

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Michael James Otto,

Case No. 0:22-cv-00005 KMM/BRT

Plaintiff,

V.

**DEFENDANT’S ANSWER TO
PLAINTIFF’S FIRST AMENDED
COMPLAINT AND
COUNTERCLAIM**

Independent School District, No. 273,
A.K.A Edina School District,

Defendant.

For its Answer to the First Amended Complaint (“FAC”) of Michael James Otto (“Otto” or “Plaintiff”), Defendant Independent School District No. 273, a/k/a the Edina Public School District (“EPSD” or “Defendant”) generally denies each and every allegation against it, unless otherwise qualified or admitted, except for jurisdiction of this Court and proper venue, and further specifically answers the individual allegations against it as follows:

1. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 of Plaintiff’s FAC, and therefore denies the same.
2. Defendant admits the allegations in paragraph 2 of Plaintiff’s FAC.
3. Answering paragraph 3, Defendant admits only that this Court has federal question jurisdiction over this case, and that it has supplemental jurisdiction over the state law claims. Defendant denies the balance of the allegations in paragraph 3 and puts Plaintiff to his strict burden of proof.

4. Answering paragraph 4 of the FAC, Defendant admits only that this Court has personal jurisdiction over Defendant because it is organized under the laws of the State of Minnesota and has its principal place of business in this district. Defendant denies the balance of the allegations in paragraph 4 and puts Plaintiff to his strict burden of proof.

5. Defendant admits the allegations in paragraph 5 of the FAC.

6. Defendant denies the allegations in paragraph 6 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof. Defendant objects to Plaintiff's chosen defined terms, and will simply refer to the image in question of a Hornet, which the Edina Public School District has exclusively used as an image of its mascot for over 40 years, as the "Work." Defendant further affirmatively states that the 3 separate page components which Plaintiff identifies as Exhibit A to his FAC are incomplete and they speak for themselves.

7. Paragraph 7 of Plaintiff's FAC calls for a legal conclusion, leaves out critically important and applicable legal aspects of that conclusion, including the rebuttable presumption, and to which no factual answer is necessary. To the extent an answer is required, Defendant denies paragraph 7 and puts Plaintiff to his strict burden of proof.

8. Defendant denies the allegations in paragraph 8 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof. Defendant objects to the definition Plaintiff uses for Exhibit B to the FAC, and will simply refer to it as the "8/5/81 Document." Defendant further affirmatively states that Exhibit B to the FAC speaks for itself.

9. Responding to paragraph 9 of the FAC, Defendant states that the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

10. Defendant denies the allegations in paragraph 10 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

11. Based upon information and belief, Defendant denies the allegations in the first sentence of paragraph 11 of Plaintiff's FAC. Defendant denies the second sentence of paragraph 11.

12. Defendant denies the allegations in paragraph 12 of Plaintiff's FAC.

13. Defendant denies the allegations in paragraph 13 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

14. Defendant denies the allegations in paragraph 14 of Plaintiff's FAC.

15. Defendant denies the allegations in paragraph 15 of Plaintiff's FAC and affirmatively states that the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

16. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 of Plaintiff's FAC.

17. Defendant denies the allegations in paragraph 17 of Plaintiff's FAC, puts Plaintiff to his strict burden of proof and affirmatively states the 8/5/81 Document, Exhibit B to the FAC, speaks for itself.

18. Answering paragraph 18 of the FAC, Defendant admits only that Otto has contacted EPSD since the 2019-2020 school year.

19. Answering paragraph 19 of Plaintiff's FAC, Defendant admits only that it received the letter dated March 4, 2021, indicating it was from Tye Biasco of the Patterson Thuente Pedersen law firm, purporting to terminate a copyright grant, as represented in

Exhibit C of Plaintiff's FAC. Defendant affirmatively states that the documents reflected as Exhibits C and B to the FAC speak for themselves. Defendant denies the balance of the allegations in paragraph 19 and puts Plaintiff to his strict burden of proof.

20. Defendant denies the allegations in paragraph 20 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

21. Paragraph 21 of the FAC does not assert factual allegations which require a response. To the extent it does, Defendant restates and incorporates by reference its prior answers to the preceding paragraphs in its Answer.

22. Answering paragraph 22 of the FAC, Defendant admits only that Otto submitted an application to the U.S. Copyright Office, identifying the title of the Work as "Edina High School Hornet Logo." Defendant affirmatively states that the balance of paragraph 22 states legal conclusions to which no answer is required, and further denies any remaining factual allegations contained therein and puts Plaintiff to his strict burden of proof.

23. Defendant denies the allegations in paragraph 23 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

24. Answering paragraph 24 of Plaintiff's FAC, Defendant admits only that the portion of Exhibit A attached to Plaintiff's FAC which purports to be a portion of a Certificate of Copyright Registration with the indicated registration number VA 109-783, speaks for itself. Defendant denies any remaining allegations in paragraph 24, to the extent there are any.

25. Defendant denies the allegations in paragraph 25 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

26. Defendant denies the allegations in paragraph 26 of Plaintiff's FAC and puts Plaintiff to his strict burden of proof.

27. In response to FAC paragraph 27, Defendant objects to the vague phrases "As a result of the actions alleged above" and "its subsidiaries, officers, agents, employees, assigns, and all other persons acting in concert with them," as it is unable to understand the factual assertions in this paragraph, and therefore is without sufficient information to either admit or deny, and therefore denies the allegations in this paragraph and puts Plaintiff to his strict burden of proof.

28. Paragraph 28 of Plaintiff's FAC states legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies any factual allegations which are not legal conclusions.

29. Paragraph 29 of Plaintiff's FAC appears to make speculative allegations of acts that may or may not take place in the future, and further states legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies any factual allegations which are not speculation about future acts or legal conclusions applied to such potential future acts and puts Plaintiff to his strict burden of proof.

30. Defendant denies paragraph 30 of Plaintiff's FAC, and affirmatively states that *any* prevailing party, including Defendant EPSD, may recover their costs and reasonable attorneys' fees, as determined in the discretion of the Court.

31. Paragraph 31 of the FAC does not assert factual allegations which require a response. To the extent it does, Defendant restates and incorporates by reference its prior answers to the preceding paragraphs in its Answer.

32. Answering paragraph 32 of the FAC, Defendant asserts that Plaintiff's allegations are vague, and therefore Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in that paragraph, and therefore denies the same.

33. Defendant denies paragraph 33 of the FAC and puts Plaintiff to his strict burden of proof.

34. Defendant denies paragraph 34 of the FAC and puts Plaintiff to his strict burden of proof.

35. Defendant denies paragraph 35 of the FAC and puts Plaintiff to his strict burden of proof.

36. Paragraph 36 of the FAC states legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies any factual allegations which are not legal conclusions.

37. Paragraph 37 of the FAC appears to make speculative allegations of acts that may or may not take place in the future, and further states legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies any factual allegations which are not speculation about future acts or legal conclusions applied to such potential future acts.

38. Defendant denies paragraph 38 of Plaintiff's FAC, and affirmatively states that *any* prevailing party, including Defendant EPSD, may recover its costs and reasonable attorneys' fees, as determined in the discretion of the Court.

39. Paragraph 39 of the FAC does not assert factual allegations which require a response. To the extent it does, Defendant restates and incorporates by reference its prior answers to the preceding paragraphs in its Answer.

40. Answering paragraph 40 of the FAC, Defendant states only that the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

41. Paragraph 41 of the FAC states a legal conclusion to which no answer is required. Defendant further asserts the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

42. Defendant denies paragraph 42 of the FAC and further asserts the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

43. Defendant denies paragraph 43 of the FAC and further asserts the 8/5/81 Document which is Exhibit B to the FAC speaks for itself.

44. Defendant denies paragraph 44 of the FAC, and puts plaintiff to his strict burden of proof.

AFFIRMATIVE DEFENSES

Defendant EPSD asserts the following affirmative defenses to Plaintiff's FAC:

1. Plaintiff's FAC fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred in whole or in part by the statute of limitations and laches.

3. Plaintiff's claims are barred in whole or in part by license.
4. Plaintiff's claims are barred in whole or in part by accord and satisfaction.
5. Plaintiff's claims are barred in whole or in part by payment.
6. Plaintiff's claims are barred by the doctrines of waiver and estoppel.
7. Plaintiff's claims are barred by the doctrines of fraud and unclean hands.
8. Plaintiff lacks standing to bring these claims as Plaintiff is not the copyright holder in the allegedly infringed Work.
9. Based upon information and belief, Plaintiff did not properly or timely register the allegedly infringed Work pursuant to 17 USC §412, and is therefore not entitled to recover statutory damages, enhanced statutory damages or attorneys' fees.

DEFENDANT EPSD's COUNTERCLAIM
AGAINST PLAINTIFF

For its counterclaim against Plaintiff, Michael J. Otto ("Otto"), Defendant Independent School District 273, a/k/a the Edina Public School District ("EPSD") states and alleges as follows:

THE PARTIES

1. Defendant/Counterclaimant EPSD is a local government entity, operating as a publicly funded school district organized under the laws of the State of Minnesota, with its principal place of business at 5701 Normandale Road, Edina Minnesota 55424.

2. Within its school district (the "District") EPSD operates the Edina High School; two middle schools, Valley View Middle School and Southview Middle School; and 6 grade schools, Concord Elementary, Cornelia Elementary, Countryside Elementary, Creek Valley Elementary, Highlands Elementary and Normandale Elementary. EPDS also

operates other programs such as Early Learning Center affiliate school programs for children, including Edina Community Education.

3. Overall, EPSD currently has 8,700 EC-12th grade students enrolled in the District's schools for the 2021-2022 school year. Since the 1981-82 academic school year, over 22,372 students have matriculated through the District's educational programs [or] graduated from Edina High School, all of whom call the Edina Hornet, and the Work in question, their school mascot and a long-term, historically identifying image of the Edina Public School District.

4. Upon information and belief, Plaintiff/Counterclaim-Defendant Otto is an individual residing at [REDACTED], Grove City, Minnesota 56243.

5. Otto was educated in, and graduated from, the Defendant Edina Public School District.

JURISDICTION AND VENUE

6. These counterclaims are for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and the United States Copyright Act 17 U.S.C §§ 101 *et. seq.* as well as consideration of the trademark laws of the United States 15 U.S.C. §§1051, *et. seq.* and common law. This Court has subject matter jurisdiction over the counterclaims pursuant to 28 U.S.C. § 1338(a), or in the alternative, pursuant to 28 U.S.C. § 1331 (federal subject matter jurisdiction) and 15 U.S.C. §1121. This Court further has subject matter jurisdiction over any supplemental state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction) because they are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c) and §1400(a).

FACTUAL BACKGROUND

8. Otto graduated from Defendant EPSD's Edina East High School in 1974. When he graduated from Edina East, that high school's mascot was the hornet.

9. At the time Otto graduated in 1974, Defendant EPSD also operated a second high school, Edina West, who's school mascot was the cougar.

10. In or about 1980, as part of Defendant EPSD's decision to re-combine its two high schools, Edina West and Edina East, it was determined that the newly combined school would continue the use the hornet as its official school mascot. However, EPSD determined it would use a newly designed hornet, rather than the existing one Edina East had used for many previous years.

11. At or around that same time, Defendant EPSD also determined it would hold a contest for its District's students ("Contest"), to enter with their drawings, the winning design of which would be selected to represent the EPSD's newly re-unified high school, Edina High School.

12. The Contest was operated by EPSD's so-called Booster Club, who's mission and activities were to support EPSD's athletic programs and other school-spirit building pursuits.

13. Even though he had graduated some six (6) years before EPSD's hornet drawing Contest, upon information and belief, Otto entered that Contest in 1980.

14. 168 people entered that Contest, and submitted drawings to be selected as the next, official Edina High School Hornet Mascot (“EHS Hornet Mascot”).

15. The Contest had rules.

16. No one who entered the Contest was offered to be paid, or was paid, any remuneration, compensation, value or other financial reward to enter the contest.

17. The winner of the Contest was not offered to be paid, or was paid, any remuneration, compensation, value or other financial reward.

18. No rule of the Contest offered or promised \$500,0000, or \$200,000, or even \$10,000 to the person who was to be selected as the winner of that Contest.

19. No rule in the Contest offered or indicated expressly or otherwise that EPSD would ever pay remuneration, compensation, value or other financial reward to any entrant in the Contest, even the winner, even 40 years after the Contest.

20. The winner of the Contest agreed to allow EPSD to use the winning entry as its new Hornet Mascot, for Defendant EPSD’s newly re-unified high school and other school district activities.

21. Upon information and belief, the winner of the Contest agreed to assign the rights to the winning entry to EPSD, as is common practice in such user-created content contests.

22. Based upon information and belief, the Contest was a work for hire circumstance which caused EPSD to be the author of the Work for copyright ownership purposes, which also allows EPSD the exclusive rights of an owner under the Copyright Act, 17 U.S.C. § 101.

23. No rule of the Contest allowed the contest winner to dictate how Defendant EPSD could or should use the EHS Hornet Mascot.

24. Otto's drawing was selected as the winning entrant from amongst the 168 entries in the Contest (the "Work").

25. For approximately the next 41 years after the Contest winner was selected, Defendant EPSD has used the Work as its official EHS Hornet Mascot.

26. Since 1981 no other person or entity has used the Work as its school mascot.

27. Since 1981 no person or entity has used the Work to identify anything other than EPSD's schools or athletic teams.

28. Since 1981 only EPSD has used the Work to identify EPSD's schools, its student body community or athletic teams within the District.

THE AUGUST 5, 1981 DOCUMENT

29. On or about August 5, 1981, Otto drafted or had drafted a document (the "8/5/81 Document"), a true and correct copy of which is reflected as Exhibit B to Plaintiff's First Amended Complaint ("FAC"). The 8/5/81 Document reflected as Exhibit B to Plaintiff's FAC is incorporated herein by reference.

30. Otto presented the 8/5/81 Document to Defendant EPSD on or about August 5, 1981.

31. Otto's intent in presenting the 8/5/81 Document to EPSD was to grant permission to EPSD to use the Work.

32. Otto did in fact grant EPSD rights to use the Work.

33. The 8/5/81 Document was and is a written agreement.

34. The 8/5/81 Document expressly stated “the hornet is copyrighted” and granted copyright rights to EPSD.

35. The 8/5/81 Document granted exclusive rights to EPSD to use the Work.

36. Otto has never granted any other school district, entity or person rights to use the Work.

37. Otto expressly granted EPSD the right to reproductive uses of the Work, meaning that the Work could be reproduced in copies.

38. Otto granted inferred rights for those reproduced copies of the Work to be displayed publicly on the articles they were reproduced upon.

39. Otto granted inferred rights for those reproduced copies of the Work to be distributed.

40. The 8/5/81 Document did not have a stated durational term within which the granted rights would terminate.

41. The 8/5/81 Document did not have a stated territorial scope within which the granted rights were limited.

42. The 8/5/81 Document stated the “official Edina hornet logo as designed by M.J. Otto Creations.”

43. The statement referenced in the immediately above paragraph means the Work was designed by “M.J. Otto Creations.”

44. The 8/5/81 Document expressly stated “Please inform your manufacturers that the logo is copyrighted and intended for select purposes only.”

45. The statement referenced in the paragraph immediately above indicates that Otto understood and anticipated EPSD would be engaging manufacturers to make reproductions of the Work.

46. The phrase “your manufacturers” in the 8/5/81 Document meant, and means, EPSD’s manufactures or vendors.

47. At the time Otto drafted and presented the 8/5/81 Document to EPSD, he knew and understood EPSD did not and would not, itself, manufacture reproductions of the Work.

48. The 8/5/81 Document states “this logo is not intended for private or public use.”

49. The statement referenced in the paragraph immediately above, as expressly stated, means the Work was not intended for private or public use.

50. There is no other use other than either private or public use.

51. The statement referenced in paragraph 48 above is inconsistent with the balance of the language in the 8/5/81 Document.

52. The 8/5/81 Document does not seek, request or mandate any financial payment for EPSD’s use of the Work.

53. The 8/5/81 Document grants EPSD royalty-free use of the Work.

54. The 8/5/81 Document expressly states “As compensation for such reproductive use, it is agreed that the creator shall receive one sample of whatever product the hornet logo is reproduced on for his own personal use.”

55. The term “the creator” is not defined in the 8/5/81 Document.

56. Otto would not and could not personally use a sample of the Work reproduced on stadium turf, gymnasium floors, terrazzo flooring in an EPSD building, on EPSD scoreboards, or on signage of EPSD buildings.

57. Otto would not and could not personally use a sample of the Work reproduced on girls' or women's clothing or athletic uniforms.

58. Otto would not and could not personally use a sample of the Work reproduced on boys' or men's clothing or athletic uniforms or gear, other than the size he would fit into.

59. The 8/5/81 Document is signed on behalf of M. J. Otto Creations.

COPYRIGHT REGISTRATION

60. Otto admits the date of the first publication of the Work was July 1, 1981.

61. Otto decided to register the Work with the United States Copyright Office in 1981, and completed his submission of the required registration materials as of December 23, 1981.

62. Otto personally signed the copyright registration application on December 20, 1981, and Otto personally hand wrote that date on his certification and further personally certified "the statements made by me in this application are correct to the best of my knowledge."

63. Otto failed to provide this Court with the second page of his copyright registration application when he initially filed his Complaint with this Court on January 3, 2022, when he later filed the Exhibits to his Complaint on January 4, 2022, and even 3

months later when he subsequently filed his First Amended Complaint and the FAC's Exhibits with this Court on April 13, 2022.

64. However, Otto asserted in both his Complaint and FAC filed with this Court that “[a] true and correct copy of U.S. Copyright Registration No. VA 109-783 is attached as Exhibit A[.]”, when in fact a true and correct copy of the entire registration application was *not* actually attached, as it was missing the second page.

65. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of the second page of Otto's copyright registration application for the Work in question in this litigation.

66. The second page of Otto's copyright registration application, signed, dated and certified by Otto reflects the fact that his application was not submitted until December 20, 1981.

67. Otto's certification and the information provided in the registration application were accurate and truthful.

68. EPSD began manufacturing, and allowing its vendors or manufacturers to manufacture reproductions of the Work, prior to December 20, 1981.

69. EPSD began displaying publicly and distributing the reproduced copies of the Work prior to December 20, 1981.

70. The title Otto chose for the Work and wrote himself on the copyright registration application is “Edina High School Hornet Logo.”

EPSD'S USE OF THE WORK

71. For over 40 years since 1981, Defendant EPSD has used the Work exclusively as its official EHS Hornet Mascot.

72. EPSD has made use of the Work at Kuhlman Field, on the artificial turf, on the scoreboard, and elsewhere within that stadium, where EPSD has many of their varsity and other EPSD-related teams play various sports since 1981.

73. Otto has attended one or more of the games indicated in the paragraph immediately above since 1981, including games taking place prior to 2019, and he did not voice any opposition to EPSD regarding such uses at those times.

74. The Edina High School varsity hockey team's home ice arena is Braemar Arena. Therefore, EPSD's varsity and other teams play and have played EPSD-related hockey games there as their "home ice" since at least 1981.

75. Otto has attended or known about one or more EPSD hockey games at the Braemar Arena since 1981, including games prior to 2019, and he did not voice any opposition of EPSD regarding such uses at those times.

76. EPSD has made use of the Work on its Edina High School basketball court and other gymnasium floors within the District, on the scoreboards and on other signage, and elsewhere within those gymnasiums, where EPSD has many of their varsity and other EPSD-related teams play various sports since 1981.

77. Otto has attended one or more of the games indicated in the paragraph immediately above since 1981, including games taking place prior to 2019, and he did not voice any opposition to EPSD regarding such uses at those times.

78. Although Otto has challenged EPSD as to its uses of the Work from time to time going back at least until 2013, Otto did not initiate any lawsuit prior to this one, or otherwise attempt to prohibit EPSD from using the Work prior to 2019.

79. Based upon information and belief, Otto was advised prior to 2019 that EPSD believed the Work belonged to or was owned by EPSD.

80. This lawsuit is the first time Otto has challenged EPSD related to his claim of ownership or infringement of the Work.

THE MARCH 4, 2021 FAILED TERMINATION ATTEMPT

81. On or about August 27, 2020, Otto began attempting to negotiate or renegotiate a license with EPSD for the use of the Work. The parties did not reach any agreement after months of effort toward Otto's attempts to negotiate a new grant agreement.

82. Thereafter, on or about March 4, 2021, Otto served, or authorized his legal counsel to serve, EPSD a letter dated March 4, 2021 (the "3/4/21 Letter"). A true and correct copy of that letter is attached to Otto's FAC as Exhibit C. That Exhibit C copy of the 3/4/21 Letter is incorporated herein by reference.

83. The 3/4/21 Letter admitted that "for the past several years" Otto had "contacted [an EPSD representative] numerous times" about what Otto perceived as "improper use" of the Work.

84. The 3/4/21 Letter also confirms Otto's claim that EPSD "chose to ignore [what Otto perceived to be EPSD's] obligations and continued to do so through [February 2021]."

85. The 3/4/21 Letter confirmed Otto granted (or maintained his prior grant to) EPSD the right to use the Work through the end of the 2020-21 EPSD school year, but did not specify a specific date, and it further confirmed Otto would “allow [EPSD] to keep the [Work] in the flooring in the foyer of the high school, if it so chooses.”

86. The 3/4/21 Letter also acknowledged Otto knew EPSD used vendors to reproduce the Work for EPSD’s use.

87. The 3/4/21 Letter purported to “terminat[e] the August 4 (sic), 1981 license of U.S. Copyright Registration No. VA000109783 for the Edina High School hornet [the Work] to [EPSD] effective at the end of the 2021 academic year.”

88. The 3/4/21 letter has not been filed or recorded with the U.S. Copyright Office as of the date of this Counterclaim.

89. Pursuant to 17 U.S.C § 203 and 37 CFR § 201.10, Otto did not, and is now time barred and therefore could not, terminate his intended copyright grant to EPSD.

DISPUTED OWNERSHIP OF THE WORK AND ITS USE

90. Based upon information and belief, EPSD is the owner of the Work.

91. Based upon information and belief, Otto is not the owner of the Work.

92. EPSD has not infringed any exclusive right of the copyright owner of the Work.

93. Otto did not object to EPSD’s use of the Work between 1981 and 2018.

94. Otto has not lost any revenue from EPSD’s use of the Work.

95. EPSD’s use of the Work does not dilute any marketplace or income Otto would have otherwise earned from the Work.

Count I – Declaratory Judgment of Copyright Ownership

96. Defendant EPSD restates and incorporates the preceding paragraphs as though fully set forth herein.

97. By reason of the existence of an actual and justiciable controversy, namely, that Otto has filed a lawsuit against Defendant EPSD, and the foregoing facts, Defendant EPSD is entitled to a declaratory judgment that it is the owner of the Work, or that Otto is not the owner of the Work.

RELIEF REQUESTED

WHEREFORE, Defendant/Counterclaimant EPSD respectfully request that this Court grant Defendant/Counterclaimant EPSD the following relief against Otto on its counterclaim:

1. That Plaintiff take nothing by his First Amended Complaint in this matter;
2. That judgment be rendered in favor of Defendant, and against Plaintiff, on all causes of action alleged in Plaintiff's First Amended Complaint;
3. Finding that Otto has not suffered actual damages, and is not entitled to statutory or enhanced damages pursuant to 17 U.S.C. § 504;
4. Entering a declaratory judgment in favor of Defendant/Counterclaimant, and against Otto, finding EPSD owns the Work;
5. Entering a declaratory judgment in favor of Defendant/Counterclaimant, and against Otto, finding that he is not the owner of the Work;
6. Finding and awarding Defendant/Counterclaimant EPSD its costs, disbursements and reasonable attorneys' fees incurred, pursuant to 17 U.S.C § 505; and

7. Any other relief the Court deems appropriate and just.

Respectfully submitted,

Dated: May 4, 2022

THE SPENCE LAW FIRM

s/Russell M. Spence, Jr.

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