



# COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0211  
December 23, 2024

---

Joseph Rooney

CLAIMANT

v.

Alexandra Von Paris and Route One Apparel, LLC

RESPONDENTS

---

## FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board (“Board”) finds in favor of Claimant Joseph Rooney (“Rooney” or “Claimant”) and awards \$6,000 in statutory damages.<sup>1</sup>

Rooney filed this claim for copyright infringement against Alexandra Von Paris (“Von Paris”) and Route One Apparel, LLC (“Route One”) (collectively, “Respondents”) on June 19, 2023 (Dkt. 1), with the operative Second Amended Claim (“Claim”) (Dkt. 5) filed on October 9, 2023. The Claim alleges that Rooney and Respondents were engaged in negotiations over the manufacturing and distribution of a travel-sized container related to Old Bay seasoning, and when those negotiations stalled, Respondents went ahead with their own product. In the process of marketing their product, Respondents, without permission, used marketing text Rooney created for the product and thereby allegedly infringed Rooney’s copyright. Following discovery, the parties filed their written testimony, and the case is now ready for final determination.

### I. Dispute over Respondents’ Submitted Evidence

Before addressing the merits, the Board needs to resolve a dispute over evidence Respondents filed in and with their Response Statement (Dkt. 68).

Claimant’s Reply Statement (Dkt. 97) noted that Respondents’ Exhibits 4 (Dkt. 92), 5 (Dkt. 89), 6 (Dkt. 88), 7 (Dkt. 80), 22 (Dkt. 79), 23 (Dkt. 75), and 25 (Dkt. 73), and the marketing images on page 11 of the Response

---

<sup>1</sup> Officer Carson recused himself and took no part in this decision.

Statement were never disclosed in discovery and asked that they be stricken. In response, Respondents—who are represented by counsel—asked to, and were allowed to, provide a Sur-reply to address this issue. Dkt. 101.

Respondents' first argument—that they had no duty to provide any of the disputed evidence (besides Exhibit 22 and the marketing images on page 11 of their testimony) because they are “screenshots of Third-Party websites” (*id.* at 1)—is not only preposterous, but could easily (and especially with their other meritless arguments related to the discovery dispute) be the basis of a bad-faith finding under 37 C.F.R. § 232.3. The very first two of the Board's standard document requests required Respondents to produce all documents they were likely to use to support their defenses and to disprove Claimant's allegations. <https://ccb.gov/handbook/RequestForDocs-DefendingAgainstInfringement.pdf>. The parties were specifically warned at their status conference that they would not be able to use documents that were not either attached to a claim or response in the proceeding or produced by one of the sides in discovery. The Board's Handbook also tells parties that they may only use evidence “that you provided to the other party or that the other party provided to you during discovery or as part of a claim, counterclaim, or response.” <https://ccb.gov/handbook/Presenting-Your-Case.pdf>. Respondents did not seek permission to rely on unproduced evidence and there would not have been good cause to allow it. *See* 37 C.F.R. § 222.15(b)(1)(ii). In sum, this argument is meritless, and Respondents' counsel should know that.

The Board notes that, additionally, Respondents' responses to the Board's standard interrogatories have been presented by Claimant as evidence in this proceeding, Exhibit R (Dkt. 46), and by Respondents with their Sur-Reply in connection with the discovery dispute (Dkt. 100). Those responses contravene the Board's regulations because they are rife with objections. Discovery is limited to the methods set forth in 37 C.F.R. § 225, which does not provide for objections to interrogatories. 37 C.F.R. § 225.1(a)(1). As the parties were told in the pre-discovery conference and again in the status conference, one of the benefits of being before the Board is that the rules are set up to level the playing field where one party is represented and the other is not. Another benefit is that represented parties should not have to pay their attorneys nearly as much because the Board has already established standard discovery, which must be answered and to which there cannot be an objection (especially since parties can note when a standard interrogatory is inapplicable or they do not have responsive documents to a standard request).

Moreover, the standard interrogatories are provided on a fillable form so that the parties can easily fill in their responses. In this case, however, Respondents' counsel chose to retype the entirety of the standard interrogatories—which is allowable although unnecessary—and then listed (taking up over three pages) thirteen separate “General Objections,” followed by specific objections to many of the interrogatories (answering them “notwithstanding” the objections), including objecting to easily-defined words used in the interrogatories like “relevant” or “published.” Dkt. 100. To say that Respondents and/or their counsel have misconstrued the purpose of the Board is a gross understatement.

Respondents' second argument is frivolous for reasons similar to the first. Respondents state that they did not need to produce Exhibits 4, 5, 6, and 22 because supposedly relevant language from the exhibits was used in their interrogatory responses. Dkt. 101 at 2. There is no support for such an argument, and Respondents ignore that the Board's standard document request No. 4 requires production (as would be typical in any litigation in which Respondents' counsel has previously been involved) of “all documents you referred to in, or used when preparing, any of your responses to the CCB's standard interrogatories.”

Respondents' last argument is that Exhibits 7, 23, and 25, and the marketing images on page 11 of their Response Statement are “rebuttal” exhibits. Dkt. 101 at 2-3. However, as Claimant points out, these are screenshots that are simply evidence to buttress arguments already advanced by Respondents in their Response and Interrogatory responses as their key defenses. Reply Statement at 1. Thus, they are not “rebuttal” exhibits.

Claimant is clearly correct that Exhibits 4, 5, 6, 7, 22, 23, and 25, as well as the marketing images on page 11 of the Response Statement should all have been produced in discovery. *See* 37 C.F.R. § 222.15(b)(1)(ii). As such, **none** of those materials will be considered by the Board in its determination. That being said, Respondents can take some solace in the fact that those materials would not have changed the Board's determination.

## **II. Factual History**

The facts relevant to the Board's Final Determination are largely undisputed except as noted below. Rooney had an idea for a travel container called “OLD BAY Mini” for Old Bay seasoning that one could, for instance, clip to a keychain. Claimant's Party Statement (Dkt. 42) at 1–2. Old Bay is distributed by a company called McCormick,

and a McCormick representative introduced Rooney to Respondents on January 22, 2018, as Route One was already an official licensee for Old Bay products. *Id.*; Exhibit 10 (Dkt. 70). Rooney presented his idea to Respondents, including mock-ups and marketing text. *Id.*; Exhibit B (Dkt. 53); Exhibit C (Dkt. 57); Exhibit D (Dkt. 61); Exhibit P (Dkt. 63). After some minimal suggestions from his family members and others, Exhibit G (Dkt. 66), Rooney presented the following marketing text (the “Work”) for the product to Respondents:

For over 75 years, OLD BAY has been a Chesapeake Bay area custom that has been used to spice up seafood, meats, salads, french fries and much more. Now with OLD BAY Mini, you can use this time-honored seasoning anywhere, anytime, to battle bland food. Simply clip OLD BAY Mini to your keychain, backpack, or purse and you’re ready to go. And with the enclosed mini funnel, refilling is a breeze! OLD BAY Mini – an on-the-go tradition!

Claimant’s Party Statement at 2–3; Exhibit Q (Dkt. 67). The Work was registered for copyright as an unpublished work by Rooney with an effective date of July 21, 2022. Claimant’s Party Statement, at 2-3; Exhibit A (Dkt. 59) (Reg. No. TXu 2-329-132).

Negotiations between the parties for the OLD BAY Mini broke down. Claimant’s Party Statement, at 1; Exhibit E (Dkt. 65); Exhibit 14 (Dkt. 95) (Respondents wondering if the difficult negotiations with claimant were “worth it”); Exhibit 15 (Dkt. 93). Respondents, however, decided to make their own versions, which they called “OLD BAY To GO” and “Old Bay Travel Tin.” Claimant’s Party Statement, at 3-4. Rather than coming up with their own marketing text, Respondents used two versions of the Work on the packaging for OLD BAY To GO/Old Bay Travel Tin and in online marketing. The OLD BAY To GO text simply changed the product name in the Work from OLD BAY Mini to OLD BAY To GO, and removed two words as well as the sentence related to the enclosed mini funnel. Claimant’s Party Statement, at 3; Exhibit M (Dkt. 45). The Old Bay Travel Tin text did the same thing (although using Old Bay Travel Tin” instead of “OLD BAY To GO”) and also removed the last sentence (“OLD BAY Mini – an on-the-go tradition!”). Claimant’s Party Statement, at 3; Exhibit H (Dkt. 55); Exhibit K (Dkt. 43).

Rooney states that he discovered Respondents’ use of the Work when he decided to check the Route One website on March 26, 2021. Claimant’s Party Statement, at 4. He approached Respondents to discuss the alleged infringement and the use of his product idea, but when those discussions did not go anywhere, he initiated this

proceeding.

Rooney has submitted evidence and argument to show that Respondents made gross sales of \$208,415.38 and netted \$102,643.39 on sales of the products using the Work in packaging and marketing text. Claimant's Party Statement at 9–10; Affidavit of Alexandra Von Paris, Exhibit S (Dkt. 56) ¶ 5; Exhibit R at 11–12 (Respondents' answer to interrogatory 15(a)). Claimant states that Respondents pay a 10% royalty of net sales to McCormick for the OLD BAY trademark on apparel (and other items), but he should get 20%, or \$20,528.68 in "direct royalties lost," because the Work forms the "core of the product's marketing appeal." Claimant's Party Statement at 9–10; Exhibit T (Dkt. 64); Exhibit 18 at Schedule A (Dkt. 85). Claimant also states that he lost licensing opportunities to other parties as well as what the Respondent was going to pay him for the product (although only the Work is at issue here and not the product), which amounts to a loss of \$31,823. Claimant's Party Statement at 10. Claimant also alleges "future market harm" of \$50,000 because of harm to his ability to market other products and damage to his relationship with McCormick. *Id.* Finally, Claimant alleges \$2,619.69 of damages based on the amount of units still in Respondents' inventory. *Id.* at 10–11. Therefore, Claimant totals his actual damages to be \$104,971.37. *Id.* at 11.

Because there was confusion in his various filings over whether Claimant was seeking actual damages or statutory damages, on November 18, 2024, the Board asked Claimant to confirm which type of damages he was seeking. Dkt. 102. Claimant responded on November 25, 2024, that he was seeking statutory damages. Dkt. 103. The maximum amount of statutory damages the Board can award for a single infringed work is \$15,000, with that maximum dropping to \$7,500 for works not timely registered under 17 U.S.C. § 412. 17 U.S.C. § 1504(e)(1)(A)(ii)(I)-(II).<sup>2</sup>

---

<sup>2</sup> To the extent Claimant made his choice because he thought the maximum statutory damages he was entitled to in this proceeding was \$30,000, this confusion would be immaterial as the Board would not be awarding over \$7,500 in this case regardless of which type of damages the Claimant chose.

### **III. Analysis**

#### **a. Liability**

To succeed on a claim for copyright infringement, a claimant must establish: “(1) ownership of a valid copyright; and (2) copying of constituent elements of the work that are original.” *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). Respondents’ challenges to Rooney’s copyright ownership are disposed of in the Defenses section below. The Work was registered by Rooney as an unpublished work with an effective date of July 21, 2022. Because the Certificate of Registration was effective before any first authorized publication of the Work, it is prima facie evidence of the validity of the copyright and of the facts stated in the certificate. 17 U.S.C. § 410(c).

Access is clearly established here and there is no dispute that Rooney directly supplied Respondents with the Work. As to substantial similarity, when “duplication is literal or verbatim, then clearly substantial similarity exists.” *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065, 1074 (9th Cir. 2021) (quoting 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[A][1] (2019)). In this case, what Respondents used is an almost identical copy of the Work.

Respondents reproduced and posted a copy of substantially similar versions of the Work on packaging and in marketing text for their OLD BAY To GO and Old Bay Travel Tin products. They did so without authorization of Claimant. Without a valid defense, such reproductions on the packaging and posting of the Work on the Internet constitute a violation of Rooney’s exclusive rights of reproduction and public display. *See, e.g., Doggie Dental v. Shahid*, 2021 WL 4582112 (N.D. Cal. 2021) (unauthorized posting on the Internet violates the reproduction and public display rights); *TeamLab Inc. v. Museum of Dream Space, LLC*, 650 F. Supp.3d 934, 949 (C.D. Cal. 2023).

Respondents assert various defenses, to which the Board now turns.

#### **b. Defenses**

Given Respondents’ handling of discovery in this case, described above, it comes as no surprise that Respondents throw every possible defense at the wall in their response testimony, no matter how meritless. The Board takes these in turn although they each need little analysis as each of them is so obviously flawed.

## 1. Claimant Did Not Create an Original Work Worthy of Protection

Respondents combine this defense into two sections (“Claimant Fails to Satisfy the Necessary Elements for an Infringement Claim” and “Claimant Did Not Create an Original Work Entitled to Protection”) both amounting to the same argument: the language Rooney used to create the Work cannot be protected by copyright law. Response Statement at 3-6. The thrust of this argument is that many of the words in the Work (taken as individual words or separate very short phrases) can be found elsewhere, including from existing McCormick marketing materials. For instance, Respondent alleges that the phrases “time-honored” and “for over 75 years,” as well as references to “seafood” and “fries,” are on the McCormick website, and Respondents state that Claimant “admits” that “[f]or inspiration, I used the story at [the link for the McCormick Old Bay story].” *Id.* at 4; Exhibit 1 (Dkt. 69); Exhibit 2 (Dkt. 91).<sup>3</sup> Respondents also refer to their barred exhibits to show that terms like “time-honored” or “battle bland food” have been used by third-parties in the past. Finally, Respondents state that Rooney’s line exhorting the public to “clip [the product] to your keychain, backpack, or purse and you’re ready to go” describes a “procedure or process” making the words unprotectable by copyright. Response Statement, at 5.

This argument has no merit. Putting aside the fact that Claimant has a copyright registration, which acts as prima facie evidence of the Work’s validity, Rooney did not *merely* copy existing words to create the Work; nor did he try to use copyright to protect a process. While Rooney used existing ideas in the marketplace, including a word or very short phrase here and there, he clearly came up with original marketing text. If Respondents’ theories—that one could parse each word and phrase from a Work to see if each word was used before and that any description of an action was not subject to protection—were valid, it would be nearly impossible to own copyright rights in, for instance, a biography, journal article, or instruction manual, and most marketing materials would similarly be excluded from

---

<sup>3</sup> The exhibits are related to Rooney’s “inspiration.” Respondents do not actually cite an exhibit to show the prior use of these words by McCormick in their response statement. Rather, they provide a link to the website <https://www.mccormickforchefs.com/en-us/products/old-bay/old-bay-seasoning>. This is not typically accepted by the Board, but the Board did go to this website (on December 2, 2024) to discover that this web page appears to line up with Exhibit 4 (Dkt. 92). However, this argument is still misleading. Respondents present the words used by Claimant as being all part of one long sentence. Response Statement, at 4. That is not accurate as the words are found in different parts of a lengthy page.

protection. Had Rooney simply copied a paragraph from the McCormick website with almost no changes, obviously the overall Work would not be subject to protection. He did not do that. The Work is a 77-word original paragraph that has a copyright registration and it is clearly protectable.

## **2. The Work Was a Joint Work of Claimant and Respondents**

As noted above, Rooney's hope was to partner with Respondents on his product idea since they were an official McCormick licensee for Old Bay. Respondents allege that because Rooney noted in emails that he hoped to have a "partnership" with Respondents on the product, everything Rooney created in furtherance of this goal, including the Work, was a "joint work," giving Respondents full rights to it. Response Statement, at 6–7.<sup>4</sup>

"A 'joint work' is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. Respondents offer no evidence remotely tending to show that they contributed material to the Work, never mind with the parties' mutual intent that their contributions be merged into a work of joint ownership. Respondents imply they made revisions to the Work in their written testimony with citations to exhibits. Response Statement, at 6–7; Exhibit 10–14 (Dkt. 70, 83, 84, 71, 95). There is, however, not a single word in the exhibits cited that backs up Respondents' claim or where the imagination could stretch to say that Rooney was even asking for Respondents to contribute to the Work. The exhibits cited are entirely about the parties' discussions related to whether they were going to strike a deal on the product itself.<sup>5</sup>

---

<sup>4</sup> While the Board will still review this defense (which is listed among the many defenses in the Response Statement), the Board notes that despite the Respondents listing approximately a dozen defenses in their interrogatory response related to defenses (Exhibit R at 13–14 (Dkt. 46) (Answer to question 16)), "joint work" is not one of them. Furthermore, although objecting to the Board's standard interrogatory related to joint works—because Respondents alleged the term "joint work" calls for a "legal conclusion"—Respondents answered the interrogatory notwithstanding the objection in a manner contrary to their argument now. Respondents there took the position that neither party contributed any copyrightable expression to the Work. *Id.* at 8 (Answer to question 5b).

<sup>5</sup> The Board notes that, although without merit and although the Board does not handle accounting claims, under Respondents' joint work theory, they would still owe Claimant an accounting for profits they made attributable to the Work. *See Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 522 (9th Cir. 1990) (quoting *Weissmann v. Freeman*, 868 F.2d 1313, 1318 (2d Cir. 1989)).



### 3. Claimant Is Engaging in Copyright Misuse

The crux of this argument is that Rooney did not have a license to use the “Old Bay” trademark on **products** (which is why he wanted to partner with Respondents), so use of that mark in the Work without permission amounts to copyright misuse, and claimant cannot prevail on a “misused copyright.” Response Statement, at 7–9. Claimant does not claim trademark infringement. Claimant does not claim copyright infringement for Respondents’ use of the Old Bay trademark. The Claim is for infringement of the entirety of the creative copyrighted Work. Respondents’ suggestion appears to be that one can never protect a work as long as a trademark is somewhere in that work (or perhaps their argument is that one can never sue the trademark owner or licensee, so that if an author wrote a book on the history of, for instance, Starbucks, Starbucks and its licensees would be free to copy that book with impunity). Regardless of how it is formulated, Respondents’ argument is as preposterous as it sounds and should never have been advanced, especially since Respondents are represented by counsel.

### 4. Respondents’ Use Amounted to Fair Use

The Board sees no need to go through an extensive recitation of each fair use factor—on which Respondents themselves spend little time. Respondents argue that despite using the Work directly on the packaging for a product and its marketing text, their use was not commercial. Response Statement, at 9. That is obviously wrong. Respondents state that they did not use Claimant’s copyright-protected language. *Id.* That is also obviously wrong. Respondents state that there was no market effect because the Work did not “induce[] consumers to purchase the Respondents’ product” (*id.*), but the market effect test has to do with whether the market for *the Work* was affected, not the market of Respondents’ product (which is more material to the damages analysis and whether profits were attributable to the infringement). In fact, the parties were in negotiations for Respondents to use Claimant’s product, including various intellectual property around the product, which would have included the Work. The market for licensing of the Work was certainly affected by Respondents’ use. In sum, Respondents’ use of the Work for a clearly

commercial purpose after negotiations between the parties broke down is certainly not fair use.

## **5. Claimant's Claim Is Barred by the Merger Doctrine**

Respondents' single-paragraph argument that Claimant cannot sue because "some ideas can only be expressed in a limited number of ways," and the sentence in the Work exhorting consumers to "clip" the product to "your keychain, backpack, or purse" describes a process, which bars the entire claim, is absurd. Response Statement, at 9–10. Claimant had a plethora of ways to create his marketing text and Respondents chose to copy the Work almost verbatim.

## **6. Claimant's Claim Is Barred by the Statute of Limitations**

Respondents' argument on the statute of limitations makes little sense. The original claim was filed before the Board on June 19, 2023. Dkt. 1. Respondents state that "Claimant admits that he was monitoring RIA's website in March 2021 for the product after they failed to reach a contract so he knew or should have discovered Respondents' product sales before the statute of limitations ran." Response Statement, at 10. Respondents also say that Claimant emailed Respondents evidencing knowledge of the infringement on February 23, 2022. *Id.*; Exhibit 17 (Dkt. 76). Respondents say "[n]otably, [in the email] he fails to allege infringement and waits nearly a year and a half to assert a claim." Response Statement, at 10.

Under the "discovery rule," adopted by most circuits including the Fourth Circuit where Respondents are located, a claim accrues "when the plaintiff discovers, or with due diligence should have discovered, the infringing act." *Warner Chappell Music, Inc. v Nealy*, No. 22- 1078, 601 U.S. 366, 369 (May 9, 2024). *See also, e.g., Starz Ent., LLC v. MGM Domestic TV Distrib., LLC*, 39 F.4th 1236, 1237 (9th Cir. 2022) (under the discovery rule, a copyright claim "accrues when the copyright holder knows or reasonably should know that an infringement occurred"); *Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 796 (4th Cir. 2001) (a copyright claim accrues "when one has knowledge of a violation or is chargeable with such knowledge") (quotations omitted).

Respondents state that they first started selling the product using the Work on January 9, 2020, with the online use of the infringement starting on February 4, 2020. However, they give no argument, reasoning, or evidence whatsoever as to why Claimant should have discovered the infringement on those particular days. Respondents do not even argue

that he should have. They point to Rooney's supposed admission that he started monitoring Respondents' website in March 2021, but—without any evidence that he should have discovered the infringement earlier—that would simply make the statute of limitations expire in March 2024, nine months *after* Rooney filed this proceeding before the Board.

The Board therefore finds all of the Respondents' proposed defenses to be without merit.

#### **IV. Damages**

Rooney requests statutory damages in this case. The maximum amount that the Board can award in this proceeding is \$7,500, because \$15,000 is the most the Board can award in statutory damages for a single infringed work, but that maximum decreases to \$7,500 for works that were not timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii). Here, the registration is untimely because the unpublished Work was infringed prior to it being registered. 17 U.S.C. § 412.

Courts have wide discretion to award statutory damages as long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231-32 (1952); *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990). “[T]he court’s conception of what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like, is made the measure of the damages to be paid. . . . Within [the statutory] limitations the court’s discretion and sense of justice are controlling[.]” *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919).

In deciding the appropriate amount of statutory damages to award, courts generally seek to establish a relationship between statutory damages and actual damages. *See, e.g., Seoul Broad. Sys. Int’l v. Young Min Ro*, No. 9-cv-433, 2011 WL 3207024, at \*8 (E.D. Va. July 27, 2011). Here, however, Rooney offers no evidence of having licensed this Work or similar works in the past. This fact is not surprising given that the primary reason for the creation of the Work was that he was attempting to enter into an agreement with Respondents to sell his product. There is also no evidence as to any separate amounts Rooney would have charged Respondents for use of the Work. As such, there is no lost license fee to show Rooney’s harm.

Rooney attempts to offer various types of losses he suffered, but none hit the mark. He states that Respondents pay a 10% royalty on net sales to McCormick for the OLD BAY trademark on apparel (and various

other items as per the evidence), but argues that he should get 20%, or \$20,528.68 in “direct royalties lost” because the Work forms the “core of the product’s marketing appeal.” Claimant’s Party Statement at 9–10; Exhibit T; Exhibit 18. However, that is not only an apples-to-oranges comparison, but as described below, the 10% number hurts rather than helps Claimant, because if Respondents only pay 10% of net product sales for licensing the Old Bay trademark, they certainly would not pay as much as 10% for the mere use of a paragraph of marketing text (and the Board disagrees that there is any evidence to suggest that the Work represents the “core of the product’s marketing appeal”). Claimant also states that he lost licensing opportunities to other parties in addition to what the Respondents were going to pay him for the product, but there is no real evidence of lost fees from third-parties and only the marketing text is at issue here, not the product. Similarly, there is no evidence of the “future market harm” alleged by Claimant or any damages based on Respondents’ unsold inventory. Further, Respondents state that they pulled the product “out of an abundance of caution” after they learned of Rooney’s claim. Response Statement, at 9.

However, losses such as lost license fees are not the only types of damages relevant to copyright infringement. The statute also provides that one element of non-statutory damages is “profits of the infringer that are attributable to the infringement. . . . In establishing the infringer’s profits, the copyright owner is required to present proof only of the infringer’s gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.” 17 U.S.C. § 504(b).

Here, the amount of gross revenue is established as \$208,415.38, with the net sales being \$102,643.39. This is set forth in Respondents’ interrogatory response No. 15(a) and in the Affidavit of respondent Von Paris. It is also parroted at page 9 of the Claimant’s Party Statement and not controverted or argued against in any way in the Response Statement.

The main question, however, is: what is the profit actually attributable to the infringement? Here, while Respondents do not directly argue the “attributable” point, their argument related to the impact of the infringement on sales and the market for the Work can be imputed to the attributable point in a reasonable way. Response

Statement, at 10–12. Respondents also answered interrogatory No. 15(c), which is directly on this point, in a similar manner.

It is reasonable to the Board that the main reason that consumers would purchase Old Bay 2 Go and Old Bay Travel Tin is because they hope to get a well-designed officially-licensed product that can hold their Old Bay spices, and not because the Work was incredibly creative or especially convincing. Old Bay is a well-known trademark with an instantly-recognizable color scheme, and the over 80-year-old spice product no doubt has a large following of fans, who buy not only the spice product, but various paraphernalia dedicated to the brand. While the Board does not need to take Exhibit 22 into account, there is no reason to doubt Respondents' claim that McCormick spends many millions of dollars in advertising its products, including Old Bay, each year, and has many marketing employees. Response Statement, at 11.

As noted above, Respondents pay McCormick a 10% royalty to put the Old Bay trademark on apparel and various other products. Exhibit T; Exhibit 18.<sup>6</sup> It is hard to imagine a license for just the Work being worth more than a relatively small fraction of that or that the profits attributable to the infringement of the Work would be more than 2%, which in this case, would work out to just over \$2,000.

Across the country, courts typically award statutory damages in a range from approximately two to six times established damages, with around three times being most prevalent. *See, e.g., Broadcast Music, Inc. v. Eatnout, LLC*, No. 2:15cv254, 2015 WL 12803458, at \*3 (E.D. Va. Dec. 29, 2015). Such awards are justified because an award “should put infringers on notice that it costs less to obey the copyright laws than to violate them.” *Broadcast Music, Inc. v. DFK Entertainment, LLC*, No. 1:10-CV-1393 GLS/DRH, 2012 WL 893470, at \*4 (N.D.N.Y. Mar. 15, 2012); *Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018). *See also Woolworth*, 344 U.S. at

---

<sup>6</sup> It does not appear (although it is not entirely clear) that the products at issue were sold with the Old Bay spice mixture within them (but rather one would just buy the product and fill it from a traditional Old Bay container). If they were, it would be natural to assume that the royalty rate for such products would be even higher, since the Respondents would get the spices from McCormick and not just a license to use the trademark. However, there is no evidence of that and a somewhat higher royalty rate paid by Respondents to McCormick in that instance would not change what the Board would find “just” in this case.

233 (“[A] rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers.”).

The Board does not have a precise value of the profits reaped specifically from the copyright infringement in this case, only what it believes is a general approximation. However, given that Rooney has chosen statutory damages, the Board has wide discretion to “consider what is just in the particular case.” This includes the need for deterrence, which, while the Board does not take willfulness into account, seems particularly relevant here given that Respondents not only had every opportunity to license the Work, but when negotiations on the product fell through, Respondents could have come up with their own marketing text. Deterrence in copyright law serves to dissuade the parties in the case as well as others from taking such actions in the future. *See, e.g., Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, No. 19-cv01356-VC, 2021 WL 1222492, at \*1 (N.D. Cal. Apr. 1, 2021).

Therefore, the Board concludes that it is appropriate to take the approximately \$2,000 it believes was attributable to the infringement based on the evidence and arguments supplied by the parties, and multiply it by three, resulting in a statutory damages award of \$6,000.

## **V. Conclusion**

The Copyright Claims Board finds Respondents, Alexandria Von Paris and Route One Apparel, LLC, jointly and severally liable for infringement, and awards Claimant, Joseph Rooney, \$6,000 in statutory damages.