UNITED STATES COPYRIGHT CLAIMS BOARD

PerfectPinz LLC,
Claimant,
v. Docket No. 24-CCB-0160
K9 King, LLC,
Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

Claimant PerfectPinz LLC and Cory Lapin respectfully respond to the Board's June 9, 2026 Order to Show Cause. Nothing in this proceeding constitutes bad-faith conduct under 37 C.F.R. § 232.3. Indeed, Claimant's purpose was not improper; it was compelled. Respondent submitted a DMCA counter-notice to Amazon swearing under penalty of perjury "a good faith belief that the material . . . was removed or disabled as a result of mistake or misidentification," which was knowingly false and would otherwise have restored its listings. Claimant filed in response, served Amazon with a copy that Amazon accepted, and chose the Board's affordable forum over federal-court counsel. That is not the improper purpose § 232.3 targets.

I. The claim had a reasonable basis in fact and law.

A participant's contentions are proper if presented for no improper purpose, grounded in a reasonable understanding of existing law, and supported by evidence. 37 C.F.R. § 232.2(a)–(c). A claim need not prevail to meet that standard.

Claimant had a reasonable basis in fact. By both parties' certified testimony, Claimant first published its works in 2021, well before Respondent's December 2022 launch and the designs it commissioned through 2024. (Claimant Resp. to Interrog. 8; Resp. Resp. to Interrog. 5, 12.) Claimant's works led the same narrow market Respondent then entered, supporting a good-faith belief in access. (Claimant Resp. to Interrog. 10.) Respondent's Fiverr records confirm the point:

in December 2022 it sent the artist a competitor's Amazon ball-marker image from the market Claimant led.



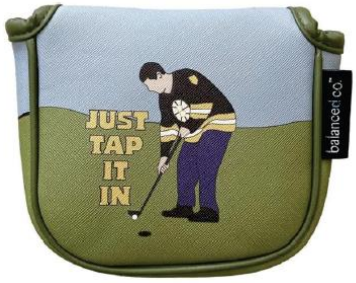
Priority and access are ordinary predicates of an infringement claim, not marks of a frivolous one.

Claimant's legal theory was likewise reasonable. It does not claim the film's scenes, characters, poses, or wardrobe; those it copied. As non-specialists, Claimant's owners believed that rendering those scenes as cartoons, most without facial detail, and adding their own backgrounds and text, made the works protectable; a derivative author's copyright reaches that new material. 17 U.S.C. § 103(b). K9 King's products reproduce Claimant's own additions, not the film's scenes: the text, the stylized background and its curved horizon, and matching line and number colors. That gave Claimant a good-faith basis to believe its additions were copied, a reading § 232.2(b) protects even if that expression is ultimately too thin.




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IT'S ALL IN THE HIPS


1
IT'S ALL IN THE HIPS


JUST TAP IT IN
balancer1.co


Just Tap It In


TAP, TAP, TAPEROO


TAPPY, TAP, TAP, TAP


GO HOME, BALL!


GO HOME, BALL!


GO HOME BALL!
ARE YOU TOO GOOD FOR


O GOOD FOR YOUR HOME?

II. The spoliation motion was substantively proper and made at the Board's direction.

The Order faults Claimant for pressing Respondent's supplier communications and moving for an adverse inference when Respondent failed to produce them. That motion was substantively proper. The Board's own statute permits it to "apply an adverse inference with respect to disputed facts against a party who has failed to" provide discovery. 17 U.S.C. § 1506(n)(3). Its regulations authorize the same relief. 37 C.F.R. § 225.5(e)(3). Claimant sought that exact relief; invoking the Board's own remedy is not bad faith.

The motion rested on Respondent's admissions, not on Claimant's speculation. Respondent admitted it used WhatsApp with its supplier for those exchanges and that they were lost, with no preservation, no auto-deletion setting, no search for nearly a year, and no supplier request until the Board ordered one. (Resp. Statements, May 9 and July 14, 2025.)

The Fiverr production did not settle the origin of Respondent's designs; the record shows the opposite. Amazon removed Respondent's Price Is Wrong (ASIN B0BQLR5ZP8, Complaint ID 12159729511) and Tap It In ball (ASIN B0BQLWSHG4, Complaint ID 12159774771) markers on Claimant's takedowns on March 6, 2023, and Respondent counter-noticed them under penalty of perjury that June. (Composite Exs. A, B.)

From: **Amazon** <no-reply-notice-outreach@amazon.com>
Date: Mon, Mar 6, 2023 at 10:08 PM
Subject: Your Report of Rights Infringement on Amazon.com
To: [redacted]

Hello,

We reviewed your report and removed the following content based on the information you provided.

ASIN: B0BQLR5ZP8
Title: Happy Golf Ball Marker 1 inch - Golf Ball Marker Set with Hat Clip, Extra Golf Ball Line Marker - Strong Metal Golf Ball Line Marker Tool - 3 Trendy Designs - Funny Golf Ball Markers for Men, Women
Complaint ID: 12159729511

Sincerely,
Seller Performance Team
Amazon.com
http://www.amazon.com

From: **Amazon** <no-reply-notice-outreach@amazon.com>
Date: Mon, Mar 6, 2023 at 10:09 PM
Subject: Your Report of Rights Infringement on Amazon.com
To: [redacted]

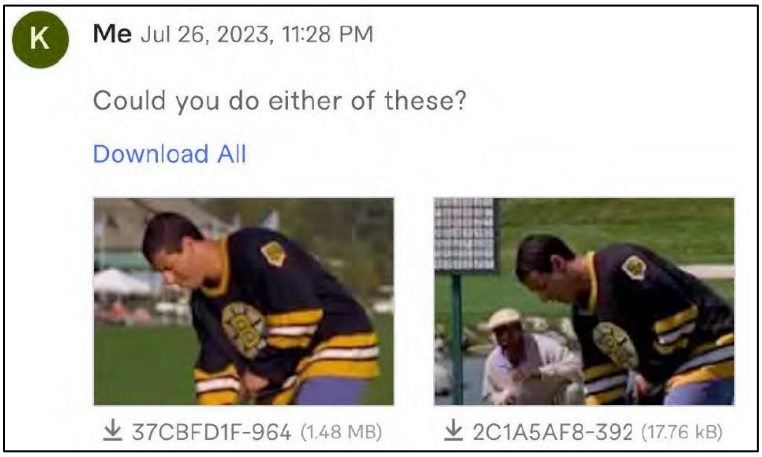
Hello,

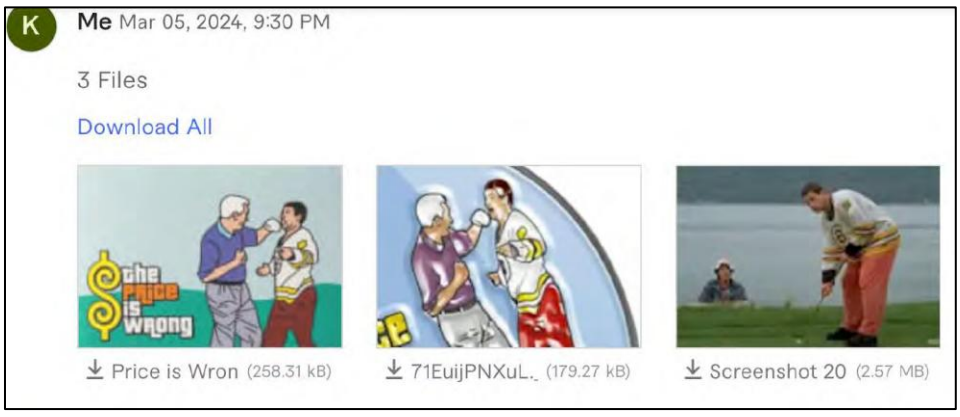
We reviewed your report and removed the following content based on the information you provided.

ASIN: B0BQLWSHG4
Title: Happy Golf Ball Marker 1 inch - Golf Ball Marker Set with Hat Clip, Extra Golf Ball Putt Marker - Strong Metal Golf Ball Line Marker Tool - 3 Trendy Designs - Funny Golf Ball Markers for Men, Women
Complaint ID: 12159774771

Sincerely,
Seller Performance Team
Amazon.com
http://www.amazon.com

Yet Respondent's own Fiverr files creating those designs are dated later: the Tap It In design on July 26, 2023, and the Price Is Wrong design on March 5, 2024. (Ex. D at K9KING00634, K9KING00674.)





A product Amazon removed in March 2023 cannot have come from a file made months or a year later. The earlier design work existed, was never produced, and on Respondent's own admission lived in the WhatsApp supplier messages it destroyed. The Fiverr production cannot be the origin of products that predate it; the destroyed messages are. That is why Claimant continued to seek them, and why their loss supports the inference the Board's rules authorize.

Claimant did not proceed on its own initiative alone. The Board ordered the communications produced on February 6, May 2, and July 2, 2025, and itself framed an adverse-inference consequence for noncompliance. (May 2, 2025 Order.) Pressing a dispute the Board was actively managing, on the opponent's admitted preservation failure, is diligent representation. Respondent's explanation that its WhatsApp and Alibaba messages simply vanished is rebutted by Claimant's unrebutted affidavit attesting that Claimant's own WhatsApp and Alibaba messages survive from 2018 because they do not auto-delete, a point the Order does not address. (Brafman Aff. ¶ 18.) Claimant maintains, in good faith, that the record still warrants that inference, confirming the motion was reasonable, not bad faith.

III. The challenged statements were good-faith advocacy.

Claimant never concealed that the Works draw on Happy Gilmore. At the first conference, when the Officer said he assumed "you're both going to agree that it's based upon scenes in Happy Gilmore," Mr. Lapin answered, "Questionably, unquestionably, yeah." (Oct. 16, 2024 Conf. Tr.) Volunteering the source at the outset is the opposite of concealment. Claimant does not dispute that the Works depict the movie and are, in that sense, derivative under 17 U.S.C. § 101, and it does not defend the interrogatory's "non-descript/generic" description of the figures: the "Tap It In" golfer and "Price Is Wrong" figure are recognizable, and that wording should not have been used. The point Claimant did and does maintain is narrower: its cartoon execution and the text and

backgrounds it added are its own expression, protectable under 17 U.S.C. § 103(b). That protection assumes the film material was not used unlawfully, § 103(a), which the Order expressly left open; Claimant's good-faith belief that its use was lawful is not bad faith. The interrogatory was Claimant's own beliefs, which copyright litigation counsel assisted in preparing but which the party must attest to from its own knowledge; the "independent and original" language was Mr. Brafman's good-faith, if overstated, lay description of the authorship he believed Claimant had contributed, not a knowing falsehood.

The Order also faults the citation to *Feist*, 499 U.S. 340 (1991), for not quoting the originality sentence in full. The Statement was rebutting Respondent's "rip-off" attack on the Works' originality, so it quoted the creativity prong, the point in dispute. The words Claimant quoted, "at least some minimal degree of creativity," are the Court's own, verbatim. *Id.* at 345. That is accurate authority; an accurate quotation omitting an adjacent clause is not fabrication. The omitted clause, requiring that a work be "independently created by the author (as opposed to copied from other works)," is the element the Order presses, and Claimant meets it as to what it claims: under § 103(b), the expression Claimant added was its own, even though the Works depict the film. The omission reflected that view, not an intent to mislead. The Party Statement was drafted by Claimant's retained copyright litigation counsel, on whom Mr. Lapin relied in good faith.

On the registrations, the Order's concern is the failure to disclaim the Happy Gilmore material. 17 U.S.C. § 103(a). But a registration is set aside only where inaccurate information was submitted "with knowledge that it was inaccurate" and would have caused the Register to refuse registration. 17 U.S.C. § 411(b)(1). Claimant had no such knowledge, and that knowledge is measured against a layman: no copyright lawyer was retained when the applications were filed. Proceeding pro se, Claimant, through Mr. Brafman, read and followed the Copyright Office's

published guidance and believed in good faith its new expression was registrable under § 103(b). An applicant who follows the Office's own guidance, and whose applications the Register granted, is the paradigm of one without the knowledge § 411(b)(1) requires. The registrations remain prima facie evidence of validity, rebuttable like any presumption. 17 U.S.C. § 410(c).

IV. Fairness requires access to the conference record the Order relies on.

The Order draws in part on Claimant's conduct at the Board's conferences, yet conferences are part of the record the Board must maintain. 17 U.S.C. § 1506(b), (l). The only transcript Claimant has, the October 16, 2024 pre-discovery conference, is unofficial and predates the discovery and spoliation disputes; spoliation was not before the Officer then. The later conferences, including those on April 29 and June 18, 2025, have no transcript, and the Board declined to provide them as "not material," though the spoliation issues were discussed there. By Claimant's recollection, when Mr. Lapin asked at one whether he could rely on Florida law, he was instructed that District of Columbia law governs, a § 1506(a)(2) ruling made off the record. Claimant cannot fully answer a charge resting on conference conduct without that record, and asks the Board to furnish it or draw no inference. Claimant raises this to preserve the point, not to impugn the Board.

Conclusion

The conduct the Board treats as bad faith is nothing like this: fabricated statutes and quotations, e.g., *Santora v. Metro-Goldwyn-Mayer Studios, Inc.*, No. 24-CCB-0127 (CCB July 8, 2025), and fake addresses, e.g., *Gortze v. Hickling*, No. 26-CCB-0327 (CCB June 18, 2026). Claimant did none of these things. Even on the Order's premise that both parties drew on the film, Claimant registered its works and pursued its claim openly; the party that registered nothing and swore false counter-notices is not Claimant.

None of this is bad-faith conduct under 37 C.F.R. § 232.3. Claimant and Mr. Lapin respectfully request that the Board determine that no bad-faith conduct occurred, 37 C.F.R. § 232.3(c), and discharge the Order to Show Cause.

Respectfully submitted,

Cory Lapin
On behalf of himself and Claimant PerfectPinz LLC as co-owner