



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0255

December 2, 2025

Keith F. Bell

CLAIMANT

v.

Michael M. Jones

RESPONDENT

FINAL DETERMINATION

This case has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board (“Board”) finds in favor of Respondent Michael M. Jones (“Jones” or “Respondent”) and dismisses the claim against Jones with prejudice.¹

I. Procedural History

Claimant Keith F. Bell (“Bell” or “Claimant”) filed the initial claim in this proceeding on July 30, 2023 (Dkt. 1), and filed the operative amended claim (“Claim”) (Dkt. 3) on September 19, 2023. The Board found the Claim compliant and, on September 29, 2023, directed Bell to serve Jones. (Dkt. 4). After service on Jones, the Board did not receive an opt-out form from him.

On January 5, 2024, the Board notified the parties that the Claim had entered the “active phase” because Jones did not opt out, ordered Bell to pay the second filing fee, and ordered Jones to register for the Board’s online docketing system (eCCB). (Dkt. 11). Jones filed his Response on February 27, 2024. (Dkt. 14). The Board held a settlement conference with the parties on May 8, 2024, which did not resolve this dispute. (Dkt. 16).

Discovery closed on September 9, 2024, and the Board ordered the parties to file written testimony. (Dkt. 22). On November 8, 2024, Bell filed evidence Exhibits A-Z (Dkt. 24-33, 37-52), and an evidence list (Dkt. 36), as well as an Opening Party Statement (“Bell Party Statement”) (Dkt. 35), and his own witness statement (“Bell Decl.”) (Dkt. 34). On December 23, 2024, Jones filed evidence Exhibits A-B (Dkt. 55-56) and an evidence list (Dkt. 57) as

¹ Copyright Claims Officer Carson did not participate in this determination because he handled a settlement conference in this matter. *See* 37 C.F.R. § 222.18(e).

well as a Party Statement (“Jones Party Statement”) (Dkt. 54), but did not file a witness statement.² Bell filed a Reply Party Statement on January 13, 2025. (Dkt. 59). This case is now ready for final determination.

II. Factual History

a. Facts Related to This Particular Proceeding

The facts relevant to this Final Determination are largely uncontested.

Bell states, and Jones does not dispute, that Bell, who is a retired sports psychologist residing in Texas, is the author and copyright owner of an approximately 73-page book titled *Winning Isn’t Normal* (the “Work”). Claimant Exhibit F (Dkt. 46); Bell Decl. ¶¶ 1-2. The Work was first published by Bell on February 3, 1982, and was registered by the U.S. Copyright Office with an effective date of registration of September 21, 1989 (Reg. No. TX002672644). Claimant Exhibit B (Dkt. 44). The Work is meant to express Bell’s philosophy regarding outperforming the competition in sports. Bell Decl. ¶ 6.

Jones, who was a resident of Massachusetts at the time the Claim was served on him and is currently a National Football League quarterback, used seven short paragraphs (the “WIN Passage”), comprising about a page from the Work, as a post on his personal Twitter/X account on May 16, 2016. Bell Party Statement at 2; Claimant Exhibit B; Claimant Exhibit C (Dkt. 52); Bell Decl. ¶ 16. At the time that Jones posted the WIN Passage, he was a seventeen-year-old high school student who wanted to inspire other athletes with his post. Response at 1 (Dkt. 14). There is no indication that Jones used the Work to sell anything or for commercial gain. *Id.* Jones claims that he did not know the source of the passage at the time he posted it. *Id.*

According to Bell, Jones’s post received eighteen retweets and 65 “like” reactions. Claimant Exhibit C; Bell Decl. ¶ 19. Bell discovered the alleged infringement on September 20, 2020, but waited until August 23, 2022 to

² Instead of submitting a separate witness statement or setting forth his factual statements in a separate section of his party statement, Jones included an “Introduction,” which merely reviews Claimant’s past litigation history and provides no recitation of the facts of this case. Jones Party Statement at 1-3. In addition, the Jones Party Statement is signed only by Jones’s counsel, and itself makes no reference to any swearing or statement as to the truth of the information included in it. *See* 37 C.F.R. § 222.15(b)(2)-(3). However, as Jones’s counsel did certify to the truth of the statement when filing it on eCCB (the Board’s online docketing system), as is true of all filings on eCCB, and in the interest of time as it does not affect this determination, the Board will take uncontested factual statements as true for the purposes of this determination.

send a cease-and-desist letter to Jones with a demand for compensation in the amount of \$249,975. Bell Decl. ¶ 16; Claimant Exhibit G (Dkt. 31). Jones claims that after receiving the cease-and-desist letter, he immediately deleted the post, Response at 1; Respondent Exhibit A, at No. 10 (Dkt. 56), but Bell asserts that the post stayed up until September 19, 2023, when Bell filed his amended claim. Bell Decl. ¶ 30. Bell claims that Jones had over 150,000 followers at the time Bell discovered the post although that was four years after posting. Bell Decl. ¶ 16.

Bell submits no evidence as to any actual losses or effect on the market for the Work due to Jones's use of the WIN Passage. Bell claims that Jones's post was displayed to "more than 5.3 billion persons/entities that have access to the Internet," because "[a]nyone with access to the Internet could view" it. Bell Decl. ¶¶ 17-18. Bell also provides a list of retailers and resellers that have made an unspecified number of purchases of the Work. Claimant Exhibit Z (Dkt. 27); Claimant Exhibit List.

In requesting damages, Bell believes Jones has engaged in acts that have damaged him in excess of the \$30,000.00 Copyright Claims Board damages limit. Bell Party Statement at 6. Bell seeks "the maximum in statutory damages available." *Id.* The Board interprets that statement as a request for \$15,000, the maximum statutory damages for the infringement of one work in a proceeding before the Board. 17 U.S.C. § 1504(e)(1)(A)(ii)(I).

Bell does not attempt to provide any detail in his papers or declaration as to any calculation of lost license fees, but rather bases his calculation of speculative lost damages on sales of the entire Work. Respondent Exhibit B, at No. 14 (Dkt. 55). He does, however, present: (a) what appears to be a reciprocal license where a company paid him \$50,000 and he paid the company \$50,000 (so it appears no money changed hands) for various rights, including use of the Work; (b) what appears to be several settlement agreements with school districts for use of the Work (and which allow future use of the Work); and (c) a settlement agreement for the reprint of what seems to be a different excerpt from the Work titled "Swimming Training is Hard Work." Claimant Exhibit O (Dkt. 33).

b. Brief Litigation History Concerning the Work

Bell has sued many people and entities in federal court regarding the Work under circumstances almost identical to those in this proceeding: that is, like here, the defendants in those cases posted the WIN Passage simply as an inspirational message, not related to the sale of any product or service, but in a personal post on social media,

whether Facebook, Twitter/X, LinkedIn, or otherwise. To say that Bell has been criticized by courts for bringing such claims (as he has racked up losses) would be an understatement. Recently, a court (within the same circuit as the claimant in this proceeding) said that Bell seems to have such an outlandish view of the WIN Passage that it had to “wonder whether it is dealing with a litigant whose feet are firmly planted on the ground.” *Bell v. Kiffin*, No. 3:24-CV-231-MPM-RP, 2024 WL 5125159, at *3 (N.D. Miss. Dec. 16, 2024). In dismissing that case, the court noted its job to “prevent[] the federal courts from being used as a forum for abusive shakedown lawsuits [as] essential for the integrity of the federal judiciary,” and suggested it was close to barring Bell from filing future lawsuits without prior judicial approval. *Id.* at *7. Another court stated that, rather than taking actions in furtherance of the purposes of the Copyright Act, “Bell’s behavior is akin to that of a copyright ‘troll’” with a “practice of trawling the Internet in search of *de minimis* and harmless references to the WIN passage.” *Bell v. Milwaukee Board of School Directors*, No. 22-C-0227, 2022 WL 18276966, at *10 (E.D. Wis. Dec. 21, 2022). These and other courts have found that, where there are facts basically identical to those in this proceeding (the same use of the WIN Passage), the alleged infringement easily falls under the fair use doctrine.

Moreover, in addition to the *Kiffin* court, other courts, including the Fifth Circuit Court of Appeals (“Fifth Circuit”)—a circuit where Bell has brought many of his cases and, again, where Bell resides—have essentially implored Bell to stop filing these cases, calling them frivolous. Due to the continuous filing of lawsuits against defendants who are engaging in what the courts view as clear fair use without any harm to Bell, some of these courts have awarded attorneys’ fees to defendants. For example, in 2022, the Fifth Circuit upheld the granting of a motion to dismiss and an award of attorneys’ fees against Bell under facts very similar to those in this proceeding and where Bell made arguments similar to the ones he makes here. *See Bell v. Eagle Mountain Saginaw Independent School District*, 27 F.4th 313 (5th Cir. 2022). The court noted Bell’s “long history” of suing over the WIN Passage, making him a “a serial litigant, who makes exorbitant demands for damages in hopes of extracting disproportionate settlements.” *Id.* at 326. In his suit against Eagle Mountain, he sued even though, as here, he “was unable to identify any actual financial injury associated with [the WIN Passage’s] use.” *Id.* As described in *Kiffin*, any similar

cases brought, at least within the Fifth Circuit, are to be dismissed under that “binding precedent.” *Kiffin*, 2024 WL 5125159, at *7.

III. Defenses

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). Jones contests neither Bell’s ownership of the Work, as documented in the certificate of registration, nor that he copied the WIN Passage from the Work. However, like various successful defendants in Bell’s federal court cases regarding the WIN Passage, Jones claims that his use of the Work qualifies for the fair use defense. Because this case presents no reason to deviate from the analysis already performed by the other courts related to the use of the WIN Passage with the same fact pattern—and, although not precedential, performed by the Board in *Bell v. Lewis*, Claim No. 24-CCB-0031—the Board will be relatively brief.

As the proponent of the affirmative defense of fair use, Jones has the burden of proof on this issue. *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994); *Dr. Seuss Enterprises, L.P. v. ComicMix LLC*, 983 F.3d 443, 459 (9th Cir. 2020), *cert. den.*, 141 S. Ct. 2803 (2021).

Four non-exclusive factors are considered when analyzing a fair use defense: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and, (4) the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107; *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1171 (9th Cir. 2012). Even if a fair use finding was not mandated by the clear instruction of a number of courts which have considered this very fact pattern, it is clear from the evidence in the record before the Board that the weight of the factors leads to a finding of fair use.

As to the first factor, there is no evidence that Jones used the WIN Passage in a commercial manner, either to sell the WIN Passage or the Work or to help sell a product (or to avoid a customary payment for this type of use of the Work). Despite the fact that Jones was a minor and a high school student at the time of the posting in 2016, Bell argues that, because at the time Bell discovered the post in 2020, Jones was a “very high-profile college athlete”

who had a “verified Twitter/X account,” Jones had a large number of followers who could have seen the post. Bell Decl. ¶ 16; Bell Party Statement at 2 & 4. He also claims that Jones, who is now a professional NFL quarterback, uses social media as an “influencer” and “to build his celebrity profile, which in turn impacts his endorsements and influencer revenue-creation opportunities.” Bell Party Statement at 2 & 7. Bell seems to be claiming that even a clearly non-commercial post becomes commercial if the alleged infringer is a public figure and even if that alleged infringer became a public figure years after the posting, just because the post can bolster the poster’s reputation and personal profile. This argument, for which Bell offers no meaningful support, has no merit. In fact, Bell has made a similar argument previously for the same use of this same Work and has been told this theory has no merit. *See, e.g., Eagle Mountain*, 27 F.4th at 322-23 (an argument that the posting of the WIN Passage bolstered the “professional reputation” of the school’s athletic programs had no merit, and factor one favored the school despite the lack of any transformative use). *See also Kiffin*, 2024 WL 5125159, at *6 (rejecting Bell’s “expedient” way of alleging defendant’s personal liability and stating that the argument would lend itself “to skepticism in any case, but [is] particularly damaging in the context of a plaintiff whose good faith leading into this lawsuit was already in very serious doubt”). *Cf. Bell v. Worthington City Sch. Dist.*, No. 2:18-CV-961, 2020 WL 2905803, at *7 (S.D. Ohio June 2, 2020) (providing information on its website about fundraisers did not make the school a “commercial endeavor” or the use of the WIN Passage commercial).

While Bell’s purpose in creating the Work was to sell it as a book, Jones’s purpose in using the short portion that makes up the WIN Passage was to make a motivational statement. Jones Party Statement at 4. The use was therefore different even if not purely transformative. Moreover, as the Supreme Court has stated, and as various courts have reiterated, while a transformative use can make a commercial use fair, the inverse analysis is not needed as the noncommercial nature of a use will usually tip the first factor towards fair use. *See Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 32 (2021) (“There is no doubt that a finding that copying was not commercial in nature tips the scales in favor of fair use.”); *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 449-51 (1984) (finding a “presumption” of fairness for noncommercial activity as to factor one and, for factor four, that a likelihood of market harm may be presumed for commercial uses, but must be demonstrated for noncommercial

uses). *See also Eagle Mountain*, 27 F.4th at 323 (citing *Campbell*, 510 U.S. at 579-80) (rejecting Bell’s argument that transformative use was mandatory for factor one to tilt towards fair use, stating that, even though defendant’s use was not transformative, transformative use “just strengthens the claim to fairness” and, in its absence, “other factors, like the extent of its commerciality, loom larger”); *Larson v. Dorland*, 693 F. Supp. 3d 59, 80 (D. Mass. 2023) (quoting *Google* and *Warhol* for the proposition that “while a finding that copying was not commercial in nature tips the scales in favor of fair use . . . the inverse is not necessarily true” as a commercial use “is not dispositive”)(quoting *Google*, 593 U.S. at 32); *Bell v. Milwaukee Bd.*, 2022 WL 18276966, at *4-*5 (finding that “defendants do not claim that [the] retweet added anything new to the work. Indeed, the retweet simply reproduced the WIN passage verbatim,” but the fact that it was noncommercial “clearly favors defendants” and makes it so that factor one points to fair use); *see also generally* Final Determination, *Bell v. Lewis*, Claim No. 24-CCB-0031 at 5-7 (CCB July 21, 2025).

As to the second factor, the Work is somewhat creative in nature, even though it is one of non-fiction and is filled with inspirational statements. Bell asserts that the Work is not factual but expresses his opinions and philosophy about how to achieve success in sports. Bell Decl. ¶ 6. Even if much of the Work merely comprises restatements of well-worn platitudes about hard work, sacrifice, and commitment, that does not mean that, overall, the Work is not creative.

It is true that courts have found that when a creative work is also somewhat informational in nature, more leeway is given towards a finding of fair use. *See, e.g., Keck v. Mix Creative Learning Center, L.L.C.*, 116 F.4th 448, 453 n. 1 (5th Cir. 2024); *In re DMCA Section 512(h) Subpoena to YouTube*, 581 F. Supp. 3d 509, 521-22 (S.D.N.Y. 2022); *Thicc Boy Prods. Inc. v. Swindelles*, No. 22-cv-00090-MSM, 2024 WL 733425, at *3 (D.R.I. Feb. 22, 2024) (podcast discussing current events, popular culture and podcasters lives found to “fall closer to the factual end of the copyright spectrum than the creative end”). However, taking the Work (the full book registered and subject of this proceeding) as a whole, the Board finds that this factor slightly weighs against fair use. The Board notes that, even as the Fifth Circuit found fair use and upheld the award of attorneys’ fees against Bell in *Eagle Mountain*, it also found that this factor weighed slightly against fair use and in favor of Bell (calling it a “meager victory”). *Eagle*

Mountain, 27 F.4th at 323.

The third factor, which is the “amount and substantiality” factor, is either neutral or weighs somewhat in favor of fair use.

Bell argues that what was taken was the “heart” of the work. Bell Party Statement at 2. This argument has the potential to ring somewhat true even though Bell offers no evidence to support it, other than saying that the WIN Passage is a “succinct summary of the core precepts of” the Work. *Id.* It is clear from so many prior cases brought by Bell that the WIN Passage is what has gained popularity and has seen widespread use on the Internet.

That being said, as has been stated by various courts, the WIN Passage is a very small part of the Work at issue—a single page in the Work, comprising only approximately 1.5% of it. Without anything more to support Bell’s argument about the WIN Passage being the heart of the work, a single page in a book is hardly a substantial amount.

Moreover, the WIN Passage has been found to have been widely disseminated by Bell freely for many years. *See, e.g., Bell v. Magna Times, LLC*, No. 2:18CV497DAK, 2019 WL 1896579, at *5 (D. Utah Apr. 29, 2019). The Board notes, without giving much weight to it, the Fifth Circuit’s holding within its analysis of factor three, that Bell himself makes the WIN Passage available on his own website free of charge, and if a use “enables a viewer to see such a work which he had been invited to witness in its entirety free of charge, the fact that [even if] the entire work is reproduced . . . does not have its ordinary effect of militating against a finding of fair use.” *Eagle Mountain*, 27 F.4th at 324 (quoting *Sony Corp.*, 464 U.S. at 449-50). *See also Kiffin*, 2024 WL 5125159, at *11. Given these facts put together (and even if the Board does not weigh the free availability of the WIN Passage in factor three), the Board, like the court in *Eagle Mountain*, finds that this factor is neutral, and, if anything, slightly favors a finding of fair use. *See also Worthington City*, 2020 WL 2905803, at *8 (finding this factor neutral for the same reasons).

Concerning the market for the work, “[t]his last factor is undoubtedly the single most important element of fair use.” *Eagle Mountain*, 27 F.4th at 324 (quoting *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 566 (1985)). This factor is not a close call in this proceeding.

As was the case in *Eagle Mountain*, there is no evidence that the use of the Work affected the market, potential

market, or value of the Work, that is sales or licenses of the book *Winning Isn't Normal*. There is also no evidence that the use of the WIN Passage affected the market or value of the WIN Passage itself, but the entire book is what is at issue here. Despite the widespread use of the WIN Passage on the Internet, Bell offers no licenses for use of the WIN Passage or other excerpts from the Work that were not tied to a settlement (other than one license where he and the other party agreed to pay each other the same amount), and he offers no testimony regarding licenses for the WIN Passage or the Work.

There is no evidence of market harm and Bell gives no credible argument about how he might have been harmed. Jones has produced Bell's interrogatory responses as evidence, and when describing his supposed harm, Bell provides misguided calculations based on potential sales of the entire book. Respondent Exhibit B, at No. 13. Bell seems to think that he can simply multiply the full price of the book by the number of people who might have seen Jones's post, and then erroneously concludes that he should get the maximum in statutory damages in part because, by posting the WIN Passage on the Internet, Jones made the WIN Passage available to "more than 5.3 billion persons." *Id.*; Bell Decl. ¶ 17 & 18. That is an absurd conclusion – there is absolutely no evidence that anywhere near 5.3 billion people saw the posting at issue here.

Bell's broad theories, which are not supported by any evidence, do nothing to suggest that Jones's posting of the WIN Passage replaced Bell's market for his book, and thus acted "as a substitute for the original." *See SOFA Ent., Inc. v. Dodger Prods., Inc.*, 709 F.3d 1273, 1280 (9th Cir. 2013) ("Where the secondary use is not a substitute for the original and does not deprive the copyright holder of a derivative use, the fourth factor weighs in favor of fair use.") (citations omitted); *Brown v. Netflix, Inc.*, 855 Fed. App'x 61, 64 (2d Cir. 2021) (finding "the intended audience for the Song would be unlikely to purchase the Film in preference to the original" so the fourth factor weighed in favor of fair use) (citations omitted). Quite to the contrary, the use of a captivating blurb to market a longer work is commonplace, and Bell appears to disseminate this very WIN Passage freely for that purpose. *See Eagle Mountain*, 27 F.4th at 325. In sum, again as stated in *Eagle Mountain* under similar circumstances, there is no "plausible" situation where an individual would pay Bell to post the WIN Passage on his personal Twitter/X page, making any lost market or potential licensing market "purely speculative." *Id.* *See also Kiffin*, 2024 WL 5125159, at *8 ("It is

simply not plausible to this court that because of that tweet, even a single individual who might have otherwise purchased plaintiff's book decided not to do so.”). There is also no evidence that any consumer would have foregone buying the entire Work just because they could read a tiny portion of it—the WIN passage, which Bell already distributes freely—on Respondent’s Twitter/X page.

Furthermore, as it has consistently done in other cases in the past,³ the Board declines to use settlement agreements as evidence of a willing buyer-willing seller license. *See, e.g., Yue v. Chordiant Software, Inc.*, No. C08-00019 JW, 2010 WL 11575579, at *3-4 (N.D. Cal. Apr. 22, 2010) (finding evidence of “settlements and licenses negotiated after the commencement of litigation are not relevant to what a willing buyer would have been reasonably required to pay a willing seller of plaintiff’s work”); *Attachmate Corp. v. Sentry Insurance*, No. C08-1035RAJ, 2009 WL 10676462, at *3 (W.D. Wash. Jan. 15, 2009) (denying discovery motion given “no authority for the proposition that the price paid in a settlement of an infringement action or breach of license action is relevant to determining copyright infringement damages”); *Attachmate Corp. v. Health Net, Inc.*, No. C09-1161 MJP, 2010 WL 11561518, at *1 (W.D. Wash. June 18, 2010) (rejecting the assertion that third-party settlements “are relevant to determining the fair market value of licenses”). *See also Eagle Mountain*, 27 F.4th at 325 (“Despite being embroiled in litigation for years, Bell is unable to allege that anyone has ever purchased a license before posting the WIN Passage on social media.”).

In sum, the weight of the fair use factors clearly favors a finding fair use in this case. Accordingly, the Board dismisses the claim against Jones with prejudice.

IV. Other Defenses

Because the Board finds that Claimant’s use of the WIN Passage was fair use, the Board finds no need to decide the issue of whether, as Respondent argues, this claim is barred by the statute of limitations under 17 U.S.C. § 1504(b). *See* Jones Party Statement at 9.

³ While Board decisions are not precedential, 17 U.S.C. § 1507(a)(3), the Board typically attempts to be consistent in the way it deals with evidence.

V. Attorneys' Fees

While it is not necessarily the case that every one of the proceedings that Bell has filed before the Board has the same fact pattern, Bell should consider himself on notice based on this opinion and the one issued by the Board in *Bell v. Lewis*, that moving forward with claims regarding the same WIN Passage and the same or very similar fact patterns could amount to pursuing a claim for a “harassing or other improper purpose, or without a reasonable basis in law or fact” under 37 U.S.C. § 220.1(c), resulting in a finding of bad faith and a potential award of costs and fees. Because the warning to that effect in the *Bell v. Lewis* Final Determination was issued well after Bell filed his testimony in this proceeding, the Board declines to award attorneys’ fees or costs to Respondent here.

VI. Conclusion

The Board dismisses the claim against Michael M. Jones with prejudice.

Copyright Claims Board