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The Walt Disney Company, Disney Publishing Worldwide, and Disney-Hyperion Books ("Respondents") Response to Claimant's request for review by the Register of Copyrights of the June 13, 2024 Order Denying Request for Reconsideration

Morly Investments Pty Ltd (imprint: The High Street Publishing Company) v. The Walt Disney Company, et al., 22-CCB-0015

Morly Investments Pty Ltd (imprint: The High Street Publishing Company) ("Claimant") must meet a high burden to prevail on a request for review by the Register of Copyrights. CCB Handbook, Chapter 21 Final Determination, pg. 4 ("This is not an easy standard to meet."). Claimant must show that the Copyright Claims Board ("CCB") abused its discretion because it "had *no reasonable basis* to reject [the] request for reconsideration." *Id.* (emphasis added).

Claimant argues that the CCB abused its discretion because the CCB should have considered evidence of Claimant's corporate structure to find that the discovery rule applied to toll the statute of limitations. Request for review by the Register of Copyrights, pg. 7. The CCB, however, provided a plethora of reasonable bases for its finding that Claimant failed to "identify any legal or factual error that would justify reconsideration of the Final Determination." June 13, 2024 Order Denying Request for Reconsideration, pg. 2.

First, the CCB found that evidence of Claimant's corporate structure "can be disregarded as a basis for reconsideration" because Claimant "acknowledge[d] that the evidence was not previously presented to the Board" and Claimant did "not contend that it lacked access to such records and information about itself at any time." *Id.* at 1.

Next, in holding that the statute of limitations barred any claims prior to June 16, 2019, the CCB found that the claim accrued more than seven years before the Claimant initiated the CCB proceeding. *Id.* In making this determination, the CCB cited evidence demonstrating that Rebecca Lim ("Lim"), Claimant's authorized representative, was aware of the allegedly unauthorized distribution as early as 2015. *Id. at* 1, 2. The CCB then articulated the following reasonable bases in support of its finding that Lim's knowledge could be fairly imputed to Claimant:

- Lim's representation of Claimant in the CCB proceeding was based on her certification that she is an "owner, officer, partner, or member" of Claimant. *Id.* at 1, 2.
- Claimant's "new evidence shows that Lim is still one of [Claimant's] members, and is in fact, one of its only two members, holding half of its shares." *Id.* at 2.
- "Before the Final Determination, Claimant did not deny that the statute of limitations barred any recovery for earlier alleged infringements. [] Any contrary evidence is now too late." *Id.*

Finally, the CCB determined that, even if Claimant did not have knowledge of the allegedly infringing acts that occurred within the statute of limitations, "that would not warrant reconsideration because it would not affect the outcome." *Id.* at 2. Claimant's position is fundamentally flawed because there was "insufficient evidence to hold [Respondents] liable for any infringement that accrued within the statutory limitations period" and "[Claimant] does not appear to challenge that finding." *Id.* 2.

Claimant also complains of procedural unfairness and an "overly lax and generous attitude towards huge, well-resourced multi-national corporations that would not be shown to a small private company in the Claimant's position." Request for review by the Register of Copyrights, pgs. 4-7. None of these arguments were raised previously and for that reason alone, they should be

disregarded. Claimant also fails to provide any basis for finding that: (1) the participation of Copyright Claims Officer Monica McCabe would have led to a different outcome; (2) Claimant was in any way "penalized" because it did not have the benefit of "professional United States-qualified litigation lawyer[]"; or (3) Respondents were under any obligation to keep correspondence from 2015. *Id*.

Claimant's Request for review by the Register of Copyrights must be denied because Claimant cannot meet its burden of showing that the CCB abused its discretion. The CCB's Order Denying Request for Reconsideration unquestionably sets forth *multiple* reasonable bases for rejecting the reconsideration request.

Proof of Delivery

I hereby certify that on Monday, July 15, 2024, I provided a true and correct copy of the Respondents' Response to request for review by the Register of Copyrights to the following:

Morly Investments Pty Ltd (imprint: The High Street Publishing Company), represented by Rebecca Lim, served via ESERVICE at rebecca@morlygroup.com

Signed: /s/ Shani Thome