Electronically Filed
Docket: 22-CCB-0015
Filing Date: 05/14/2024 04:54:05 PM EDT

15 May 2024: 22-CCB-0015 - Request for reconsideration - error of law or fact material to the outcome

Dear CCB team

This email constitutes a formal request for reconsideration under the rules of the CCB as set out in its Handbook at: https://ccb.gov/handbook/

The "clear error of law or fact material to the outcome" in this case is that the Claimant is a corporate entity with a sole director and secretary called **Michael Liu**. He has occupied those positions **since 1 July 2002**. The authorised representative of the company in this case has not been a director of the company **since 17 February 2015**, although she remains a passive shareholder/member in the company. The Claimant cannot have had knowledge of the breaches of copyright by the Disney entities that were discovered by the authorised representative on 5 March 2022 until the claim was originally lodged with the Copyright Claims board on **16 June 2022** at 09:12 PM EDT (as authorised by the Claimant on that date) and therefore the 'discovery rule' should be applied in this case:

Your eCCB filing was submitted successfully

E eCCB@egov.com
To highstreetpublishing@gmail.com
Cc Rebecca Lim
17/06/2022

Dear Rebecca Lim,

Your eCCB filing was submitted successfully

- Date: 06/16/2022 09:12 PM EDT
- Docket: 22-CCB-0015
- Caption: Morly Investments Pty Ltd (imprint: The High Street Publishing Company) v. The Walt Disney Company, et al
- Document(s):
  - Claim

Take a brief survey to let us know how we're doing.

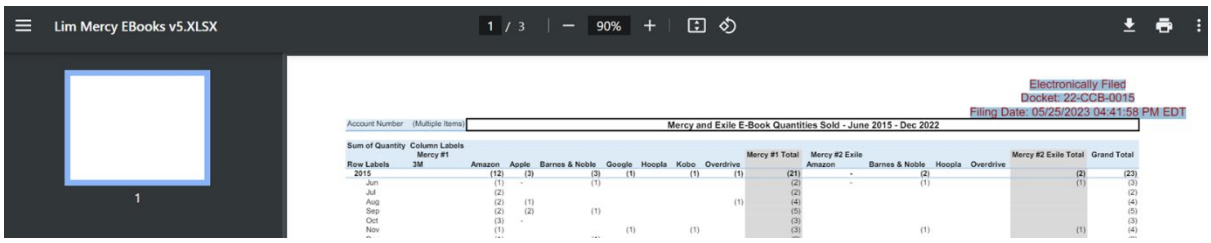
For assistance, please contact the Technical Support at (202) 707-3000 or 1 (877) 476-0778 (toll-free) or asktheboard@ccb.gov.

Regards,

Copyright Claims Board

The Claimant is solely operated by Michael Liu, who files its taxes and controls the corporate vehicle at all times, including receipt of any royalty income and controlling its bank accounts and investment activities. The authorised representative has no active participation in, nor any control, of the Claimant.

The Claimant notes that it would have had no knowledge of an e-book distributor called Hoopla until Disney electronically filed this document (https://dockets.ccb.gov/document/download/3310):



on **05/25/2023 (US dating convention) at 04:41:58 PM EDT**. Being an Australian-resident trading company with no expertise in American litigation laws, the Claimant would have had no idea it had to join Hoopla to this action given that Disney has the direct contractual relationship with Hoopla.

The Claimant considers that there has been a "clear error" in the final determination that is unquestionably wrong and it is "material" to the outcome such that the CCB's decision would have been different without the error. On the basis of the 'discovery rule' (see: https://www.supremecourt.gov/opinions/23pdf/22-1078_4gci.pdf, the '**Nealy case**'), the Claimant is entitled to damages (however minimal) against the Disney entities for copyright breaches from the date of rights reversion (in 2014 or 2015, as the CCB determines is applicable) as the claim is 'timely' (ie brought by the Claimant when it discovered the infringement on or around **16 June 2022**) and there is no bar to prevention of the recovery of damages for any infringement that occurred more than three years before the claim's filing. In Justice Kagan's words in the Nealy case, "The Copyright Act entitles a copyright owner to recover damages for any timely claim."

While the attached company search has not been filed with the CCB before, it is not 'new evidence' in the sense that the CCB should have done its own investigation of the Claimant in making its final determination with the Australian corporate regulator, or asked the Claimant for evidence of the corporate structure during the course of this case. While the Claimant is not an expert in U.S. law, it is unlikely that there is U.S. case law imputing the knowledge of a non-officeholder authorised representative of a company to the company, especially in a case where there has been no wrongdoing by the company. While the authorised representative is a passive shareholder/member in the Claimant, any knowledge of a passive shareholder/member (in the case where there is no wrongdoing by the company) is unlikely to be imputed to the company either. The Claimant has a separate, active existence from the authorised representative and engages in many business affairs, on a daily basis, that are beyond the authorised representative's knowledge and expertise.

An unredacted form of the attached company search issued by Australia's national corporate regulator can be obtained by the Copyright Claims Board here with payment of an AUD$19 fee: https://connectonline.asic.gov.au/RegistrySearch/faces/landing/ProfessionalRegisters.jspx

If a company extract of the Claimant must be filed on eCCB, **only the attached redacted version may be filed** pursuant to Australian privacy laws.

The Claimant asks that the CCB consider the above request and issue an amended final determination. This material will also be filed through eCCB today.

Yours sincerely, Rebecca Lim for the Claimant.

Proof of Delivery

I hereby certify that on Tuesday, May 14, 2024, I provided a true and correct copy of the 15 May 2024: 22-CCB-0015 - Request for reconsideration - error of law or fact material to the outcome to the following:

Disney Publishing Worldwide, represented by Shani Thome, served via ESERVICE at shani.thome@disney.com

Disney-Hyperion Books, represented by Shani Thome, served via ESERVICE at shani.thome@disney.com

The Walt Disney Company, represented by Shani Thome, served via ESERVICE at shani.thome@disney.com

Signed: /s/ Rebecca Lim