

X Greg Emmons & Assoc.
215-348-9817

4-20-92.

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Dear Greg, (~~Hi~~ Hi Kathy!)

Hope the enclosed helps. → Have it on computer disk if you need it.

- Answer to Complaint: put ?'s when did not know how to answer.

- New Matter: only had time to do an outline.

* NOTE: a sponsee of mine gave me phone # & an intro. to Betty K. (Jimmy K., "founder" of N.A., wife). I'm told she would be very interested in submitting affidavit as original BT author like the others we have. Let me know if you're interested & I'll call her. good

Love,
J
©

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ANSWER TO COMPLAINT

1. Admitted.
2. Partially admitted, partially denied. Admitted, the Fellowship is an organization composed of local Narcotics Anonymous groups throughout the world. Denied, WSO is the only service and support arm.
3. Partially admitted, partially denied. Admitted, WSO is a charitable trust. Denied, World Service Conference is the fellowship's governing body. Admitted, WSO currently publishes and sells over 20 works of literature.
4. Partially admitted, partially denied. Admitted, received no written permission. Denied, that as an co-author/owner need any permission.
5. Partially admitted, partially denied. Admitted, Basic Text has been revised on five occasions. Denied, six United States Copyright registrations legally issued; legality at issue.
6. Denied, sale of publications by WSO provides "the Fellowship" with 95% of the resources required to fund Fellowship's worldwide activities. It is further denied that control by WSO assures consistency of message.
7. Denied. On the contrary, see New Matter.
8. Admitted.

COUNT I: COPYRIGHT INFRINGEMENT

Jurisdiction and Venue

9. Admitted.
10. Denied.

Statement of the Action

11. Denied. On the contrary, see New Matter.
12. Denied. On the contrary, see New Matter.
13. Neither admitted or denied; legality of copyright registrations is in question.
14. Neither admitted or denied; legality of copyright registrations is in question.
15. Denied. On the contrary, see New Matter.
16. ?
17. ?
18. Denied.

19. Denied. Defendant needs no permission as an co-author/owner of the copyright.

20. Denied.

21. Denied. No harm has been shown.

COUNT II: FEDERAL TRADEMARK AND SERVICE MARK INFRINGEMENT

Parties and Background

22. Defendant repeats, and incorporates herein, the averments of paragraphs 1-21 of this answer.

Jurisdiction and Venue

23. Admitted.

Statement of Action

24. ?

25. ?

26. Denied. WSO was not formed in 1953.

27. Denied, as in 26 above. It is further denied exclusive to and with WSO.

28. Denied. On the contrary, see new matter.

29. ?

30. Denied, that defendant was in disregard of the Fellowship's rights or in need of authorization or permission from the WSO.

31. Denied.

32. Denied. No harm has been shown.

33. Denied. No harm has been shown.

COUNT III: COMMON LAW UNFAIR COMPETITION

34. Defendant repeats and incorporates herein the averments of paragraphs 1-21 and 24-33 of this answer.

Jurisdiction

35. Admitted.

Statement of the Action

36. Denied.

37. Denied. WSO, Inc. and World Service Conference have no such designation and never have. ???????????????

38. Denied. On the contrary, see new matter.

39. Denied. No harm has been shown.

40. Denied. No injury or harm has been done. Plaintiff entitled to no compensation.

COUNT IV: LANHAM ACT, SECTION 43(a)

Parties and Background

41. Defendant repeats and incorporated herein the averments of paragraphs 1-21, 23-33, and 36-40 of this answer.

Jurisdiction

42. Admitted

Statement of the Action

43. ?

44. Denied. No harm has been shown. ???????????????

45. Denied. No harm has been shown.

COUNT V: COMMON LAW TRADEMARK AND SERVICE MARK INFRINGEMENT

Parties and Background

46. Defendant repeats and incorporates herein the averments of paragraphs 1-21, 24-33, 36-40 and 43-45 of this answer.

47. Admitted. ?????????????????

Statement of the Action

48. ?

49. ?

50. Neither admitted nor denied. No proof of expenditures has been shown.

51. Denied. On the contrary, see new matter.

52. Denied, that defendant was in disregard of the Fellowship's rights or in need of authorization or permission from the WSO.

53. Denied.

54. Denied. No harm has been shown.

55. Denied. No harm has been shown and plaintiff is entitled to no compensation.

COUNT VI: DILUTION

Parties and Background

56. Defendant repeats and incorporates herein, the averments of paragraphs 1-21, 24-33, 36-40, 43-45 and 48-55 of this answer.

Jurisdiction and Venue

57. Admitted. ??????????

Statement of the Action

58. Denied.

59. Denied. No harm has been shown.

60. Denied. No harm has been shown.

NEW MATTER

- I. WSO's copyright improper/invalid
 - A. Improper registrations
 - 1. WSO's own attempts fix them (through amplifications) shows this
 - 2. Basic Text was never a work for hire
 - a. no agency theory at play; author's affidavits; supporting documentation and letters from WLC/WSC
 - B. No transfer of ownership from/by authors
 - 1. No written K or documentation; no supporting writing
 - 2. Author's intentions as expressed by actions in 1983, since that time, and in their affidavits
- II. Dave did not infringe any copyrights
 - A. NA copyright not vigorously enforced by anyone
 - 1. conventions use it, regions, Hazledon catalog
 - B. Copyrights not registered properly
 - C. Dave's use was proper ("fair")
 - 1. non-commercial, nonprofit making, reasonable, motivation and intent proper (to help still-suffering addict), no negative competitive effect on WSO
 - 2. Dave had his home group's support
- III. WSO's complaint "malicious"
 - A. Personal, political attacks
 - B. Selective enforcement of (improper) copyrights
 - C. Tradition violation to break a group member's anonymity
 - D. Tradition violation; outside issue
 - E. Tradition violation; public controversy
 - F. WSO's actions not allowed by their own bylaws
 - G. Comments, letters about Dave and to Dave

General Info and Some Useful Language

I. "Work for Hire"

- A. Similar to agency theory; person(s) under direct control and dominion of an employer, a commissioned work
- B. Need an "express contract for hire"
 - 1. are the author(s) intentions to transfer or assign the copyright in a writing
 - a. joint works = authors are "co-owners"
 - b. collective works = every author must join in transfer or assignment
- C. Pl.s prima facie case to prove work is "for hire":
 - 1. pl. must show is proprietor of valid copyright
 - 2. work must be w/in scope of what is statutorily copyrightable
 - 3. pl. must comply w/ statutory formalities; esp. publication and notice
 - 4. the work must have been created at employer's insistence, expense, time and facilities

II. "Fair Use Doctrine"

- A. "Fair Use" = privilege in others than the owner to use copyrighted material in a rsbl. manner w/out consent
 - 1. when use is fair, there is no infring. of c/w
- B. Important considerations:
 - 1. Commercial v. Nonprofit Educational use
 - a. commercial or profit-making use leads to a presumption of unfair use
 - b. non-commercial, nonprofit use is presumptively fair
 - 2. Amount and importance of material used
 - 3. Nature of works involved, and purpose or object of use of c/w work
 - 4. Competitive effect of use objected to; effect on potential market or demand for c/w work
 - 5. Intent, motivation, or state of mind of the user

III. Challenging Copyright Registration

- A. Affirmative Defenses:
 - 1. Defendant, on information and belief, and pursuant to Title 17, United States Code, states that said United States Copyright is not and has not been infringed by Defendant.
 - 2. Defendant, on information and belief, and pursuant to Title 17, United States Code, states that said United States Copyright Registration is invalid.
- B. Transfer of Ownership Invalid:
 - 1. Transfer of copyright ownership invalid because there exists no instrument of conveyance, or note or memo, of the transfer, in writing and signed by the owner of the rights conveyed, or by such owners duly authorized agent.
 - 2. Authors and owners of the copyright did not release and quitclaim all rights, title, interest, and ownership in and of the above-mentioned work, including all copyrights or rights to copyright therein throughout the world, with the intention to vest all such rights

1. Counterclaims of Defendant
2. Plaintiff has filed the present action and asserted that Defendant has infringed United States Copyright Registration No. ____ as enumerated in the Complaint filed herein; Plaintiff has asserted and now asserts such copyrights against Defendant and Defendant denies the validity of and the alleged infringement of same, wherefore an actual controversy exists between the Defendant and the Plaintiff regarding which is cognizable by this court under the [Federal Declaratory Judgement Act, Title 28, United States Code, Section 2201-- ???].
3. Defendant further alleges that such copyright is invalid and void and has not and never has been infringed by Defendant and that this action cannot be maintained by Plaintiff against Defendant under such copyright for the reasons set forth in Paragraphs [] above which are incorporated in this counterclaim by reference as fully and completely as though they were set forth herein.
4. Wherefore, Defendant prays as follows:
- a. That the Complaint herein be dismissed with costs and reasonable attorney fees awarded Defendant;
 - b. That this Court declare and decree that United States Copyright Registration No. ____ is invalid and unenforceable and that Defendant has not at any time or place infringed same, of Defendant to continue their businesses without any further action, threat or interference of any kind of nature whatsoever by Plaintiff or anyone claiming through or under Plaintiff on account of said trademark or any alleged infringement thereof;
 - c. That all costs and expenses of this action including reasonable attorney fees be taxes in favor of Defendant and against Plaintiff and that Defendant shall have judgement and execution thereof against plaintiff; and
 - d. For such other and further relief as this court may deem just and proper.

~~PAUL SALVATORE~~

Dave

Answer

to

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