

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

MICHAEL JAMES OTTO,

Plaintiff,

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

v.

INDEPENDENT SCHOOL DISTRICT NO. 273,
a.k.a. EDINA SCHOOL DISTRICT,

**PLAINTIFF’S ANSWER TO
DEFENDANT’S COUNTERCLAIM**

Defendant.

Plaintiff and Counterclaim Defendant Michael James Otto (“Otto” or “Plaintiff”) hereby responds to the Counterclaim by Defendant and Counterclaimant Independent School District, No. 273, a/k/a Edina Public School District (“ISD 273” or “Defendant”), as follows. Plaintiff denies each allegation in the Counterclaim unless otherwise specifically admitted.

1. Plaintiff admits the allegations of paragraph 1 of the Counterclaim.
2. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 2 of the Counterclaim, and therefore denies the same.
3. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 3 of the Counterclaim, and therefore denies the same.
4. Plaintiff admits the allegations contained in paragraph 4 of the Counterclaim.
5. Plaintiff admits the allegations contained in paragraph 5 of the Counterclaim.
6. Plaintiff denies the allegations of paragraph 6 in their entirety. Plaintiff also specifically denies that there is any justiciable case or controversy set forth in the Counterclaim giving rise to subject matter jurisdiction under the Declaratory Judgment Act, Copyright Act, Lanham Act, or any other statute or common law theory.

7. Plaintiff admits the allegations contained in paragraph 7 of the Counterclaim.

8. Plaintiff admits that he graduated from Edina East High School in 1974, and that when he graduated from Edina East, the mascot of that high school was a hornet, different from the copyrighted Hornet Logo (“Hornet Logo”) at issue in this matter. Any remaining allegations of paragraph 8 of the Counterclaim are denied.

9. Plaintiff admits the allegations of paragraph 9 of the Counterclaim.

10. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 10 of the Counterclaim.

11. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 11 of the Counterclaim.

12. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 12 of the Counterclaim.

13. Plaintiff admits the allegations of paragraph 13 of the Counterclaim.

14. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 14 of the Counterclaim.

15. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 15 of the Counterclaim.

16. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 16 of the Counterclaim.

17. Otto admits only that he did not receive any monetary compensation in return for his submission of his drawing of the Hornet Logo. Any remaining allegations of paragraph 17 are denied.

18. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 18 of the Counterclaim.

19. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 19 of the Counterclaim.

20. Plaintiff admits only that he offered to Defendant a limited, non-exclusive license to reproduce the Hornet Logo, based on the terms set forth in that document (*see* Doc. 6 at 6). Any remaining allegations of paragraph 20 of the Counterclaim are denied.

21. Plaintiff denies the allegations contained in paragraph 21 of the Counterclaim, and holds Defendant to its strictest proof thereof.

22. Plaintiff denies the allegations contained in paragraph 22 of the Counterclaim, and holds Defendant to its strictest proof thereof.

23. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 23 of the Counterclaim.

24. Plaintiff admits that his Hornet Logo drawing was selected as the winner of a contest he entered. Any remaining allegations of paragraph 24 are denied.

25. In response to paragraph 25 of the Counterclaim, Plaintiff admits only that since 1981, Defendant had been licensed by Plaintiff to make reproductions of and thereunder to use the Hornet Logo, until that license and Defendant's permission to use the Hornet Logo was terminated in March 2021 (*see* Doc. 6 at 8). Any remaining allegations of paragraph 25 of the Counterclaim are denied.

26. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 26 of the Counterclaim.

27. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 27 of the Counterclaim.

28. Plaintiff denies the allegations of paragraph 28 of the Counterclaim.

29. Plaintiff admits the allegations contained in paragraph 29 of the Counterclaim, except for the incorporation by reference statement as to the identified “8/5/81 Document,” as the document speaks for itself and Defendant makes no allegation in paragraph 29 with regard to the statements contained in the 8/5/81 Document, so no response is required to this portion of paragraph 29.

30. Plaintiff is without information or knowledge as to the precise date the 8/5/81 Document was presented to Defendant, and therefore denies the allegations of paragraph 30.

31. Plaintiff admits only that Plaintiff intended to grant a limited, non-exclusive license of the right to reproduce the copyrighted Hornet Logo, and the 8/5/81 Document speaks for itself. Any remaining allegations of paragraph 31 are denied.

32. Plaintiff admits only that he granted Defendant a nonexclusive, limited license to make reproductions of the Hornet Logo, as set forth in the 8/5/81 Document. Any remaining allegations of paragraph 32 are denied.

33. The allegations of paragraph 33 are legal conclusions and therefore require no response.

34. Responding to paragraph 34 of the Counterclaim, Plaintiff admits only that the 8/5/81 Document includes the language “the hornet is copyrighted” and that it granted a limited, non-exclusive right to reproduce the Hornet Logo. Any other allegations of paragraph 34 are denied.

35. Plaintiff denies the allegations of paragraph 35 of the Counterclaim.

36. Plaintiff denies the allegations contained in paragraph 36 of the Counterclaim.

37. Responding to paragraph 37 of the Counterclaim, Plaintiff admits only that the 8/5/81 Document granted a limited, non-exclusive right to reproduce the Hornet Logo. Any remaining allegations of paragraph 37 are denied.

38. Responding to paragraph 38 of the Counterclaim, Plaintiff denies the allegations.

39. Responding to paragraph 39 of the Counterclaim, Plaintiff denies the allegation.

40. Responding to paragraph 40 of the Counterclaim, Plaintiff admits the allegation.

41. Responding to paragraph 41 of the Counterclaim, Plaintiff admits the allegation.

42. Responding to paragraph 42 of the Counterclaim, Plaintiff admits the allegation.

43. Responding to paragraph 43 of the Counterclaim, Plaintiff denies the allegation.

44. Responding to paragraph 44 of the Counterclaim, Plaintiff admits the allegation.

45. Responding to paragraph 45 of the Counterclaim, Plaintiff denies the allegation.

46. Responding to paragraph 46 of the Counterclaim, Plaintiff denies the allegation.

47. Plaintiff denies the allegations contained in paragraph 47 of the Counterclaim.

48. Responding to paragraph 48 of the Counterclaim, Plaintiff admits only that this language appears in the document, in the context of other language. Any remaining allegations of paragraph 48 are denied.

49. Responding to paragraph 49 of the Counterclaim, Plaintiff denies the allegation.

50. Paragraph 50 of the Counterclaim is vague and ambiguous, and therefore Plaintiff denies the allegations.

51. Paragraph 51 of the Counterclaim is vague and ambiguous and calls for a legal conclusion, and therefore Plaintiff denies the same.

52. Plaintiff admits only that the 8/5/81 document states that as compensation for the limited license, Plaintiff was to receive samples of whatever product on which the Hornet Logo was reproduced. Any remaining allegations of paragraph 52 are denied.

53. Plaintiff denies the allegations contained in paragraph 53 of the Counterclaim.

54. Plaintiff admits the allegations contained in paragraph 54 of the Counterclaim.

55. Paragraph 55 of the Counterclaim calls for a legal conclusion and, therefore, no response is required and the allegations are denied.

56. Plaintiff denies the allegations contained in paragraph 56 of the Counterclaim.

57. Plaintiff denies the allegations contained in paragraph 57 of the Counterclaim.

58. Plaintiff denies the allegations contained in paragraph 58 of the Counterclaim.

59. Responding to paragraph 59 of the Counterclaim, Plaintiff admits that Plaintiff signed the 8/5/81 document on behalf of himself. Any remaining allegations of paragraph 59 of the Counterclaim are denied.

60. Responding to paragraph 60 of the Counterclaim, Plaintiff admits only that U.S. Copyright Registration No. VA 109-783 (“Certificate of Copyright Registration”) lists a date of first publication as July 1, 1981. Any remaining allegations of paragraph 60 are denied.

61. Plaintiff admits only that he filed an application for copyright, that the effective date of registration granted in the Certificate of Copyright Registration is August 17, 1981, and that he signed a certification associated with the registration on December 20, 1981. Any remaining allegations of paragraph 61 are denied.

62. Plaintiff admits the allegations contained in paragraph 62 of the Counterclaim.

63. Responding to paragraph 63 of the Counterclaim, Plaintiff admits that the second page of the copyright registration application was incidentally not included in Plaintiff's filings in January 2022 or in April 2022.

64. Plaintiff admits only that a page associated with his copyright registration was not part of an Exhibit filed with the Court. Any remaining allegations contained in paragraph 64 of the Counterclaim are denied.

65. Plaintiff admits the allegations contained in paragraph 65 of the Counterclaim.

66. Plaintiff denies the allegations of paragraph 66 of the Counterclaim.

67. Plaintiff admits the allegations contained in paragraph 67 of the Counterclaim.

68. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 68 of the Counterclaim.

69. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 69 of the Counterclaim.

70. Plaintiff admits the allegations contained in paragraph 70 of the Counterclaim.

71. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 71 of the Counterclaim.

72. Plaintiff admits the allegations contained in paragraph 72 of the Counterclaim.

73. Plaintiff denies the allegations contained in paragraph 73 of the Counterclaim.

74. Plaintiff lacks information sufficient to form a belief as to the veracity of the allegations of paragraph 74 of the Counterclaim.

75. Paragraph 75 of the Counterclaim is unduly vague and ambiguous in its wording, and therefore Plaintiff denies the allegations.

76. Plaintiff admits the allegations contained in paragraph 76 of the Counterclaim.

77. Plaintiff denies the allegations contained in paragraph 77 of the Counterclaim.

78. Responding to paragraph 78 of the Counterclaim, Plaintiff admits only that he did not initiate a lawsuit against Defendant prior to this case. Any remaining allegations in paragraph 78 of the Counterclaim are denied.

79. Plaintiff denies the allegations contained in paragraph 79 of the Counterclaim.

80. Plaintiff denies the allegations contained in paragraph 80 of the Counterclaim.

81. Plaintiff admits only that on or about August 27, 2020, the parties began negotiating proposed terms of a new license agreement to replace the 8/5/81 Document but no agreement was reached. Any remaining allegations of paragraph 81 are denied.

82. Plaintiff admits the allegations contained in paragraph 82 of the Counterclaim.

83. Responding to paragraph 83 of the Counterclaim, Plaintiff admits only that the 3/4/21 Letter states: “For the past several years Reverend Otto contacted Troy Stein numerous times about improper use of the Hornet Logo as well as EPS’s failure to obtain prior consent to have third parties to use the logo.” Any remaining allegations contained in paragraph 83 of the Counterclaim are denied.

84. Responding to paragraph 84 of the Counterclaim, Plaintiff admits only that the 3/4/21 Letter states: “Unfortunately, Mr. Stein chose to ignore EPS’s obligations and continued to do so through last month.” Any remaining allegations of paragraph 84 are denied.

85. Responding to paragraph 85 of the Counterclaim, Plaintiff admits only that the 3/4/21 Letter states: “Reverend Otto will permit the EPS to use the logo for all remaining athletic events and school activities for the current school year, including graduation and related events. Reverend Otto will also allow the school district to keep the logo in the flooring in the foyer of

the high school, if it so chooses.” Any remaining allegations contained in paragraph 85 of the Counterclaim are denied.

86. Plaintiff denies the allegations contained in paragraph 86 of the Counterclaim.

87. Responding to paragraph 87 of the Counterclaim, Plaintiff admits only that the 3/4/21 Letter states: “Michael Otto is terminating the August 4, 1981 license of U.S. Copyright Registration No. VA000109783 for the Edina High School hornet (“the Hornet Logo”) to Edina Public Schools (“EPS”) effective at the end of the 2020-21 academic year,” and that the letter did in fact terminate the limited non-exclusive license that had been extended by the 8/5/81 Document. Any remaining allegations in paragraph 87 of the Counterclaim are denied.

88. Plaintiff admits the allegations contained in paragraph 88 of the Counterclaim.

89. The allegations of paragraph 89 are denied.

90. The allegations of paragraph 90 are denied.

91. The allegations of paragraph 91 are denied.

92. The allegations of paragraph 90 are denied.

93. Plaintiff denies the allegations contained in paragraph 93 of the Counterclaim.

94. The allegations of paragraph 94 are denied.

95. The allegations of paragraph 95 are denied.

COUNT I
DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP

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

97. The allegations of paragraph 97 are denied.

AFFIRMATIVE DEFENSES

98. Defendant’s Counterclaim fails to state a claim upon which relief may be granted.

99. Defendant has failed to plead a sound theory of actual ownership and therefore cannot overcome the rebuttable presumption of ownership created by the Hornet Logo's certificate of copyright ownership.

100. Defendant has not pled that a document sufficient to satisfy the requirements of 17 U.S.C. § 204(a) exists, and cannot establish that it is the owner of the Hornet Logo copyright as a matter of law.

101. Defendant has not pled the elements necessary for ownership of the Hornet Logo as a work for hire pursuant to 17 U.S.C. § 101 as a matter of law, at least because Defendant has not pled that a written instrument exists showing a work made for hire.

102. Defendant's counterclaim is barred by the doctrines of laches and equitable estoppel.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

RELIEF REQUESTED

Plaintiff asks that Defendant take nothing by its Counterclaim, that the Counterclaim be dismissed with prejudice, that Michael Otto be deemed the rightful owner of all exclusive rights in and to the Hornet Logo copyright, and that costs, disbursements, and attorneys' fees be awarded to Plaintiff as a prevailing party on this Counterclaim pursuant to 17 U.S.C. § 505.

Respectfully Submitted,

Dated: October 4, 2022

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