Electronically Filed
Docket: 23-CCB-0328
Filing Date: 05/23/2024 06:22:10 PM EDT

COPYRIGHT CLAIMS BOARD

FLORIAN SOMMET Claimant, - against – PLEASURE IN LIFE LLC Respondent.	Case No.: 23-CCB-0328 **PARTY STATEMENT**

Pursuant to the Order of the Copyright Claims Board dated April 8, 2024, (Case Doc. #17), Petitioner Florian Sommet submits the following Party Statement in support of his request that default judgment be entered against Respondent Pleasure In Life LLC.

I. STATEMENT OF FACTS

Claimant Florian Sommet ("Sommet") is a photographer specializing in beauty photography. Declaration of Florian Sommet ("Sommet Decl.") ¶ 3. Sommet does not allow third parties to use his works without the payment of a licensing fee or permission. *Id.* at ¶ 5.

Respondent Pleasure in Life LLC ("PIL") is a commercial medical spa specializing in botox injections, fillers, skin rejuvenation, laser treatments and body contouring. *See* https://laserfacialmiami.com/. PIL operates and manages an

Instagram account @laserfacialmiami ("Respondent's Instagram"), which they directly link to at the bottom of their website. *See* https://laserfacialmiami.com/. Respondent's Instagram page is used to promote and advertise its services. *See generally* https://www.instagram.com/laserfacialmiami/.

Sommet is the sole author and rights holder of an original beauty photograph of a woman with beauty tools being used on her face (the "Beauty Photograph"). Sommet Decl. ¶7, Exhibit A. Sommet registered the Beauty Photograph with the United States Copyright Office on January 19, 2021, under registration VA 2-237-252. *Id.* at ¶9, Exhibit B.

On January 2, 2021, Sommet's licensing agency, Trunk Archive, discovered his Beauty Photograph in two separate posts on Respondent's Instagram ("Infringing Posts"). *Id.* at ¶11, Exhibit C, D. The Respondent added their own watermark to Sommet's Beauty Photograph in the Infringing Posts. *Id* at ¶12. After discovering the unauthorized use of Sommet's Beauty Photograph, Trunk Archive confirmed that they did not issue a license to Respondent and confirmed with Sommet that he did not license the Beauty Photograph to Respondent. *Id* at ¶18. Prior to this matter being filed with the CCB, counsel for Sommet reached out to Respondent to try to resolve this matter informally but all emails and calls were ignored by Respondent. *See* Declaration of Taryn R. Murray ("Murray Decl.") at ¶4-8.

On September 29, 2023 Sommet filed the instant action with the CCB. Docket #1. On October 27, 2023, proof of service was filed for the Respondent. Docket #5. The Board requested additional service information and Supplemental Proof of Service was filed on December 7, 2023. Docket #6. On January 23, 2024, the Board sent out an email notification for a Pre- Discovery Conference in this matter. Docket #12. On February 21, 2024, the Discovery Conference took place and the Respondent did not appear. *See* Murray Decl.. at ¶ 10.

As of the date of this filing, Respondent has not contacted Claimant or the Board and has not participated in this action.

II. RESPONDENTS HAVE ENGAGED IN INFRINGMENT

To establish a prima facie case of copyright infringement, a plaintiff must demonstrate "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Pubs., Inc. v. Rural Tel. Serv. Co*., 499 U.S. 340, 361 (1991). "The word 'copying' is shorthand for the infringing of any of the copyright owner's five exclusive rights" under 17 U.S.C. § 106. *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001) (quotation omitted)). These exclusive rights include the right to reproduce, publicly display, or create derivative works of the copyrighted work. *See* 17 U.S.C. § 106.

A. Sommet Owns A Valid Copyright In The Image.

Claimant's Photograph is covered and protected under the Copyright Act. 17 U.S.C. § 102(a)(5). Here, Claimant registered the work pursuant to 17 U.S.C. § 411(a) and was given a Certificate of Registration under Registration Number VA 2-237-252 issued on January 19, 2021. While not registered within 5 years of publication and therefore not afforded the statutory presumption of validity, Sommet's Beauty Photograph easily makes the grade. Pictorial and graphic works have long been the subject of copyright. *See* 17 U.S.C. § 102(a)(5).

Thus, Sommet has satisfied the first element of copyright infringement.

B. Respondents Engaged In Unlawful Copying.

The Copyright Act grants a copyright holder the exclusive right include the right to reproduce, publicly display, or create derivative works of the copyrighted work. *See* 17 U.S.C. § 106.

As evidenced by the screenshots provided, Sommet's Beauty Photograph was copied and displayed on Respondent's Instagram. *See* Sommet Decl. ¶¶11-16, Exhibit C; Exhibit D. The Beauty Photograph was published on Respondent's Instagram from March 12, 2020 to at least April 26, 2021 when the screenshots in Exhibit C and Exhibit D were captured. Respondent's unauthorized use of the Beauty Photograph violated Sommet's exclusive rights to reproduce, display, and

create derivative works from the Beauty Photograph. Thus, Sommet has satisfied the second element of copyright infringement.

In conclusion, Sommet has established that PIL engaged in *prima facie* copyright infringement because he owns a valid copyright in the Beauty Photograph and because PIL impermissibly incorporated that Photograph into the Infringing Posts on its commercial Instagram which was uploaded and displayed on the Internet.

III. SOMMET IS ENTITLED TO RECOVER DAMAGES

Pursuant to 17 U.S.C § 1504(e)(1)(A), Sommet is entitled to recover actual damages, profits, or statutory damages for infringement. Here, Sommet would elect to pursue an award of statutory damages. Sommet submits that he is only eligible for the statutory award set forth in § 1504(e)(1)(A)(ii)(II) which sets a maximum award of $15,000.

Courts have wide latitude to determine the scope of the statutory damages award, and there need not be a direct correlation between statutory and actual damages. *Psihoyos v. John Wiley & Sons, Inc*., 748 F.3d 120, 127 (2d Cir. 2014). An award may be in such amount "as the court considers just." 17 U.S.C. § 504(c)(1); *see also* 17 U.S.C. 1504(e)(1)(A)(ii)(stating that statutory damages in CCB proceedings "shall be determined in accordance with section 504(c)"); *F.W. Woolworth Co. v. Contemporary Arts, Inc*., 344 U.S. 228, 233 (1952).

Here, Sommet has provided a comparable invoice showing online licensing for a 6-month license in the amount of $5,680. Sommet Decl. ¶¶22-23, Exhibit E. Sommet has also granted a three-month worldwide license for strictly online use for $7,464. Id at ¶24-25, Exhibit F. Because Respondent used the Beauty Photograph on their Instagram page in two separate posts, Sommet would submit that these previous licenses are comparable for the license that would have been granted had the Respondent properly licensed the Beauty Photograph. Sommet would request that the Board award him $10,000 in statutory damages for infringement of the Beauty Photograph by Respondent. *See* 17 U.S.C. § 1504(e)(1)(A)(ii)(II).

Although the statute prohibits the Board from making a finding of willfulness, *see* § 1504(e)(1)(A)(ii)(III), the statute does not prohibit the Board from considering deterrence or other policies goals when awarding statutory damages. *See Woolworth Co*., 344 U.S. at 233 ("Even for uninjurious and unprofitable invasions of copyright the court may, if it deems it just, impose a liability within [the] statutory limits to sanction and vindicate the statutory policy" of discouraging infringement.); *New World Music Co. v. Tampa Bay Downs, Inc.*, 2009 U.S. Dist. LEXIS 1221 *32, 2009 WL 35184 (M.D.Fla., Jan. 6, 2009) ("In keeping with the principle of awarding statutory damages to deter wrongful conduct, courts often award damages based on some multiple of unpaid licensing fees"); *Broad. Music, Inc. v. Prana Hosp., Inc*., 158 F. Supp. 3d 184, 198 (S.D.N.Y. 2016) ("[A] statutory damage award should

significantly exceed the amount of unpaid license fees," so as to put "infringers on notice that it costs less to obey the copyright laws than to violate them"); *see also Nintendo of America, Inc. v. Dragon Pacific Intern*., 40 F.3d 1007, 1012 (9th Cir. 1994) (emphasizing punitive and deterrent goals).

Sommet would also submit that an award of $10,000 in statutory damages is commiserate with the invoices he has provided, and would likely correlate with the amount of actual damages they would be entitled to recover had they elected to do so, especially given that the use by Respondent surpassed the 6 month and 3 month licenses evidenced in the invoices provided. Furthermore, such an award would effectively advance the policies of deterring future infringements particularly where, as here, the infringer has affirmatively chosen not to participate in these proceedings.

IV . CONCLUSION

In conclusion, Claimant Florian Sommet would request that he be awarded $10,000 in statutory damages.

DATED: May 23, 2024

Respectfully submitted,

/s/ Taryn R. Murray
Taryn R. Murray, Esq.
Bar No. 5888896
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8373

(714) 597-6729 facsimile
tmurray@higbee.law
Attorney for Plaintiff