("Murray Statement") at ¶5. Ms. Oakes has the right to retain counsel and enforce her copyright. The document provided by Respondents merely shows that a member of Higbee & Associates reached out on Ms. Oakes' behalf to try to resolve the matter. Further, the document shows emails directly from the CCB that Respondents have labeled as "Intimidation". The document submitted by Respondents attempts to classify Ms. Oakes' legal right to enforce her copyright and this Board's involvement in that enforcement as "intimidation". This document is completely irrelevant to any claim of a license, release, or permission.

F. Document #69 "Notarized Letters From Those Willing To Testify"

The document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Williams and Claimant Oakes about the Images. Further, it is not clear what this document has to do with the matter at hand.

G. Document #70 "Angel Jameson vs. Mary Oakes"

The document provided does not contain an actual release for the Images. Further, this document contains statements that are contradictory to the previously provided documents. At one point, Ms. Jameson claims that on "On September 3, 2018, Mary Oakes submitted Michalea's photo to me for Heart of Gold's promotional use, and to promote Abigail while she was a titleholder with Heart of Gold." *See* Doc. #70. Meanwhile, in Document #62, Respondents' have provided screenshots of the correspondence between Respondent and Ms. Oakes which does not contain any permission or license by Ms. Oakes to Respondents for use of the Michalea Ad Image in promotion of Respondents' business or in Respondents' marketing materials. The correspondence provided in Document #62 is related to Ms. Oakes' daughter's participation in a pageant, not a release of Ms. Oakes' copyright or a license for use of Ms. Oakes' copyrighted photographs for commercial or business purposes by Respondents.

Additionally, in this document, Respondent Jameson states "Mary Oakes never gave a contract or anything else with the photo after she submitted it to me". Respondent Jameson admits in this document that she did not receive a release, license, or contract from Ms. Oakes for use of the Michalea Ad Image. In conjunction with the correspondence provided in Document #62, Respondents have failed to establish that any release or license was granted to Respondents by Ms. Oakes impliedly or explicitly.

In this document, Respondent Jameson also admits that she did not have a release, license, or correspondence regarding the Abby Image. Ms. Jameson states "I was unaware that Mary Oakes took the picture". If she was not aware that Ms. Oakes took the picture, it begs the question – how would she have received a license or permission to use the Abby Image from the copyright holder, Ms. Oakes. Respondent Jameson has continuously provided testimony that is at odds with the facts of this case and cannot be proven by her own documentary evidence. Respondent Jameson also claims that she "immediately questioned Leslie Pedro, and she told me she has full rights to Abby's photo because she bought the photos". According to Ms. Oakes, this is highly unlikely, as her contract with Leslie Pedro was extremely clear in regards to Ms. Oakes' copyright ownership and what Ms. Pedro and her daughter could use the Abby Image for. *See* Oakes Statement ¶15-19, Exhibit A. Further, despite all of the testimony that Respondents have provided, they have not provided any correspondence between Respondents and Ms. Pedro showing that Ms. Pedro gave Respondents permission to use the Abby Image in Respondents' commercial or marketing material at the time that they used the Abby Image in the marketing materials or at the time that Respondents received the Abby Image from Ms. Pedro. Additionally, Respondents have failed to provide a copy of the release they had Abby Pedro sign that they contend would have granted them commercial usage of Ms. Oakes' Abby Image.

This document does not contain an actual release for the Images, nor does it provide any correspondence granting permission to use the Images.

H. Document #71 "Intimidation"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images. Further, it appears this document is redundant to Document #69, which is addressed above. Please refer to the response to Document #69.

I. Document #72 "Notarized Letters From Those Willing To Testify

Claimant Oakes is not familiar with the person who wrote and signed this document. *See* Oakes Statement at ¶20. The document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Torres and Claimant Oakes about the Images.

Further, Ms. Torres indicates in this notarized letter that the photo release that she signed pertained to her "image or likeness" and there is no reference of a copyright release in the document. Publicity rights are an entirely different set of rights than a photographer's copyright in an image. While Respondents may have contestants sign releases as it pertains to their image or likeness, that is not a conveyance of a license in the copyright of the underlying photograph. Regardless, Respondents have once again failed to provide documentation showing a release or permission for use of Ms. Oakes' copyrighted Images.

J. Document #73 "Notarized Letters From Those Willing To Testify"

Claimant Oakes is not familiar with the person who wrote and swore to this document. *See* Oakes Statement at ¶21. Regardless of whether Ms. Williams-Mosely is familiar with this matter or Ms. Oakes, the document provided does not contain an actual release for the Images, nor does

it reference any correspondence between Ms. Williams-Mosely and Claimant Oakes about the Images. While Respondents may have contestants sign a photo release, Respondent has once again failed to provide actual evidence of a release as it related to Ms. Oakes' Images.

K. Document #74 "Mary's Bad Business"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

L. Document #75 "Police Report for Harassment"

Claimant Oakes is not familiar with this report and was not contacted by authorities in relation to this report. *See* Oakes Statement at ¶22. Notably, this report is not related to or filed by either Respondents.

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

M. Document #76 "Proof Against Mary"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

Respondents provided screenshots of correspondence between Respondent Jameson and Ms. Oakes in which Ms. Oakes 1) specifically tells Respondent Jameson that she cannot use her work for commercial purposes without paying her and 2) lets Respondent Jameson know that they will need to agree to a contract in order for Ms. Oakes to do any work with her and her organization. This document supports Ms. Oakes claim rather than Respondents as no license was granted for

use of the Images, no permission was granted for use of the Images, and Ms. Oakes specifically says "We will need to set up a contract and all that to move forward". No contract was ever formulated for the work referenced in this message exchange. *See* Oakes Statement at ¶ 25.

N. Document #77 "Ella is willing to testify"

The document provided does not contain an actual release for the Images, nor does it reference any correspondence between Ms. Phillips and Claimant Oakes about the Images.

O. Document #78 "Proof of Abby Photo"

Respondent Jameson deliberately provides incomplete information and evidence in this document. Ms. Oakes uploaded several photographs of contestant Abby Pedro in a crown and sash to a photo gallery on her website that were taken at a Heart of Gold pageant. *See* Oakes Statement at ¶26. The Abby Image at issue in this claim was not provided to Respondents by Ms. Oakes or placed in the gallery by Ms. Oakes. *Id* at ¶28. The gallery is available here: https://maryoakes1.sproutstudio.com/gallery/heart-of-gold-pageant *Id* at ¶30. Respondent Jameson provided only an email from Ms. Oakes where Ms. Oakes indicates that photographs have been placed in the gallery. Respondent Jameson does not provide any evidence showing that the Abby Image was placed in that gallery. Moreover, the larger issue is that Respondents did not have the right to use the Images in promotional or marketing materials and have continuously failed to provide evidence that Ms. Oakes granted them those rights.

Further, Respondents provide a screen shot of the Abby Image posted by Abby's mother Leslie Pedro. Ms. Oakes provided Ms. Pedro with a digital copy of the Abby photograph for her personal use on her social media page. *Id* at ¶19. She was not granted any commercial rights to distribute the photograph which is evidenced in the contract provided by Ms. Oakes in her witness statement which was filed concurrently with this response.

P. Document #79 "Notarized Letters From Those Willing to Testify"

The document provided does not contain an actual release for the Images, nor does it reference any correspondence between Professor Bausman and Claimant Oakes about the Images. Professor Bausman's letter seems to imply that because other people's copyrights may be violated in the pageant world, Ms. Oakes is not entitled to enforce hers. The content of this letter has no basis in copyright law.

Moreover, Professor Bausman letter appears to reference a pageant at which Ms. Oakes was taking photographs of the contestants as they participated. *See* Oakes Statement at ¶35. The Images at issue here were not shot at pageant but were private photoshoots with individuals. *Id* at ¶37. The dynamic Professor Bausman is describing is not even relevant to this matter as it pertains to entirely different photographs.

Q. Document #80 "Trying to seek Counsel"

This document does not contain an actual release for use of the Images, nor does the correspondence that took place in this document provide a license or permission to Respondents to use the Images.

IV. CONCLUSION

In conclusion, Respondents have failed to provide the documentation requested by the Board in support of their claims that they had a license or permission to use Ms. Oakes' copyrighted Michalea Ad Image and Abby Image. As Respondents do not have proof of such permissions, Respondent's Motion to Vacate should be denied and the Final Determination should stand.

DATED: March 8, 2024

Respectfully submitted,

/s/ Taryn R. Murray
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Proof of Delivery

I hereby certify that on Friday, March 08, 2024, I provided a true and correct copy of the Response to Respondents' Request for Motion to Vacate to the following:

Angel Jameson, represented by Angel M Jameson, served via ESERVICE at jamesonservices@gmail.com

Heart of Gold Pageant System Inc., represented by Legalcorp Solutions, LLC, served via MANUALEEMAIL

Signed: /s/ Taryn R. Murray