Electronically Filed
Docket: 23-CCB-0381
Filing Date: 08/20/2024 05:18:37 PM EDT

COPYRIGHT CLAIMS BOARD

GAVIN O'NEILL Claimant, - against – SABRINA CARROLL d/b/a SKY LOUNGE SKIN CARE Respondent.	Case No. 23-CCB-0381 **PARTY STATEMENT**

Pursuant to the Order of the Copyright Claims Board dated August 7, 2024, (Case Doc. #18), Petitioner Gavin O'Neill submits the following Supplemental Party Statement in support of his request that default judgment be entered against Respondent Sabrina Carroll d/b/a Sky Lounge Skin Care.

I. RESPONDENT CARROLL IS A DIRECT INFRINGER REGARDLESS OF WHETHER THE INFRINGEMENT OCCURRED WHEN THE LLC WAS STILL OPERATIONAL

Under the Copyright Act, anyone, regardless of their relationship to a limited liability company can be found liable for copyright infringement. Congress has established that it is illegal to reproduce a copyrighted work in copies or to distribute copies of the copyrighted work. 17 U.S.C. § 106. "Anyone who violates any of the exclusive rights of the copyright owner . . . is an infringer of the copyright." *Id.* §

501(a). A direct infringer is "characterized as one who 'trespasses into [the copyright owner's] exclusive domain' established in § 106." *CoStar Grp., Inc.*, 373 F.3d at 549 (quoting *Sony,* 464 U.S. at 433)). Therefore, “simply because a limited liability company was found directly liable for copyright infringement does not prevent an individual who actually participated in the copyright violation from being personally liable for direct copyright infringement.” *See Oppenheimer v. ACL LLC*, 504 F. Supp. 3d 503 (W.D.N.C. 2020), citing *Universal Furniture Int'l, Inc. v. Frankel*, 835 F. Supp. 2d 35, 49 (M.D.N.C. 2011), aff'd, 538 F. App'x 267 (4th Cir. 2013).

Moreover, a member, owner, or officer of an LLC "may be held liable . . . for torts he or she personally commits, or which he or she inspires or participates in, even though performed in the name of an artificial body." *Allen v. Dackman*, 413 Md. 132, 991 A.2d 1216 (2010). Further, “Joint and several liability for a corporate officer in the context of copyright infringement will lie "where the officer was the dominant influence in the corporation, and determined the policies which resulted in the infringement." *Broad Music, Inc. v. It's Amore Corp.,* No. 3:08CV570, 2009 U.S. Dist. LEXIS 55721, 2009 WL 1886038 (M.D. Pa. June 30, 2009) (citing *Sailor Music v. Mai Kai of Concord. Inc*., 640 F. Supp. 629, 634 (D.N.H. 1984).

In *Oppenheimer v. ACL LLC*, a copyright holder sued an LLC and the LLC’s owner, William Moore, as an individual for the unauthorized use of a copyrighted photograph. The Court found that even if the individually named defendant was

operating on behalf of an LLC at the time the copyright infringement occurred, Moore had verified that he was "the sole owner of the ACL, LLC" which operated the website on which the copyright infringement had occurred. Moore, even has the owner of the LLC, was found individually liable for direct copyright infringement because as established by the Copyright Act "Anyone who violates any of the exclusive rights of the copyright owner . . . is an infringer of the copyright." 17 U.S.C. § 501(a).

The facts in *Oppenheimer* are directly analogous to the situation at hand. Respondent Carroll has established herself as the "sole owner and founder" of Sky Lounge Skin Care on multiple different websites and pages. Respondent's Facebook, where the infringement of O'Neill's Beauty Photograph occurred, specifically states "Sabrina Carroll is the sole owner and founder of Sky Lounge Skin Care.". *See* Second Declaration of Taryn Murray ("Second Murray Decl.") at ¶6. Respondent's Personal Facebook Page also states "I am the Owner and Operator of Sky Lounge Skin Care". *Id* at ¶10. Additionally, Respondent's Booking Website only provides users with the ability to book appointments with Respondent. *Id* ¶16.

Based on the facts available to Claimant, Respondent Carroll is the "sole owner and founder" of Sky Lounge Skin Care. As the sole party involved with the management and operation of the prior LLC, Respondent Carroll was the party that ultimately published O'Neill Photograph on Respondent's Facebook without

authorization. Even if Respondent had not dissolved the LLC originally associated with the business, because a member of an LLC can be personally liable for their own tortious acts, Respondent Carroll would have been personally liable for this infringement regardless of whether the LLC still existed.

II. CONCLUSION

In conclusion, Respondent Carroll is liable for the direct copyright infringement of O'Neill Photograph.

DATED: August 20, 2024

Respectfully submitted,

/s/ Taryn R. Murray
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Proof of Delivery

I hereby certify that on Tuesday, August 20, 2024, I provided a true and correct copy of the Supplemental Party Statement to the following:

Sabrina Carroll, represented by Sabrina Carroll, served via MANUALEEMAIL

Signed: /s/ Taryn R. Murray