COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0015
June 13, 2024

Morly Investments Pty Ltd (imprint: The High Street Publishing Company)	*v.*	The Walt Disney Company, Disney-Hyperion Books, and Disney Publishing Worldwide
CLAIMANT		**RESPONDENTS**

ORDER DENYING REQUEST FOR RECONSIDERATION

Claimant Morly Investments Pty Ltd ("Morly") initiated this copyright infringement claim on June 16, 2022. Dkt. 1. The Copyright Claims Board ("Board") issued the Final Determination in this proceeding on May 13, 2024. Dkt. 147. Morly filed a request for reconsideration the next day. Dkt. 148 ("Request"). Respondents The Walt Disney Company, Disney-Hyperion Books, and Disney Publishing Worldwide (collectively "Disney") filed a response to the request on June 11, 2024. Dkt. 151.

A request for reconsideration of a final determination must identify a clear error of law or fact that was material to the outcome, or a technical mistake. 17 U.S.C. § 1506(w); 37 C.F.R. §§ 230.1-230.2. The request may not rely on new evidence unless the requesting party demonstrates by clear and convincing evidence that the evidence was not available to that party, exercising reasonable diligence, before it submitted its written testimony (or before a hearing, if a hearing was held). 37 C.F.R. § 230.4.

The Request relies on evidence of Morly's own corporate records and structure, as presented in an Australian corporate regulator's extract. Dkt. 149. Morly acknowledges that the evidence was not previously presented to the Board, but asserts that "it is not 'new evidence'" since, Morly suggests, the Board should have discovered it independently or solicited the evidence from Morly earlier. Request at 2. Morly does not contend that it lacked access to such records and information about itself at any time. Such evidence can be disregarded as a basis for reconsideration. Moreover, as explained below, that evidence does not point to any clear error and would not have affected the outcome.

Morly's authorized representative throughout this proceeding was Rebecca Lim ("Lim"), the author of *Mercy* and *Exile*. Lim registered for eCCB as an "owner, officer, partner, or member" of Morly, and her representation of Morly was based on that status. Morly contended that it enters into publishing agreements with publishers on Lim's behalf, and its publishing rights for *Mercy* and *Exile* were granted to Disney in 2011, but the grant was terminated by some point in 2014 or 2015, after which Disney had no right to publish the works. Final Determination at 1-3. On several occasions in 2015 and 2016, Lim informed her Australian publisher that Disney was distributing *Mercy* and *Exile* without authorization. *Id.* at 4. The Board found that Disney's first allegedly infringing acts commenced—and that the claim had "accrued," under the three-year limitations period for infringement claims set in 17 U.S.C. § 507(b)—more than seven years before Morly initiated this proceeding on June 16, 2022. *Id.* at 4-5.

Morly contends that **it**—as opposed to Lim—did not discover certain infringing acts by Disney until June 16, 2022, when Lim filed this claim, essentially arguing that Lim's knowledge—even though she is a member of Morly and even though it appears to own and administer Lim's works—should not be imputed to Morly. Request at 2. Morly (through its representative, Lim) therefore argues that the claim is timely as to any alleged infringement committed after Disney's rights terminated in 2014 or 2015. *Id.* To support its argument, Morly offers its new evidence, which shows that Morly was registered as an Australian Proprietary Company in 2002 with two directors: Lim and Michael Liu. *See id.* at 1; Dkt. 149. Morly emphasizes that Michael Liu is now its sole director and secretary, and that Lim has not been a director of the company since February 17, 2015, "although she remains a passive shareholder/member in the company." Request at 1. Morly argues that it is "unlikely" that Morly would have gained Lim's knowledge or learned about the allegations in this proceeding before the date Lim filed the claim in this proceeding on Morly's behalf. *Id.* at 2.

Lim has been on notice of Disney's alleged violations since 2015. As noted above, when filing this claim on Morly's behalf, Lim certified that she was an owner, officer, partner, or member of Morly, as required to be authorized to represent it before the Board. Dkt. 1; *see* 37 C.F.R. § 232.6(b)(3). Morly's new evidence shows that Lim is still one of Morly's members, and is in fact, one of its only two members, holding half of its shares. Dkt. 149. Imputing to Morly knowledge held by Lim is not clearly erroneous. Morly was clearly on sufficient notice for the claim to accrue more than three years before it initiated this proceeding.

Before the Final Determination, Morly did not deny that the statute of limitations barred any recovery for earlier alleged infringements. Disney argued the issue in its written testimony. Dkt. 145 at 1 & 8-9. Morly's reply testimony quoted part of that argument, but did not substantively address it. Dkt. 146 at 4; *see* Final Determination at 4 ("Claimant also does not appear to challenge Disney's assertion."). Any contrary evidence is now too late.

Morly also conflates the Board's reasons for finding for Disney on claims within the statute of limitations and outside it. Morly now contends that it did not know, and could not have known, of the allegedly infringing acts that occurred in the three years before the proceeding until the filing of this claim (Request at 1: "The Claimant cannot have had knowledge of the breaches of copyright by the Disney entities that were discovered by the authorised representative [Lim] on 5 March 2022 until the claim was originally lodged with the Copyright Claims board[.]"), or until the discovery stage (*id.* at 1-2: "The Claimant notes that it would have had no knowledge of an e-book distributor called Hoopla until Disney electronically filed [Claimant's Exhibit 49 (Dkt. 92)] . . . on 5/25/2023[.]"). Even if accurate as to Lim or Morly, that would not warrant reconsideration because it would not affect the outcome. The Board found insufficient evidence to hold Disney liable for any infringement that accrued within the statutory limitations period. Final Determination at 5-9. Morly does not appear to challenge that finding. For any timely aspect of the claim, Morly has not shown any basis for liability.

The Request does not identify any legal or factual error that would justify reconsideration of the Final Determination. Therefore, the Board denies the Request.[1] This case remains closed.

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[1] Copyright Claims Officer McCabe did not participate in this decision.

Copyright Claims Board