

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS - FORT WORTH DIVISION**

KEITH BELL,
Plaintiff,

v.

**EAGLE MOUNTAIN SAGINAW
INDEPENDENT SCHOOL
DISTRICT**
Defendant.

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Civil Action No. _____

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Keith Bell (“Bell” or “Dr. Bell”) to present this original complaint against Defendant Eagle Mountain Saginaw Independent School District (“Eagle Mountain ISD”) for copyright infringement.

Summarizing, in December of 2017, both Chisholm Trail High School Softball and Color Guard published a passage containing the core message of Dr. Bell’s copyrighted work, *Winning Isn’t Normal*, without authorization. Eagle Mountain ISD’s infringement continued until Plaintiff discovered the infringing content in November of 2018. Eagle Mountain ISD continued to violate federal law through this infringement without taking any disciplinary action.

Even now, Eagle Mountain ISD continues to aid this infringement by denying any wrongdoing, giving tacit endorsement to the infringements. Plaintiff seeks damages for copyright infringement by Eagle Mountain ISD.

I. PARTIES

1. Plaintiff Keith Bell is an individual residing at 3101 Mistyglenn Circle, Austin, TX 78476. He can be reached through the undersigned counsel.
2. Defendant Eagle Mountain Saginaw Independent School District is located in the State of Texas and may be served with process by serving Superintendent Jim Chadwell at 1200 N Old Decatur Rd, Fort Worth, TX 76179 or wherever he may be found.

II. VENUE AND JURISDICTION

3. This Court has jurisdiction over Plaintiff's claims pursuant to Sections 1331 and 1338 of Title 28 of the United States Federal Code (copyrights).
4. Venue is proper in this judicial district under 28 USC §§ 1391(b) and 1400(b) because all events giving rise to the described claims occurred within the geographic area of the jurisdiction of the Northern District of Texas.
5. This Court has jurisdiction over the Defendant because it is located in Texas, conducts business in Texas, has its principal place of business in Texas, and committed the wrongful acts at issue in Texas.
6. Plaintiff contends that there is both specific and general jurisdiction over Defendant in Texas, that Defendant has sufficient minimum contacts to satisfy due process, and that the exercise of jurisdiction over Defendants comports with traditional notions of fair play and substantial justice.

III. THE FACTS

Dr. Bell and His Sports Psychology Practice

7. Dr. Bell is an internationally recognized sports psychology and performance consultant. He has worked as a sports psychologist with over 500 teams, including the Olympic and national teams for the United States, Canada, Australia, New Zealand, Hong Kong, Fiji, and the Cayman Islands. Dr. Bell speaks at national and international coaching symposia. Among others, he has been a featured speaker with the American Swim Coaches Association, Australian Coaches Association, Canadian Coaches Association, Japanese Coaches Association, North American Soccer Association, United States Olympic Sports Medicine Symposium, National High School Coaches Association, and British Swim Coaches Association.

8. Dr. Bell has also enjoyed success as an athlete and coach. He is a four-time collegiate All-American swimmer, holds numerous world and national masters swim records, and has coached U.S. national, university, collegiate, high school, and club swimming teams.

9. Further, Dr. Bell has authored and published 10 books and over 80 articles relating to sports psychology and sports performance. He also has been a regular columnist for national swimming publications such as *Swimmers*, *Swimmers Coach*, *SwimSwam*, and *Swim Texas Magazine*, and is a periodic contributor to *Austin Fit Magazine*.

Dr. Bell's Original Literary Work, Winning Isn't Normal

10. In 1981, Dr. Bell wrote the book entitled *Winning Isn't Normal* (“*Winning Isn't Normal*” or the “Infringed Work”), which was first published in 1982. The book has enjoyed substantial acclaim, distribution, and publicity to this day. Dr. Bell is the sole author of this work and continues to own all rights in the work.

11. Dr. Bell holds a copyright registration for the Infringed Work. A copyright registration certificate for *Winning Isn't Normal* was issued to Dr. Bell by the United States Copyright Office on or about September 21, 1989, with the registration number TX-0002-6726-44. A true and correct copy of the Certificate of Registration is attached hereto as Exhibit A.

12. Since Dr. Bell authored and published the Infringed Work, *Winning Isn't Normal*, he has and continues to promote, distribute, offer for sale, and sell numerous copies of the work. Currently, among other venues, Dr. Bell offers *Winning Isn't Normal* for sale through Amazon.com and the website keelpublications.com.

13. Dr. Bell has made and continues to make meaningful efforts to create a market for *Winning Isn't Normal* and to protect and enjoy the rights afforded to him under the Copyright Act. Importantly, as part of these efforts, Dr. Bell creates, markets, and sells works derived from his work, such as posters and t-shirts that display a particular passage from *Winning Isn't Normal* (the “WIN Passage”).

14. The WIN Passage is viewed by Dr. Bell and others as the heart of Dr. Bell's literary work *Winning Isn't Normal*. The WIN Passage's copyright was registered in November of 2017 and is attached as Exhibit B.

15. Dr. Bell owns the domain winningisntnormal.com, which points to the keelpublications.com website where Dr. Bell offers the *Winning Isn't Normal* and derivative works for sale.

16. Due to the popularity of his original work *Winning Isn't Normal*, Dr. Bell has been able to increase his international recognition as an authority in sports psychology and sports performance and has been asked to speak at conferences, symposia, and other engagements as a result.

17. Dr. Bell has offered and continues to offer licenses at fair and reasonable rates to others who wish to publish or otherwise use the popular WIN Passage on the internet or in traditional publishing mediums. Dr. Bell has taken due care to provide notice of his copyright in *Winning Isn't Normal*. Dr. Bell has included pertinent copyright notices on physical and electronic copies of *Winning Isn't Normal* and derivative works, provides pertinent copyright notices on Amazon.com and keelpublications.com, and includes a conspicuous copyright watermark on digital images of derivative works (such as posters) or excerpts that he posts online or otherwise distributes.

18. Dr. Bell also includes information on keelpublications.com regarding how to contact Dr. Bell about obtaining permission to use the WIN Passage or other portions of *Winning Isn't Normal*.

19. As part of Dr. Bell's efforts to protect his intellectual property, Dr. Bell obtained a federally registered trademark for the phrase "WINNING ISN'T NORMAL" (Reg. No. 4630749, issued November 4, 2014, attached as Exhibit C), which he uses in connection with various goods and services, including his Winning Isn't Normal® series of books, of which *Winning Isn't Normal* is part.

20. Pursuant to Section 33(b) of the Lanham Act, registration of the WINNING ISN'T NORMAL® mark is conclusive evidence of the validity of the registered mark and of Dr. Bell's right to use the registered mark in commerce in connection with the goods or services specified in the registration.

21. As a result of the unique and distinctive nature of Dr. Bell's WINNING ISN'T NORMAL® mark and his continued commercial use of the mark, "Winning Isn't Normal" has become widely associated with Dr. Bell and his printed material and related goods and services. The WINNING ISN'T NORMAL® mark is indicative to consumers that printed material and related items bearing the WINNING ISN'T NORMAL® mark originate from or are affiliated with, sponsored, or approved by Dr. Bell.

Facts of Infringement

22. Eagle Mountain Saginaw Independent School District is a school district located in Tarrant County, Texas.

23. CTHS Softball is the official Twitter page for Chisolm Trail High School softball team, a high school in Eagle Mountain ISD. CTHS Softball is not an independent organization, but is formed as part of Eagle Mountain ISD.

24. CTHS Color Guard is the official Twitter page for Chisolm Trail High School color guard, a high school of Eagle Mountain ISD. CTHS Color Guard is not an independent organization, but is a part of Eagle Mountain ISD.

25. On or about December 9, 2017, CTHS Softball displayed the WIN Passage, which is attached as Exhibit D. Dr. Bell discovered this infringing post on the CTHS Softball page on or about December 29, 2017.

26. On or about December 9, 2017, CTHS Color Guard displayed the WIN Passage, which is attached as Exhibit E. Dr. Bell discovered this infringing post on the CTHS Color Guard page on or about February 6, 2018.

27. Both infringing posts remained online and publicly available even on November 15, 2018.

28. Dr. Bell contacted Eagle Mountain ISD around November 25, 2018, which replied on December 6, 2018, claiming that the WIN passage in question was not the generally circulated version and properly attributed credit to Dr. Bell.

29. Eagle Mountain ISD removed both infringing posts and informed Dr. Bell that the incident would be a “teachable moment” and the ISD was developing training to prevent future incidence.

30. The parties discussed settlement on multiple occasions between 2018 through 2020, to no avail.

31. The publication of the WIN passage was made without authorization from Dr. Bell. Defendants did not contact Dr. Bell to request permission to use Dr. Bell’s copyrighted work.

IV. APPLICABLE LEGAL AUTHORITIES

32. Chapters 1 through 8 and 10-12 of Title 17 of the United States Code are the legal statutes which govern copyright in the U.S.

- a. 17 U.S.C § 501(a) defines “infringer” and 17 U.S.C § 501(b) defines the right of the copyright owner towards the infringer.
- b. 17 U.S.C §§ 502-505 outlines remedies for infringement, including but not limited to, damages, profits, costs and attorney’s fees.
- c. 17 U.S.C § 507(b) presents the limitation for infringement claims for civil actions, which reads, “[...] No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.”

33. Direct Infringement - Direct infringement occurs when, “(1) the [Plaintiff] owns a valid copyright; and (2) the defendant copied constituent elements of the plaintiff’s works that are original.” *ZeniMax Media, Inc. v. Oculus VR, LLC*, 116 F. Supp. 3d 697, 704 (N.D. Tex. 2015).

34. Vicarious Infringement - For a vicarious infringement to occur, “defendant profits directly from the infringement and has a right and ability to supervise the direct infringer, even if the defendant initially lacks knowledge of the infringement.” *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 930 n.9, 125 S. Ct. 2764, 2776 (2005).

35. Contributory Infringement - For contributory infringement to occur, a party is liable for contributory infringement when it, with knowledge of the infringing activity, induces, causes or materially contributes to another’s infringing conduct. *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 790 (5th Cir. 1999).

36. Defense of Fair Use - 17 U.S.C. §107 limits exclusive rights, formalizing the doctrine of Fair Use. Fair Use permits limited use of copyrighted material without having to first acquire permission from the copyright holder. Fair Use generally requires consideration of factors listed in § 107, as follows:

- a. The first fair use factor is “the purpose and character” of the alleged infringement. This factor weighs against fair use if the use is non-transformative. *Campbell v. Acuff-Rose Music Inc.*, 510 U.S. 579 (1994).

- b. The second factor is “the nature of the copyrighted work.” This factor prevents a finding of fair use when the work is otherwise expressive, creative, or non-factual. *Cambridge Univ. Press v. Patton*, 769 F.3d 1232, 1268 (11th Cir. 2014).
- c. The third factor considers the “amount and substantiality of the portion used in relation to the copyrighted work as a whole.” 17 U.S.C. §107. This determination considers “not only ... the quantity of the materials used, but ... their quality and importance, too.” *Patton*, 769 F.3d at 1271 (quoting *Campbell*, 510 U.S. at 587). Even if a small portion of a work is copied, this factor can still demonstrate against fair use if the copied portion is “the heart of the work.” *See Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539 (1985) (finding that the third factor disfavored fair use when 300 words were taken out of 200,000 words in President Ford’s memoirs because they were “the most interesting and moving parts of the entire manuscript” or “the heart of the work”).
- d. The fourth factor is the effect of the use upon the potential market for or value of the copyrighted work. If use of a copyrighted work could damage even a potential market for a tangential market, a defendant could be held liable. *See Rogers v. Koons*, 960 F.2d 301, 309 (2d Cir. 1992).

V. DEFENDANT *DIRECTLY* INFRINGED BELL'S COPYRIGHT.

37. As stated above, Plaintiff Dr. Keith Bell owns the work, *Winning Isn't Normal*, for which the copyright has been registered with the Library of Congress.

38. Defendant Eagle Mountain ISD knowingly and intentionally copied Plaintiff's copyrighted work by publishing substantially the heart of Plaintiff's work, the aforementioned WIN passage, to two of the Defendant's Twitter pages.

39. Tucker's "post" constitutes a direct infringement of Bell's copyright as Bell owns the copyrighted passage and Tucker "copied constituent elements of the plaintiff's works that are original." *ZeniMax Media*, 116 F. Supp. 3d at 704.

40. Defendant Eagle Mountain ISD's use of Plaintiff's copyrighted work does not constitute a fair use of the work, as discussed below:

- a. Purpose and Character - Though Dr. Bell has contributed substantially to the body of factual and scientific data in other works, the WIN Passage is motivational and expressive rather than purely factual. Here, Eagle Mountain ISD's "post" is nearly a verbatim copy of the entire WIN Passage. Eagle Mountain ISD's intent of the post was certainly not for "criticism, comment, news reporting, teaching, scholarship, or research." 17 U.S.C. §107. The infringement simply provided Eagle Mountain ISD's "followers" an opportunity to enjoy the heart of Bell's work without purchasing the

copyrighted work, which does not constitute fair use.

- b. Nature of the Copyrighted Work - As stated above, the nature of the copyrighted work is one of motivation, used in training, and factual. Eagle Mountain ISD's use is for the same purpose and nature, and thus does not support a finding of fair use.
- c. Amount and Substantiality of the Portion Used - Here, the WIN Passage is only one page out of 78 pages in *Winning Isn't Normal* but is plausibly the "heart of the work" considering that Dr. Bell sells merchandise featuring the WIN passage and that individuals find it moving enough to share with others on Twitter. This is far more than the *Harper & Row* case where the heart of President Ford's memoirs was used. Thus, Eagle Mountain ISD's posts do not constitute fair use under the third factor.
- d. Effect of the Use upon the Potential Market - As stated in the fact section, Dr. Bell sells motivational items using his work. Defendant Eagle Mountain ISD uses Dr. Bell's work to motivate but sought no license toward that end.

The 11th Court of Appeals has provided more explanation well with this:

The central question under the fourth factor is not whether Defendants' use of Plaintiffs' works caused Plaintiffs to lose some potential revenue. Rather, it is whether Defendants' use—taking into account the damage that might occur if "everybody did it"—would cause substantial economic harm such that allowing it would frustrate the purposes of copyright by materially impairing Defendants' incentive to publish the work.

Cambridge Univ. Press v. Patton, 769 F.3d 1232, 1276 (11th Cir. Ga. 2014).

It is plausible and even probable that if social media use of the WIN Passage became even more widespread, the incentive to purchase *Winning Isn't Normal* or related merchandise could fall given that the passage is purportedly the most moving section or otherwise “the heart of the work.”

Thus, Eagle Mountain ISD's posts fail to fall under fair use.

41. Summarizing, Eagle Mountain ISD's actions constitute direct infringement, and no limiting Fair Use defense is appropriate.

VI. ALTERNATIVELY, DEFENDANT VICARIOUSLY INFRINGED.

42. In the alternative, Eagle Mountain ISD has a right and ability to supervise direct infringers CTHS Softball and CTHS Softball, and should be liable under the theory of vicarious infringement, even if Eagle Mountain ISD initially lacked knowledge of the infringement, as described in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 930 n.9, 125 S. Ct. 2764, 2776 (2005).

VII. ALT., DEFENDANT CONTRIBUTED TO INFRINGEMENT.

43. In the alternative, Eagle Mountain ISD employs all the actors involved in the infringing posts, has a social media policy allowing these posts, and is aware that the coaches, players, and other ISD personnel post such infringing works, and should thus be liable under the theory of contributory infringement by knowingly materially contributing to another's infringing conduct, as described by *Alcatel*

USA, Inc. v. DGI Techs., Inc., 166 F.3d 772, 790 (5th Cir. 1999).

VIII. DAMAGES SOUGHT

44. Plaintiff seeks damages from Defendant Eagle Mountain ISD for its infringement of Plaintiff's copyright work, seeking damages of not less than \$750 and not more than \$30,000, or should the court decide Bell bears the burden of proving, no less than \$200 and no more than \$150,000 pursuant to 17 U.S.C § 504.

45. Plaintiff also seeks costs and attorney fees from Defendant Eagle Mountain ISD and pursuant to 17 U.S.C § 505.

IX. CONDITIONS PRECEDENT

46. Plaintiff has satisfied all conditions precedent to bring this suit.

X. CLAIM: DECLARATORY JUDGMENT

47. Plaintiff seeks Declaratory Judgment under 28 USC § 2201 under Rule 57.

XI. PRAYER

48. Plaintiff respectfully prays that the Defendant be cited to appear and answer, and that Plaintiff have the following relief:

- a. An award of damages for infringement of Plaintiff's copyright pursuant to 17 U.S.C § 504 from Eagle Mountain Saginaw Independent School District;
- b. Reasonable and necessary attorney's fees pursuant to 17 U.S.C § 505;
- c. Costs of court, including prejudgment and post judgment interest as provided by law pursuant to 17 U.S.C § 505;

d. All other relief to which Plaintiff may be entitled in law and equity.

Respectfully submitted,
/s/ Warren V. Norred
Warren V. Norred,
Texas Bar No. 24045094
wnorred@norredlaw.com
515 E. Border St., Arlington, Texas 76010
Tel. (817) 704-3984, Fax. (817) 524-6686
Attorney for Plaintiff

By: /s/ Warren V. Norred

Attached Exhibits:

- A - Copyright Cert. TX-0002-6726-44, “*Winning Isn't Normal*” book (Sept., 1989)
- B - Copyright Cert. TX-8-503-571, “*Winning Isn't Normal*” phrase (Nov. 2017)
- C - Trademark Reg. 4630749, “Winning isn’t normal” (Nov. 4, 2014)
- D - CTHS Softball’s use of the WIN Passage (December 9, 2017)
- E - CTHS Color Guard’s use of the WIN Passage (December 9, 2017)

EXHIBIT A

Certificate of Registration TX-0002-6726-44

CERTIFICATE OF COPYRIGHT REGISTRATION

FORM TX

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 2 672 644

EFFECTIVE DATE OF REGISTRATION

9 21 89



OFFICIAL SEAL

This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

REGISTER OF COPYRIGHTS
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

Winning Isn't Normal

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 NAME OF AUTHOR ▼

a Keith Frank Bell

DATES OF BIRTH AND DEATH
Year Born ▼ 1948 Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country U.S.A.
OR { Citizen of ▼
Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP Entire Text

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▼
Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▼
Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
1981

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published. Month February Day 3 Year 1982
United States of America

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.▼

Dr. Keith Bell
3101 Mistyglenn Circle
Austin, Texas 78746

1598 Winford Ave.
Ventura, CA 93004

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

MORE ON BACK ▶

• Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 10.

DO NOT WRITE HERE

Page 1 of 2 pages

EXHIBIT B

Copyright Cert. TX-8-503-571



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Karen Taylor Clayett

Acting United States Register of Copyrights and Director

Registration Number

TX 8-503-571

Effective Date of Registration:

November 06, 2017

Copyright Registration for One Work by One Author

Registration issued pursuant to 37 CFR §202.3

Title

Title of Work: Winning Isn't Normal

Title of Larger Work: Winning Isn't Normal

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: July 18, 2010

Nation of 1st Publication: United States

International Standard Number: ISBN 0-945609-96-5

Author

- Author: Keith Frank Bell
Author Created: text
Citizen of: United States
Domiciled in: United States
Year Born: 1948

Copyright Claimant

Copyright Claimant: Keith Frank Bell
3101 Mistyglenn Circle, Austin, TX, 78746, United States

Limitation of copyright claim

Material excluded from this claim: text

Previous registration and year: TX 2 672 644, 1989

New material included in claim: text

Rights and Permissions

Name: Keith Frank Bell
Email: drkeithbell@gmail.com
Telephone: (512)327-2260
Address: 3101 Mistyglenn Circle
Austin, TX 78746 United States

Certification

Name: Keith F. Bell
Date: November 06, 2017



EXHIBIT C

Winning Isn't Normal, pg. 8, the “WIN Passage”

think you are one of those special people who win national championships and break world records?

Well, guess what? No one is special! The people who win are not special people. There is nothing special about the people who break world records. They are not special people — they do special things! They are just people who do special things. You can too! And you have to do special things, if you want to win.

Winning Isn't Normal

Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It's highly unusual.

Every race only has one winner. No matter how many people are entered (not to mention all those who tried and failed to make cuts), only one person (or one relay) wins each event.

Winning is unusual. As such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. (Now, take note! Wanting it more is a decision you make and act upon — not some inherent quality or burning inner drive or inspiration!) And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in." You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness . . . because *winning isn't normal!!*

EXHIBIT D

WINNING ISN'T NORMAL (Reg. No. 4630749, issued November 4, 2014)



United States Patent and Trademark Office

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Record 1 out of 1[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)***WINNING ISN'T NORMAL****Word Mark** **WINNING ISN'T NORMAL****Goods and Services** IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed matter, namely, non-fiction publications, namely, books, booklets, pamphlets, articles, manuals and posters in the field of sports, fitness, and competitive performance and psychology. FIRST USE: 19780923. FIRST USE IN COMMERCE: 19821231**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 85947685**Filing Date** May 31, 2013**Current Basis** 1A**Original Filing Basis** 1A**Published for Opposition** May 27, 2014**Registration Number** 4630749**Registration Date** November 4, 2014

Owner (REGISTRANT) Bell, Keith Frank INDIVIDUAL UNITED STATES 3101 Mistyglen Circle Austin TEXAS 78746
Attorney of Record Jeff A. McDaniel
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT D

CTHS Softball's use of the WIN Passage
(December 9, 2017)

Home Moments

Search Twitter

Have an account? Log in

Tweets
610Following
219Followers
393Likes
84

Follow

CTHS Softball

@CTHSSoftball

[emsisd.com/Page/468](http://www.emsisd.com/Page/468)<http://www.emsisd.com/Page/468>[emsisd.com/Page/468](http://www.emsisd.com/Page/468)

Joined May 2012

91 Photos and videos



Tweets Tweets & replies Media

CTHS Softball Retweeted

**EMS ISD Athletics** @emsisdathletics · Dec 11

Congratulations AOW winners @CTHS_Wrestling Trinity Portales & Andrew Maldonado!

chisholmtrail.sidhelp.com

9

30



CTHS Softball @CTHSSoftball · Dec 9

WINNING ISN'T NORMAL

"Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It is highly unusual.

Every competition only has one winner. No matter how many people are entered, only one person or one team wins each event.

Winning is unusual. And as such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. Now take note! Wanting it more is a decision you make and act upon — not some

inherent quality or burning inner drive or inspiration! And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in." You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness... **BECAUSE**



8



12

CTHS Softball Retweeted



Jon Gordon @JonGordon11 · Dec 6

Not everyone is going to share your vision. Not everyone is going to believe what you believe. That's okay. Your positive energy must be greater than their negativity. No Energy Vampires allowed!



12



531



1.1K

Promoted Tweet



Uptown Cheapskate @UptownAustin · 23h

Look spiffy on chilly [#winter](#) days with a [#fresh](#) [#sweaterweather](#) outfit. Grab [#layers](#) in a variety of styles great for a walk outdoors or [#NewYearsEve](#), [#NewYearsDay](#) or [#ValentinesDay](#) activities.

[#ShopEarlyShopOften](#) [#atx](#) [#vintage](#) [#fallfashion](#) [#2017trends](#) [#atxfashion](#) [#thrifty](#)



EXHIBIT E

CTHS Color Guard's use of the WIN Passage (December 9, 2017)



16 54

CTHS Color Guard Retweeted



Ranger Regiment @RangerRegiment · 11 Dec 2017

REGIMENT ALL-AREA band students: Gianna Jasso, Ben Simmons, Elijah George, Justin Torres, Logan Miertschin, Isaiah DeDios, Conan White, and Bailey



Home Moments Search Twitter Have an account? Log in



CTHS Color Guard
@CTHSColorGuard

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CTHS Color Guard Retweeted



CTHS Softball @CTHSSoftball · 9 Dec 2017

WINNING ISN'T NORMAL

"Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It is highly unusual.

Every competition only has one winner. No matter how many people are entered, only one person or one team wins each event.

Winning is unusual. And as such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. Now take note! **Wanting it more is a decision you make and act upon** — not some inherent quality or burning inner drive or inspiration! And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in." You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness... **BECAUSE**



8



12

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Ranger Regiment @RangerRegiment · 9 Dec 2017

29 REGIMENT members make the ALL-REGION BAND! 6 FIRST CHAIR players! 8 ALL-AREA players!! CONGRATULATIONS to ALL!!!



1

18



80



CTHS Color Guard @CTHSColorGuard · 9 Dec 2017

2018 CT cast!

Siham

Emily

Natalie

Jada

Stephanie

Nadia

Lucas

Jackie

Giselle

Cielo

KayInn

Sam

Brianna

Madison V

Ashlynn

Kylie

Wash

Madison W



1

8



18

CTHS Color Guard Retweeted



Ranger Regiment @RangerRegiment · 28 Nov 2017

We still need 11 more parent helpers for tonight's audition. Can you help? If so, contact Mrs. Stephens at hstephens @ems-isd.net PLEASE HELP!



5



4



CTHS Color Guard @CTHSColorGuard · 27 Nov 2017

Color Guard!!! This is today!!!! Can't wait to see you!

don't stop
until you're
-PROUD-



♥ 5 | 🗨 3

TWEETCS

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CTHS SOFTBALL

TWITTER FOR ANDROID :

DECEMBER 11, 2017

@CTHSSOFTBALL



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- Dr. Keith Bell



♥ 12 | 🗨 8