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COPYRIGHT CLAIMS BOARD

CCB STANDARD WRITTEN QUESTIONS ("INTERROGATORIES")

Interrogatories to Be Answered by Parties Defending Against an Infringement Claim

During the **discovery** stage of a Copyright Claims Board (CCB) proceeding, the CCB directs participants to exchange—with each other but not the CCB—(1) answers to a standard set of questions issued by the CCB ("standard interrogatories") and (2) documents identified in a set of standardized document requests issued by the CCB ("document requests"). **Each party must respond to the requests truthfully and provide the requested documents over which they have control.**

This information concerns the CCB's standard set of Interrogatories. The questions themselves, *as well as a certification you must sign*, can be found after the rules described below. **Provide answers to these questions to the other party(ies) if you are defending against an allegation of copyright infringement in a CCB proceeding**, whether an infringement *claim* or *counterclaim* has been brought against you, or you have brought a claim or counterclaim for a declaration of noninfringement.

The questions and certifications follow the background information. You may use the fillable fields provided or type your answers in a separate document.

General Rules for Interrogatories

In a legal proceeding, each side has information and knowledge important to the case. When parties present their positions and evidence to the CCB, neither side should be surprised at what they are seeing or hearing. Therefore, the CCB has developed standard questions ("interrogatories") that each party must answer and then serve their answers on the other parties by the deadline set by the CCB in their case.

Answering Interrogatories and Updating Your Answers

Respond to each interrogatory separately and completely. Each answer must be as complete and straightforward as the information reasonably available to you permits, including information possessed by your attorneys, employees, or other agents. If you cannot answer any interrogatory in full, respond as fully as possible, explain why you cannot answer the rest, and state whatever information you have about the unanswered portion.

You have an obligation to update your interrogatory answers throughout this proceeding. If you discover or learn new or updated information that changes any of your answers, you must serve updated answers to the other parties as soon as practical.

How to Produce Your Interrogatory Answers to the Other Parties

Unless the parties agree to other terms in writing (or something different is ordered by the CCB):

- You may use the standard interrogatory form created by the CCB or you may separately type out each interrogatory and then type your answer below each interrogatory.
- You must produce your interrogatory answers by email, unless for some unlikely reason, their size and format makes such service reasonably possible. If that unlikely event occurs, confer with the other parties to agree to other arrangements, and if the parties cannot agree to other arrangements, send the interrogatory answers by U.S. first class or priority mail.

Whenever you answer interrogatories, you must certify that your answers are truthful and complete to the best of your knowledge. That certification will be on the CCB's standard form. If you are not using the CCB's standard form, you must copy the CCB standard interrogatory certification at the bottom of your interrogatory answers.

To Whom You Should Produce Interrogatory Answers

Your production is effective (it counts) when you send it unless you learn that it did not reach the other party.

- If the party is **represented by a lawyer or other authorized represented,** you must send the answers to that lawyer or representative.
- If the party is **self-represented,** you must send the answers directly to that party.

Use the email address provided to you by the other party or representative. If none has been provided, use the email address provided in the claim, response, or in their eCCB user information, provided by the CCB, unless the CCB orders you to serve the party directly. Interrogatory answers should generally be provided by email unless the parties have agreed on another arrangement or the size or format of what is being sent makes that not practical.

Any interrogatory answers and other responses to any other discovery requests **shall not be filed with the CCB at this time**. You should only file a party's interrogatory answer or documents produced in discovery as part of *written testimony*, as needed as attachments to your other filings, or otherwise ordered by the CCB.

Confidential Communications

Any confidential communications with your legal counsel (including a lawyer, in-house counsel, or authorized law school representative) reflecting or seeking legal advice about the merits of the

proceeding or other legal issue are considered **privileged** communications, which means that you do not have to provide your lawyer's legal advice as part of your answer to an interrogatory, although you must note if you are withholding such information as privileged in case the other party/parties dispute that the information is privileged.

Preserving Materials and Updating Your Answers

You must preserve all material relevant and significant to your case. Do not destroy or dispose of documents or other materials related to your claim or defense against a claim. This is true throughout the CCB proceeding. If you answer an interrogatory **and then you find new information or realize you made a mistake, you must send updated answers to the other parties as soon as practical**.

Discovery Sanctions

If you do not comply with the discovery requests, the other party may raise the issue with the CCB. If the CCB orders you to comply but you remain noncompliant, it may ultimately impose **sanctions** on you. Those sanctions may include the CCB adopting an **adverse inference** against you about the facts related to the discovery you should have produced. The CCB may also consider any discovery sanctions as it considers awarding attorney's fees and costs against you as part of a final determination. You can avoid these concerns by producing everything that is required, including answering interrogatories truthfully and completely to the best of your knowledge.

Interrogatories that Must Be Answered by a Party Defending Against an Allegation of Infringement (or a Party Claiming Noninfringement)

You must answer the following interrogatories and send the other party(ies) your answers by the deadline set by the CCB in the scheduling order. You may use this form to enter your answers (and may attach additional well-labeled pages as needed). If you would rather type out the answers in a separate document, you can do so by copying the questions and certification exactly, and typing your answers under each question. **In these interrogatories, "your work" is defined as all versions of your works that are subject to the copyright infringement claim against you in this proceeding. "Claimant's work" is defined as all works alleged by to have been infringed in this proceeding whether the infringement claim was brought as a claim or counterclaim and whether you have brought a claim or counterclaim for a declaration of noninfringement.** Be as detailed as you can in answering each of these interrogatories:

1. Give the full name of each person you plan to use in the proceeding as a **witness**. Include their phone number, mailing address, and email address, if you know it. Include a brief description of the topics on which they may give a witness statement in this proceeding.

None

2. Name any other person who may have important information related to the claims, counterclaims, or defenses in the proceeding. Include their phone number, mailing address, and email address, if you know it.

The Etsy account named "TheHogansArts" is the seller that I have purchased the design from. I have attached the screenshot of the email I received after shopping with them. However, I do not have their any contact information.

3. Is any agreement or other relationship between the parties relevant to the claim? If yes, describe the agreement or other relationship.

no

4. Are you aware of any relevant document that exists or once existed, that is **responsive** to a **request for the production of documents**, but that is not in your possession? If yes, for each such document, provide a summary of its contents and, if it was once in your possession, explain when and why it was disposed, destroyed, lost, or otherwise became unavailable.

No. However it would indeed be helpful if we had access to the original listing that is shown in the etsy email screenshot I provided. If it had not been deleted, that listing could provide additional details.

5. Describe the process of the creation of your work, including:

   a. Who conceived of the work, and on what date?

   b. Who created the work, and on what date?

c. If it is a joint work, identify each joint author (including their phone number, mailing address, and email address, if you know it) and describe what each joint author contributed to your work?

d. To the extent you used the claimant's work in any way to help you create your work, state how you used claimant's work, and what, if anything, is different as between your work and claimant's work.

6. If you believe that you had permission or rights to use claimant's work, describe in detail how you received such permission and the nature of such rights, including a description of any relevant communications, licenses, or agreements (including if through a **work made for hire** agreement) and the dates and the people or entities involved in such communications, licenses, or agreements.

I have purchased a design on Etsy with its commercial use license; this permit to use it for any purpose is usually written in the description section of the listing and allows the buyers to utilize the design file to use on their own garments. After a month, I received an infringement claim regarding the same design. I have filed a counterclaim with Etsy on the grounds that I purchased the design and its commercial use license. However, when I received the service docket from eCCB, I learned that the seller who sold me the commercial use license and the mentioned design was a fraudulent seller infringing the design of our discussion.

It is also worth to mention that Etsy had found my counterclaim rightful due to the circumstances I have explained in this case. This shows how, not just me but even a company with a strick intellectual property protection policy had found it reasonable that I had no way of thinking that the design I had purchased had actually belonged to a third-party.

7. If you had seen claimant's work before creating your work, describe where and how you saw claimant's work.

I have seen it when I purchased it through another Etsy listing.

8. If you had never seen claimant's work before creating your work, state that here. Also describe any basis for believing that you did not have an opportunity to see claimant's work (also known as "**access**").

9. State in detail in what ways you believe the claimant's work is different or not substantially similar to your work.

10. If you have brought a claim or counterclaim for a declaration of noninfringement, describe how you found out that the party(ies) alleging infringement believed that you were infringing their work, and any actions you took relating to the work upon hearing of their allegations?

11. To the extent the sale, publication, display, distribution, and/or performance of your work or copying of claimant's work has stopped, state when and how it stopped. To the extent it has not stopped, state that here and describe how such actions are continuing.

It has publication stopped on July 14 when the claiment claimed infringed intellectual property with Etsy. On July 17th, it was re-published by Etsy on my behalf since they agreed with my counterclaim; showing even an entity as careful as Etsy could've taught I had the right to sell this design due to my purchase.
However, due to not wanting to risk credibility of my store, I have removed the listing even after Etsy re-published it on my behalf.

12. Has your work been published? If yes, when and where was it first published and where and when has it been published since?

The design was purchased on May 24th. As it takes time for me to photoshop the designs I purchase on my tshirt pictures, it was published on my Etsy account around early-July and it did not stay published for more than a few weeks which resulted in one sale.

13. To the extent you believe the other party(ies) was not **harmed** due to any **infringement** of claimant's work, state your basis for believing that here.

I have gone over the sales of claiment's Etsy account which sells multiple products like keychains, mugs, yard signs, and only one shirt. That shirt has the design of our discussion on it and has sold 9 shirts in 8 years.

My listing was not active for more than a few weeks and has sold only once with the price tag of $17.49 and leaving me profit around five to eight US dollars.

Even if we were to assume the customer who purchased from my listing would have otherwise gone to claiment's listing, the maximum amount of harm that was potentially done to claiment was $10-$15 (my profit + difference of price assuming our costs are equal) since her price is $5 higher than mine.

Additionally, the claiment operates a shopify store with a similar theme. The shopify store does not even involve the shirt listing. Suggesting they, reasonably, do not deem this product to be a major part of their sales operation due to low amount of purchases.

Though there are multiple arguments that could be made for the sake of showing these potential harms do not exist, I had contacted the claiment and offered the entire revenue I made from this sale: $17.49. As a college student who is trying to sell shirts to help out his family, I was simply shocked when the claiment requested $5000 instead of my $17.49.

It is also important to note that the Etsy account of the claiment, aside from the 9 shirt sales, has made 1000 sales in 8 years-- combination of products mentioned earlier. Even if their profit margin was $10 per sale which would be astonishing if it was possible on Etsy, the total profit they would have made per year would be around $1250; showing this was not an operation that claiment depended on by any means. This lack of dependency would have minimized the actual harm if there were any other than the listed potential lost-profit of $10-$15.

14. Have you sold copies of your work? If yes, describe such sales in detail including how you went about selling your work and in what medium, how many sales, and the price you charged for the work or each copy of the work.

I have sold ONE shirt. It was a pink XS shirt and I have applied the design of our discussion onto that shirt. Medium utilized in transaction was the online marketplace Etsy. The price I have charged for the shirt was $17.49.

15. If you are responding to an infringement claim or counterclaim, state:

a. The revenues and **profits** you have received, including any royalties received, directly related to the sale, licensing or use of any allegedly infringing material(s) in this proceeding.

Revenue = 45.72
My costs:
Marketing, shipping, raw material, design cost, Etsy fees (%6 of revenue)
Marketing = $2.00-$4.00 per shirt
Shipping = $28.23 (customer purchased expedited)
Shirt cost = $3.14
Design cost = $2.20
After subtracting the mentioned costs, my profit from this sale was around $5-$7

b. The deductible expenses, such as the cost of producing the allegedly infringing material(s) directly related to that sale, licensing, or use, broken down into categories of expenses.

Cost of purchasing the design of our discussion on Etsy was between $2.20 as can be seen from the screenshot of the email I received from Etsy after purchasing the product.

c. The elements of profit for that sale, licensing or use, that you believe resulted from factors **other** than the allegedly infringing material, such as from the aspects of your work not included in the claimant's work.

None.

16. Review the Response you filed in this proceeding. For each defense you have checked in the Response Form, *as well as any other defenses you wish to raise,* list those defenses here, and separately for each one, describe in detail your basis for believing you have such a defense.

1) Lack of loss: my response to question 13 presents my defense for showing the claiment did not suffer any harm other than the potential profit-loss of $10-$15

2) Lack of intent to infringe: this document, along with the screenshot showing I had purchased the design on Etsy, should be sufficient to prove I truly had no intention nor any reason to suspect any infringement

3) Lack of evidence: claiment party has no proof nor a plausable explaination of how I may have "stolen" their design. One can not simply screenshot designs off the web and photoshop them on your own product; it simply does not work that easily.

4) Due Diligence: In the discovery google document I've shared with the claiment, I have attached the United States Patent and Trademark Office's trademark search engine. After receiving the notification from Etsy that stated a party was asserting infringement, I have went to the USPTO search engine and tried to see whether the material/trademark number mentioned in the email was in fact a valid trademark (as I have mentioned, many Etsy stores continously receive infringement claims that end up to be void) however I was not able to find any trademarks-- even if I was able to find the trade mark, I would still have a reason to believe I had to right to sell the design due to my purchase and sellers permit.

5) Cooperation: As soon as I received the infringement claim, I have removed the listing from my store despite the pleasuable judgement that I had the right to sell this design. Additionally, after understanding I had become a victim of an IP infringement, I had contacted the claiment party and still offered to give them my entire revenue.

Certification of Discovery Responses

Please include a signed copy of this form with your discovery responses

I, Celil Akgobek , certify that the enclosed material is accurate, complete, and truthful to the best of my knowledge.

Celil Akgobek

Signature

07/09/2024

Date

Glossary

- **Access:** Reasonable opportunity to view or hear the work at issue in the claim before the alleged infringement took place.
- **Adverse inference:** A negative conclusion that is drawn from silence or the failure to provide responsive information.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in the case.
- **Harm:** What the claimant has suffered or lost as a result of respondent's actions.
- **Infringement:** Copyright infringement occurs when a copyrighted work is reproduced, distributed, publicly performed or displayed, or made into a derivative work without permission of the copyright owner, if the use does not qualify for an exception, such as fair use.
- **Privileged:** Any confidential communications with legal counsel reflecting or seeking legal advice about the merits of a proceeding or other legal issue.
- **Profits:** The money that the infringer earned in profits from the unlawful use of another's work.
- **Responsive:** Documents that are requested for production in response to discovery requests.
- **Request for the production of documents:** Written requests provided by the CCB that require parties to provide documents, other information, or evidence as part of discovery in an active proceeding.
- **Sanctions:** Penalties imposed by the CCB for misconduct during proceedings.
- **Witness:** Someone with personal knowledge about factual information that is relevant to the proceeding.
- **Work for hire:** A work that has been created by an employee in the scope of their employment, or created (for certain types of works) based on a written agreement commissioning that work and stating that the work should be treated as a work made for hire.

Proof of Delivery

I hereby certify that on Tuesday, May 21, 2024, I provided a true and correct copy of the Exhibit H - Respondents Interrogatories to the following:

Celil Akgobek, represented by Celil Akgobek, served via MANUALEEMAIL

Signed: /s/ Wendy Papula

Proof of Delivery

I hereby certify that on Friday, July 12, 2024, I provided a true and correct copy of the Respondent's Interrogatories Signed to the following:

Wendy Papula, represented by Wendy Papula, served via ESERVICE at wpapula@gmail.com

Signed: /s/ Celil Akgobek