COPYRIGHT CLAIMS BOARD

Docket number: -22-CCB-0012
November 20, 2023

Benjamin Bronner	*v.*	EssayZoo
CLAIMANT		**RESPONDENT**

FINAL DETERMINATION

On October 18, 2023, the Copyright Claims Board (Board) issued the below Proposed Default Determination, proposing a finding that EssayZoo has committed copyright infringement and that Claimant Benjamin Bronner should be awarded $1,200 in statutory damages. The Proposed Default Determination and a Notice of Proposed Default Determination were sent via mail and email to the addresses on file for EssayZoo. More than thirty days have passed, and EssayZoo has not responded to the Notice of Proposed Default Determination. Therefore, pursuant to 17 U.S.C. § 1506(u)(4), the Board issues the below Proposed Default Determination as a Final Determination. The Board finds EssayZoo liable for copyright infringement and awards Benjamin Bronner $1,200 in statutory damages.

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Respondent, EssayZoo ("Respondent" or "EssayZoo"), has not appeared or participated in this proceeding before the Copyright Claims Board (Board), and the claim is now in default. If a respondent fails to appear in a proceeding and the Board proceeds to a default determination, the Board shall require the claimant to submit written direct testimony. 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a). The claimant, Benjamin Bronner ("Bronner"), has submitted written testimony. The Board has reviewed Bronner's submissions and testimony and now issues this proposed default determination. 17 U.S.C. § 1506(u)(2). For the reasons that follow, the Board finds that the presented evidence is sufficient to support a finding in favor of Bronner and awards $1,200 in statutory damages.

EssayZoo now has thirty days from the issuance of this proposed default determination to submit any evidence or information in opposition to the proposed default determination. *Id.* A copy of this proposed default

determination will be sent to EssayZoo at all postal and email addresses reflected in the record. *Id.* If EssayZoo submits an opposition, the Board will evaluate any materials submitted by EssayZoo before issuing a final determination. *Id.* § 1506(u)(3). If EssayZoo does not submit a response, the Board will issue this default determination as a final determination. *Id.* § 1506(u)(4). **Any determination against EssayZoo, including a monetary award for damages, will be enforceable in a court of law.**

I. Procedural History

This claim was filed on June 16, 2022. (Dkt. 1). The Board found the claim compliant, and in its July 7, 2022, Notice of Compliance and Direction to Serve, directed Bronner to serve EssayZoo within ninety days of the Notice. (Dkt. 2).

On September 7, 2022, Bronner filed an affidavit stating that he completed service according to the requirements of Washington state law, Wash. Rev. Code § 4.28.110. (Dkt. 8). The Board sent a Second Notice to Respondent by mail on September 22, 2022. (Dkt. 9). On October 20, 2022, due to a misstatement in the Second Notice, and out of an abundance of caution, the Board extended the opt-out period for EssayZoo to November 28, 2022. (Dkt. 10). The Board did not receive an opt-out from EssayZoo.

On November 29, 2022, the Board notified the parties that the claim had entered the "active phase" of the proceeding because EssayZoo did not submit a timely opt-out. (Dkt. 11). The Board also ordered Bronner to pay the second filing fee and EssayZoo to register for eCCB. *Id.* On December 7, 2022, upon receipt of the Second Notice marked return to sender, the Board issued a stay in proceedings to re-issue the Second Notice by email and extend the opt-out period again, until December 21, 2022. (Dkt. 13). The Board still did not receive an opt-out from EssayZoo. On December 22, 2022, the Board resumed proceedings, giving EssayZoo until December 28, 2022, to register for eCCB. (Dkt. 14). On January 18, 2023, the Board issued a Scheduling Order (Dkt. 15) and a Second Notice for respondent to register for eCCB. (Dkt. 16). The Board issued all of the foregoing orders through its online docketing system (eCCB) and also mailed and emailed them to EssayZoo (except the October 20, 2022 order extending the opt-out period, which the Board issued on eCCB and sent to EssayZoo solely by mail).

In the Scheduling Order, EssayZoo was ordered to submit a response by February 17, 2023, but EssayZoo did not. (Dkt. 15). Both parties were also ordered to attend an initial conference to be held on March 2, 2023. *Id.* While Bronner did attend the initial conference, EssayZoo did not, despite the Board sending the Zoom link to the email address on file for Respondent on February 23, 2023. (Dkt. 17).

On March 3, 2023, the Board issued its First Default Notice to EssayZoo because it did not meet any of the mandatory deadlines set by the Board. *Id.* The First Default Notice gave EssayZoo until April 3, 2023 to file a response and register for eCCB. *Id.* On March 20, 2023, the Board issued its Second Default Notice, which reminded EssayZoo of the April 3, 2023 deadline. (Dkt. 18). These notices were also issued on eCCB as well as mailed and emailed to EssayZoo.

EssayZoo failed to file a response or register for eCCB by April 3, 2023. The Board received no communication at all from EssayZoo. Accordingly, on April 11, 2023, the Board ordered Bronner to submit written direct testimony in support of a default determination. (Dkt. 19). Bronner submitted the required written materials on May 26, 2023, which included a party statement, an evidence list, evidence, and a witness statement. (Dkt. 20-22.). In an order dated September 12, 2023, the Board directed Bronner to clarify the type of damages sought (Dkt. 23), and he did so on September 16, 2023, seeking statutory damages in the amount of $7,500. (Dkt. 24).

II. Factual History

Bronner is a member of the faculty in the George Washington University School of Business, where he primarily teaches undergraduate courses in business ethics, public policy, and related areas. Witness Statement of Benjamin Bronner ("Bronner Statement") ¶ 2 (Dkt. 22). Bronner owns the copyright in the instructions and prompts for the first paper in a course taught by Bronner. (Reg. No. TXu2-304-844) (the "Work"). Evidence Docs. C & D (Dkt. 21); Bronner Statement ¶ 4. The effective date of registration is February 21, 2022, and the registration states that the Work was unpublished. Evidence Doc. C (Dkt. 21).

The Work was created in 2021. *Id.* Bronner regularly uses plagiarism-detection software. Bronner Statement ¶ 2. In February 2022, the software flagged a portion of a student essay as a match with an EssayZoo website page.

Id. ¶ 3. Bronner discovered that some of the shared text between the EssayZoo page and the student essay was part of the text of the Work. *Id.* EssayZoo publicly displayed the full text of the Work on a page labeled "Paper Outline: Analysis of Case and Fiduciary Duties of Wal-Mart Board of Directors (Essay Sample)." *Id.*; Evidence Doc. B (Dkt. 21). The website offered for purchase a copy of an outline responsive to the essay prompt (that is, the Work) for $4.32. *Id.* Bronner states that this page was available between May 8, 2021 and March 21, 2022. Default Direct Party Statement ("Default Statement"), at 2-3 (Dkt. 20).

EssayZoo holds itself out as "the most reliable place to buy pre-written essays." Evidence Doc. A (Dkt. 21). EssayZoo provides two products: (1) a catalog of pre-written essays, accompanied by the original prompts and assignments, that the public can browse for purchase at a flat fee and (2) an online essay-writing service. EssayZoo, *Homepage*, available at essayzoo.org (last accessed by the Board July 3, 2023). Evidence Docs. E & F (Dkt. 21). Each entry in the catalog includes the price for a download of the essay, the instructions for the assignment, and a preview of content of EssayZoo's pre-written product. EssayZoo's instructions for ordering essays states that the student should "not forget to upload files or any instructions that you have received from your professor. . . . This will help the writers to tackle your essay from the exact angle that your teacher wanted." Evidence Doc. F. Bronner states that a student from the Spring 2021 semester provided the prompt to EssayZoo as part of the process of commissioning an outline for a paper in response to the Work. Bronner Statement ¶ 3; Default Statement, at 2. Bronner has provided a screenshot of the EssayZoo-drafted outline uploaded to the course website. Evidence Doc. I (Dkt. 21). A portion of this outline was on display at EssayZoo below the copy of the Work. Evidence Doc. B (Dkt. 21).

Bronner sought to contact EssayZoo on multiple occasions. On an unspecified date, Bronner requested information from EssayZoo for submitting a takedown request for material alleged to infringe copyright. Evidence Doc. K (Dkt. 21). The reply from EssayZoo's chat function stated that "there is no process since we don't upload other people's content." *Id.* Bronner replied with a request that the page with the copy of the Work be taken down. *Id.* On March 8, 2023, Bronner sent an email to support@essayzoo.org requesting an address for receiving service of process. Evidence Doc. P (Dkt. 21). This email, and a follow-up sent on March 15, went unanswered.

Id.; Default Statement, at 6.

III. Copyright Infringement

To succeed on a claim for copyright infringement, a plaintiff 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). *See also Folkens v. Wyland Worldwide, LLC*, 882 F.3d 768, 774 (9th Cir. 2018); *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 984 (9th Cir. 2017). Bronner submitted Certificate of Registration No. TXu2-304-844 for the Work, which was effective as of February 21, 2022. A certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid, and that the registrant owns the copyright. *See Unicolors*, 853 F.3d at 988 ("A certificate from the U.S. Copyright Office raises the presumption of copyright validity and ownership.") (citing *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1110 (9th Cir. 1998)*; United Fabrics Int'l v. C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011) ("A copyright registration is prima facie evidence of the validity of the copyright and the facts stated in the certificate.") (internal quotation marks and citations omitted). This evidentiary presumption applies when the certificate of a registration is obtained before or within five years after first publication of the work. 17 U.S.C. § 410(c). As the Work was not published at the time of registration, the evidentiary presumption applies, and the Board need only consider whether the Respondent infringed the work.

In the absence of direct evidence, copying is proved by circumstantial evidence of access to the copyrighted work and substantial similarities as to protectible material in the two works. *See Unicolors*, 853 F.3d at 984–85. However, copying can also be inferred if the allegedly infringed work and the allegedly infringing work are "strikingly similar," regardless of whether there is any evidence of access. *Id.* at 985. "Two works are strikingly similar when the similarities between them are so great that they are 'highly unlikely to have been the product of independent creation.'" *Malibu Textiles, Inc. v. Label Lane Int'l, Inc.,* 922 F.3d 946, 953 (9th Cir. 2019) (*quoting Rentmeester v. Nike, Inc.,* 883 F.3d 1111, 1124 (9th Cir. 2018)). *See also Unicolors,* 853 F.3d at 988 (affirming an inference of copying when "the works are virtually identical"). 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 M. Nimmer & D. Nimmer, *Copyright* § 13.03(A)(1) (2019)).

Bronner has demonstrated that, without his consent, EssayZoo reproduced and publicly displayed an exact copy of the Work on its commercial website. Evidence Docs. B & D (Dkt. 21). There is no question that the two sets of instructions and prompts are identical, including date-specific deadlines for the assignment. *Id.* The Board, therefore, finds that EssayZoo infringed Bronner's copyright-protected Work.

IV. Defenses

When reviewing the evidence provided by a claimant in support of a default determination, the Board must consider whether respondent has a meritorious defense. 37 C.F.R. § 227.3(a). The Board has considered the facts and finds that no such defense exists in this claim.

V. Damages

In his Default Statement, Bronner sought $646,500 in actual damages or $7,500 in statutory damages. (Dkt. 20 at 8-12). Because a party must choose between actual or statutory damages before a final determination is made (17 U.S.C. § 1504(e)(1)(B)(i)) and Bronner's various filings made it unclear whether he was choosing actual or statutory damages, the Board directed Bronner to make an election of the type of damages sought. (Dkt. 23). Bronner elected statutory damages and asked for the amount of $7,500. Statement as to Damages (Dkt. 24).

Before the Board, the maximum award of statutory damages is $15,000 per work for works timely registered (either before the infringement started or within three months of first publication of the infringed work) and $7,500 for works not timely registered. 17 U.S.C. § 1504(e)(1)(A)(ii). The unpublished Work was not registered before the infringement occurred, and thus, the statutory maximum here is $7,500.

Courts have wide discretion to award statutory damages so long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231–32 (1952); *Columbia Pictures Television, Inc. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1194 (9th Cir. 2001) ("If statutory damages are elected, 'the court has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.'") (*quoting 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). *See also Alouf v. Expansion Products, Inc.*, 417 F.2d 767, 769 (2d Cir. 1969); *Peer Int'l Corp.*, 909 F.2d at 1336 (*quoting F.W. Woolworth*, 344 U.S. at 232).

Furthermore, various courts have explained that (regardless of willfulness or lack thereof) statutory damage awards should significantly exceed the amount of unpaid license fees because the 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) (internal quotation marks and citations omitted). As the court noted in *Werner v. Evolve Media, LLC*, No. 2:18-CV-7188-VAP-SKx, 2020 WL 4012784, at *3 (C.D. Cal. June 22, 2020):

> Such an approach is consistent with the Copyright Act's purpose of deterring copyright infringement. Indeed, as the Supreme Court has held, "a rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of copyright policy. The statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed to discourage wrongful conduct."

(*quoting F.W. Woolworth*, 344 U.S. at 233). *See also Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018) ("Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement would do little to discourage infringers.") (internal quotation marks and citation omitted), *rev'd and remanded on other grounds sub nom. Philpot v. LM Commc'ns II of S.C.*, 776 F. App'x 906 (6th Cir. 2019).

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.*, *Atari Interactive, Inc. v. Redbubble, Inc.*, 546 F. Supp. 3d 883, 888 (N.D. Cal. 2021) ("A statutory damages award 'must bear a plausible relationship to Plaintiff's actual damages'") (citation omitted); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) ("Undoubtedly these [statutory] damages should bear some relation to the actual damages suffered[.]"); *Seoul Broad. Sys. Int'l v. Young Min Ro*, No. 1:09cv433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011) ("After all, 'when awarded, statutory damages should bear some relation to the actual damages suffered.'") (citation omitted); *Aberle v. GP Clubs, LLC*, No. A-19-cv-1066-RP, 2020 WL 4035074, at *4 (W.D. Tex. July 17, 2020) (while

there "need not be a direct correlation between statutory damages and actual damages," it has generally been held that "the statutory award should bear some relation to actual damages suffered") (citation omitted); *Bly v. Banbury Books, Inc.*, 638 F. Supp. 983, 987 (E.D. Pa. 1986) ("numerous courts have held that asserted statutory damages should bear some relation to the actual damages suffered").

Actual damages are primarily measured by "the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement." *Fitzgerald*, 807 F.2d at 1118. To secure actual damages, a claimant typically establishes impairment of market value by demonstrating lost sales or other lost profits that would have been obtained from the sale or license of the infringed work but for the respondent's infringement. *See Stevens Linen Associates v. Mastercraft Corp.*, 656 F.2d 11, 15 (2d Cir. 1981); *Baker v. Urban Outfitters, Inc.*, 254 F. Supp. 2d 346, 356 (S.D.N.Y. 2003).

While Bronner claims that EssayZoo has had revenues of at least $646,500, he provides no evidence to support a conclusion that EssayZoo has made a profit *attributable to* the infringement. To reach the $646,500 amount, he noted that EssayZoo has over 50,000 essays available on its website, each of which contains instructions and/or prompts from an instructor, and that EssayZoo charges a minimum of $12.93 to create an essay responding to a prompt, and then simply multiplies 50,000 and $12.93. Default Statement, at 9. Actual damages should be based on a "factual basis" and not "undue speculation." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 165 (2d Cir. 2001). In contrast, Bronner provides little evidence regarding EssayZoo's profits attributable to the infringement of his particular Work.

It is clear from the evidence submitted that Bronner does not license or sell the Work but uses it as instructions and prompts for the undergraduate courses that he teaches as member of the faculty in the George Washington University School of Business. Bronner Statement ¶ 2. Thus, Bronner is not able to present evidence of licensing of the Work or any of his similar works. Based on the limited record regarding damages before the Board, the Board concludes that an award near the bottom of the permissible range of statutory damages is appropriate.

However, in considering damages for a copyright infringement, courts are "guided by 'what is just in the particular case, considering the nature of the copyright [and] the circumstances of the infringement.'" *Peer Int'l Corp.,* 909 F.2d at 1336 (*quoting F.W. Woolworth Co.*, 344 U.S. 228 at 232). This includes the "deterrent effect on others besides the

defendant" and "the potential for discouraging the defendant." *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, No. 19-cv-01356-VC, 2021 WL 1222492, at *1 (N.D. Cal. Apr. 1, 2021).

Here, the totality of the "circumstances of the infringement" justifies an increase from the minimum. EssayZoo's use was commercial in nature because it derives income from using essay prompts, formulating essays based on those prompts and then selling them to students. Default Statement, at 1-2. Therefore, EssayZoo was clearly deriving income directly from the infringing use of the Work. The infringing work was posted on EssayZoo's website for more than ten months. *Id.*, at 1.

The Board is also aware of the importance of the "deterrent effect on others besides the defendant" in making its determination in this case. *Mon Cheri Bridals*, 2021 WL 1222492, at *1. In fact, EssayZoo appears to be encouraging students to assist it in violating copyright law by telling them not to "forget to upload files or any instructions that you have received from your professor." Default Statement, at 1; Evidence Docs. E & F (Dkt. 21). As a result, it appears that EssayZoo routinely uploads for public view instructions and paper prompts written by instructors who own the copyrights to those instructions and prompts. As demonstrated by the search Bronner performed for the term "tort" on EssayZoo's homepage, at least five of ten essay samples included instructions and prompts written by instructors. Default Statement, at 10; Evidence Doc. EE (Dkt. 21). An increased award deters both the students and EssayZoo from continuing to violate the copyrights of these instructors who are unlikely to bring an action against EssayZoo because of the time and cost involved. Default Statement, at 11.

Here, an increased award could have another "deterrent effect on others besides the defendant." *Mon Cheri Bridals*, 2021 WL 1222492, at *1. Bronner has also submitted evidence that several other entities, perhaps affiliated with EssayZoo, are violating the copyrights of others in the same way presented in this proceeding. It is apparent that these entities provide the same paper-writing services using the same methods as EssayZoo. Default Statement, at 6-8. This evidence includes the following facts:

- EduJungles' logo is almost identical to EssayZoo's logo (Evidence Doc. R) (Dkt. 21), and its contact page (Evidence Doc. S) (Dkt. 21) provides two phone numbers the same those on as EssayZoo's contact page;
- CustomEssayOrder's contact page (Evidence Doc. T) (Dkt. 21) provides two phone numbers the same as those on EssayZoo's contact page;

- PandaScholar's contact page (Evidence Doc. U) (Dkt. 21) provides one of the two phone numbers found on EssayZoo's contact page; and
- PerfectEssay's customer service agents reached through its chat service are the same individuals as the customer service agents reached through the chat at EssayZoo. (Evidence Doc. AA, showing Agent Era on both sites simultaneously on 5/24/23 and Agent Stacy on both sites simultaneously on 5/25/23) (Dkt. 21); see Default Statement, at 8.

It also appears that these contact pages provide physical addresses that are false in that each paper-writing business does not occupy or conduct business at the address provided. Default Statement, at 7-8; Evidence Docs. S, V, T, U W, X, Y and Z (Dkt. 21). Given the fact that there may be as many as four other businesses related to EssayZoo *performing the same infringing services*, the deterrent effect on Respondent, its affiliated entities, and other similar services is an important consideration in awarding statutory damages here.[1]

On balance, the damages awarded should exceed the $750 minimum of the statutory range. *See* 17 U.S.C. §§ 504(c)(1) & 1504(e)(1)(A)(ii). Based on the record before it, the Board awards $1,200.

VI. Conclusion

The Board's proposed default determination is to find that EssayZoo has committed copyright infringement and award Bronner $1,200 in statutory damages.

[1] One member of the Board, while concurring in the finding of liability, the award, and almost all of the reasoning set forth in this determination, does not join in the analysis regarding deterrence based upon particular acts taken by EssayZoo and related entities. *See* 17 U.S.C. § 1504(e)(1)(a)(ii)(III).