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JUST PRINT IT, INC.

Plaintiff,

v.

3DR HOLDINGS, LLC

Defendant.

PHILADELPHIA COUNTY
MUNICIPAL COURT

SC-17-02-21-5340

**DEFENDANT’S BRIEF IN OPPOSITION TO PLAINTIFF’S DEFAMATION
CLAIM**

Defendant 3DR Holdings, LLC (“3DR”), by and through its attorney respectfully submits the following Brief in opposition to the defamation claim of Plaintiff, Just Print It, Inc.’s, (“Just Print”).

I. INTRODUCTION

3DR is a technology media company with various holdings including 3dprint.com, an online 3D printing news source. (<http://3drholdings.com/>). Just Print is a 3D printing company headquartered in Philadelphia, Pennsylvania. (<http://www.just3dprint.com/index.html>).

This case arises out of Just Print's attempt to profit from a business model based on the illegal use of copyright protected designs. Just Print downloaded thousands of designs from a website, opened a shop on eBay, and proceeded to offer 3D printed models of those designs for a profit without permission from the creators of the designs for approximately six months. Upon learning that Just Print was using her Aria the Dragon (for dual extrusion) ("Aria the Dragon") design in violation of her rights, Louse Driggers ("Loubie") reached out to Just Print via eBay to ask it to stop selling her design (*See* affidavit of Louise Driggers attached as Exhibit A). Just Print responded by stating it was well within its rights to profit from her design and had no intention of stopping. In addition to responding to Loubie directly, Just Print published a lengthy justification and admission of its actions in an online comment thread for all the world to see.

Loubie then reported Just Print to eBay and sent eBay a Digital Millennium Copyright Act notice to put an end to the illegal use of her design. Other designers also complained to eBay, and upon receiving these complaints eBay shut down Just Print for violating its copyright policies.

Instead of using the appropriate forums to challenge eBay's decision to ban Just Print from its site¹, Just Print elected to file suit against 3DR (and others). Just Print claims that 3DR published defamatory articles about this incident and it was those articles that caused eBay to shut it down, completely ignoring the fact that eBay had received other complaints about Just Print's illegal use of

¹ Just Print is permitted to file a response to any DMCA notice filed by a designer. Digital Millennium Copyright Act 17 U.S.C. § 1201 (1998).

copyrighted designs. Just Print fails to provide a shred of evidence to prove that eBay acted in response to 3DR's articles. Just Print instead offers double hearsay and speculation to bolster its farfetched theory of causation and fabricated theory of damages.

At the conclusion of the July 10th hearing, the Court told Just Print it needed to connect the dots regarding causation. Just Print has failed to do so. Instead it asks the court to make numerous assumptions about how eBay conducts its business, speculate about eBay's decision making, and ultimately place the blame with 3DR without a single admissible fact to prove causation.

Apart from failure to prove causation, Just Print's claim also clearly fails because 3DR was well within its rights to offer commentary about the events that took place. It was justified in pointing out the inaccuracies and complete misstatements of the law in Just Print's own admissions published online. Just Print's claims are entirely without merit and lack any connection whatsoever to the law and the facts.

II. FACTUAL SUMMARY

Loubie, created a three-dimensional ("3D") design titled "Aria the Dragon" with the use of computer aided design ("CAD") software (Driggers Aff. ¶ 1). Loubie uploaded her design to a website called "Thingiverse" at www.thingiverse.com. (<https://www.thingiverse.com/thing:767823>) Thingiverse allows the 3D community to share its designs for various uses. <https://www.thingiverse.com/about/>. *Id.* The Thingiverse terms of use, at paragraph

3.1, provides that a user displaying work on the Thingiverse site retains all intellectual property rights in the work. *See* Terms of Use attached as Exhibit B. Thingiverse also requires designers to use a secondary copyright license provided by Creative Commons (“CC”) of their choosing. *Id.* at section 4.1. Loubie selected a CC license stating that use of her design was for non-commercial purposes only and that users must give attribution. *See* CC License attached Exhibit C.

Just Print downloaded Aria the Dragon from Thingiverse and listed it for sale on eBay in violation of the CC license attached to Loubie’s design.² Loubie reached out to Just Print via eBay on February 17, 2016 asking it to stop illegally selling her design. *See* Driggers Aff. ¶ 7. Just Print responded stating it had done nothing wrong and refused to stop selling her design. *Id.* at ¶ 8. It admitted that Just Print was making commercial use of Aria the Dragon without Loubie’s permission and offered two justifications for its conduct: (1) that the thingiverse.com site terms of service permitted Just Print’s infringement, purportedly because Just Print contended that placing the design on the Thingiverse site made Aria the Dragon a “public domain” work; and (2) Just Print had made a “transformative adaptation” of the work protected by the fair use doctrine. *Id.*

Loubie reported Just Print’s conduct to eBay on February 17, 2016 using eBay’s verified rights owners (“VeRO”) procedures and sent a DMCA notice to eBay regarding Just Print’s copyright violation. *Id.* at ¶ 9. On February 18, 2016,

² Just Print was forced to remove Loubie’s design from eBay and it is no longer listed for sale.

Loubie posted a “sad face” image on Thingiverse and in the comments under the image alerted the Thingiverse community about what happened with Aria the Dragon. *Id.* at ¶ 13. On February 19, 2016, Just Print posted a lengthy comment in the Thingiverse comments section about these events and again defended and admitted to its illegal actions. *See* Comment attached Exhibit D. Approximately one week later, on February 25, 2017 eBay forced Just Print to remove Aria the Dragon. *Id.*

As a result of the above events, the 3D printing world took notice and various bloggers began reporting on the incident and offering opinions about what transpired.³ On February 19 and 20, 2016 Michael Weinberg, a noted attorney in this area, posted two articles on his blog explaining why Just Print was wrong. *See* attached Exhibit E. A blog called “Anonymong” published an article on what transpired between Loubie and Just Print on February 19, 2016. *See* attached Exhibit F. All3dprint.com wrote about the incident on numerous occasions beginning on February 19, 2016. *See* attached Exhibit G. 3D Printing Industry published a blog post on February 19, 2016 about the incident. *See* attached Exhibit H. On February 26, 2016, “Technical.ly” published an article discussing these facts as well. *See* attached Exhibit I. In all of these articles, Just Print’s actions were criticized and questioned.

On February 20, 2016, 3DR published a blog post on 3dprint.com titled “When eBay Sellers Try to Defend Their Illegal Sale of 3D Models from Thingiverse,

³ All of the articles mentioned are currently readily available on the internet.

Comedy Ensues.” See attached Exhibit J. The blog post discussed what happened between Loubie and Just Print including Just Print’s response to Loubie’s request to cease selling her design on e-Bay. *Id.* It also pointed out the many inaccuracies in Just Print’s published comments defending its misuse of copyrighted protected designs. *Id.* 3DR published numerous other articles discussing how these events affected the 3D printing industry as a whole. See attached Exhibit K.⁴

Just Print filed the instant action on February 21, 2017. See attached Exhibit L. It also filed a similar action against TechCrunch, Inc. and against Stratasys, Inc. on February 24, 2017. See attached Exhibit M. In all three cases, Just Print asserts the same claims and same demand for damages, begging the question who actually caused its alleged harm?

A hearing was held in the instant case on July 10, 2017. At the conclusion of the hearing, the Court asked for further briefing. Just Print was to submit a brief by July 24, 2017 and 3DR was to reply by August 7, 2017. Just Print failed to submit its brief in a timely fashion and it was ultimately submitted more than a week late on August 1, 2017. Despite the delay, 3DR submits its Brief in Opposition on August 7, 2017 per the original court ordered deadline.

⁴ It should be noted that Plaintiff addresses two articles from 3d Printing Industry (<https://3dprintingindustry.com/>); however, 3DR does not own 3d Printing Industry and has only a minority interest in the company with no oversight on editorial content.

III. ARGUMENT

A. Just Print Failed to Prove Causation and Damages.

Under the defamation statute, Just Print must prove “special harm resulting to the plaintiff from its publications.” 42 Pa.C.S. § 8343(a)(6). Just Print cannot prove any harm as a result of the blog posts in question. It has failed to offer any proof that (1) it was shut down on eBay because of 3DR’s articles and (2) it suffered any harm as a result of the articles. 3DR was not the only news source offering commentary on what transpired and there is no proof that eBay’s decision to remove Aria the Dragon (among other designs) and shut down Plaintiff’s eBay site entirely was the result of 3DR’s articles. Loubie herself reported the misconduct to eBay and also submitted a DMCA notice to eBay on February 17, 2016 in an effort to have her design removed from the website. *See* Exhibit A at ¶ 10.

1. Just Print Failed to Provide Any Evidence eBay Acted As a Result of 3DR’s February 20, 2016 Article.

Just Print claims it was removed from eBay because of 3DR’s February 20, 2016 article. *See* complaint attached as Exhibit N. Just print provides no evidence to support its claim. *Id.* The lack of evidence destroys its claim against 3DR. In its brief, Just Print claims that over “100 individuals documented themselves making complaints online to eBay within four days (Feb. 20-23, 2016) of when Defendant’s articles were published while in the prior three days only three complaints were submitted” (Pl’s Br. 4). When questioned at the July 10th hearing about these alleged complaints to eBay, Just Print admitted it did not have access to the complete record of what eBay received (*See* Hr’g Tr. 64:23-65:8 attached as

Exhibit O). Meaning, Just Print had no idea exactly how many complaints eBay received, the content of the complaints, when the complaints were made, and how eBay arrived at the decision to remove Just Print's listings. Instead, Just Print explained at the hearing its entire claim against 3DR is based on user comments posted on the Thingiverse website. (*Id.* at 65:22-66:11).⁵ Despite the online Thingiverse comments making no reference to 3DR at all, Just Print claims eBay acted as a result of an article there is no evidence eBay ever knew existed. Again, there is no mention of 3DR in any of these comments, so even if they were admissible they prove nothing.

The Thingiverse comments amount to double hearsay and are not admissible evidence. Pa. R. Evid. 802. The comments were posted on a website by unknown individuals who referred to emails they received from eBay. *See* comments Pl.'s Br., D-1, attached as Exhibit P. These comments were made by unknown individuals, cannot be authenticated and should not be considered by the Court. Pa. R. Evid. 802. Just Print's statement of the facts continues to be disingenuous at best with no supporting admissible evidence.

Looking beyond the inadmissible double hearsay comments on the Thingiverse website, Just Print fails to fully acknowledge 3DR's articles were not the only online publications discussing Just Print's wrongdoing. Just Print claims

⁵ Just Print submitted an exhibit binder at the July 10th hearing. (Hr'g Transcript; Pl's Exhibit D-1) One of the exhibits was a list of the alleged comments on the Thingiverse website. *See* Exhibit P. Just Print points to "42+ Reports after February 20, 2016," and upon further examination it is clear that 3DR is not mentioned anywhere in the comments. *Id.* Furthermore, it was not "42+" individuals who commented, it was only 21 individuals, some of whom commented more than one time. *Id.*

“[d]uring the February 20-23 period, there was no coverage of “Loubie” beyond three personal blogs that get less than 100 visitors a month and Defendant’s press outlets that get 1,000,000 unique visitors a month” (Pl’s. Br. 4). Again, these facts are entirely unsupported by any evidence. There were five other articles published online between February 19, 2016 and February 23, 2016. See Exhibits E-I. Just Print provides no evidence to support any claims of readership and website traffic and it is impossible to assert that its damages were the result of 3DR’s articles specifically.

2. Just Print is Collaterally Estopped from Asserting a Defamation Claim Against 3DR as It Prevailed Against Stratasys, Inc. for the Same Claim.

It must also be noted that Just Print sued two other websites for the same alleged harm. See Exhibit M. In fact, Just Print prevailed against one of these websites and obtained a judgment for \$12,000.00 for its defamation claim. *Id.* The doctrine of collateral estoppel prevents Just Print from asserting the same claims against 3DR with the same alleged harm. *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998) (citations omitted). The Court stated:

Overall, the doctrine of collateral estoppel, or issue preclusion, applies where the following four prongs are met: (1) An issue decided in a prior action is identical to one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Id.

Just Print's claims for defamation were identical in its lawsuit against Stratasys, Inc. *See* Exhibit M. It claimed defamation for an article Stratasys, Inc. published on February 26, 2017, resulting in Just Print's ban from eBay. *Id.* Just Print prevailed on this claim and obtained a judgment in the amount of \$12,000.00. *Id.* Just Print was the Plaintiff in the action against Stratasys and therefore a party to the case. *Id.* Lastly, Just Print did have the opportunity to have its case heard before a Judge. *Id.* It is clear the elements of collateral estoppel are met in this case and Just Print should be precluded from prevailing for the same claim against 3DR.

3. Just Print Failed to Prove It Suffered Any Harm.

Just Print claims damages in the form of lost profits in amounts ranging from \$15,839.33 to \$500,000.00 (Hr'g Tr. 47:5-48:17)⁶. These projections depend on the amount of items sold on eBay and presume more products being offered for sale as time progresses. *Id.* These calculations are entirely speculative and based only on six months of prior sales. *Id.* at 48:21-22. Just Print failed to provide any substantial or reliable data to prove that its business would grow at the rate it suggested. As the Court pointed out at the hearing, the six months of data it did provide fluctuated month to month with no demonstrated steady growth. *Id.* at 61:5-17.

Just Print's presented witness, Gregory Pelish, CPA, and during cross-examination it came to light that Mr. Pelish did not create the growth scenario analyses presented by Just Print. *Id.* at 55:5-7. Mr. Pelish simply reviewed the data

⁶ Just Print waived the right to any damages over the \$12,000.00 jurisdictional limit when it filed in Municipal Court, but still attempted to prove damages up to the amount of \$500,000.00.

created by Just Print. *Id.* Mr. Pelish also testified that it is very difficult to predict revenue based on only six months of data. *Id.* at 55:24-56:12. He further stated that he had not done any analysis for an eBay company similar to Just Print. *Id.* at 66:16-20. Lastly, when the six months of revenue data was broken out by month it was clear that the numbers did not steadily climb each month, but were in fact fluctuating. *Id.* at 61:5-17.

Just Print's growth projections have no basis in fact and are entirely speculative. Even if 3DR was found to have illegally defamed Just Print and caused damage, the amount being sought is not tied to any facts or data.

At the conclusion of the July 10th hearing, Just Print also stated that it lost a \$10,000.00 contract with a potential client. *Id.* at 72:15-73:21. Just Print has failed to offer any proof that a contract even existed, that it lost such a contract, and any such loss happened because of 3DR's article and not simply because of its own wrongdoing.

B. 3DR's Blog Posts are Protected by Qualified Privilege.

3DR is a leader in the 3D printing world, and its blog posts are intended to keep readers up to date on industry developments. The Pennsylvania Supreme Court stated in *Am. Future Sys., Inc. v. Better Bus. Bureau*:

[u]nder Pennsylvania's common law regime, the defendant was strictly liable for the publication of a defamatory statement unless he could prove that the statement was true, (citation omitted) or that it was subject to a privilege. For such a privilege to arise, the communication must have been 'made upon a proper occasion, from a proper motive, in a proper manner and based upon reasonable and probable cause.

923 A.2d 389, 396 (Pa. 2007) (citing *Dempsey v. Double*, 126 A.2d 915, 917 (Pa. 1956)). The court in *Beckman v. Dunn*, 419 A.2d 583, 587 (Pa. Super. 1980), stated “[t]hus, proper occasions giving rise to a conditional privilege exist when: (1) some interest of the person who publishes defamatory matter is involved; (2) some interest of the person to whom the matter is published or some other third person is involved; or (3) a recognized interest of the public is involved. (quoting *Keddie v. Pennsylvania State University*, 412 F. Supp. 1264, 1277 (1976)).

The dispute between Loubie and Just Print quickly turned public and raised real concerns in the 3D printing world. The issue of copyright, and profiting off someone else’s work are of great importance to designers and printers alike, and 3DR offered commentary and updates on these events through its blog posts. See Exhibits J-K. Designers and printers need to be aware of the pitfalls within the industry when making products and 3DR offered helpful insight for anyone attempting to navigate within the industry.

The blog posts were published on 3DR’s website www.3dprint.com. The website states on its homepage:

3DPrint.com is a news organization dedicated to bringing you up to date on all the latest news from the 3D printing industry. We pride ourselves on finding interesting and unique news stories through investigative reporting, interview, and on-the-ground experiences through conferences, site visits, and hand-on information.

<https://3dprint.com/about/>.

It is clear that 3DR aims to report on the happenings in the 3D printing world. The articles at issue simply report on the facts and correct the many

errors in Just Print's comments in response to Loubie's request that it stop illegally selling her designs. 3DR was well within its rights to report and comment on these facts and did so with proper motive and probable cause.

As a leader in the industry, 3DR is well versed in the legal ramifications surrounding 3D printing, and seeks to ensure that its readers are also made aware. To leave Just Print's comments unchecked would be a disservice to all involved in the 3D printing world and would allow incorrect and misleading information to become the prevailing voice.

C. 3DR's February 20, 2016 Article Expressed an Opinion Regarding the Events that Happened Between Loubie and Just Print.

3DR's blog posts offered an opinion on what transpired between Loubie and Just Print. The posts were true in its analysis of the facts and applicable law, and set forth its justifications for stating that it believed Just Print had infringed upon Loubie's rights. 3DR simply offered truthful commentary on the events, and corrected Just Print's gross misstatements of the law.

Just Print cites to several 3DR articles that discuss the facts at issue in this case. *Id.* Each writer offered an opinion on the matter and provided justification for their respective comments. *Id.*

The court in *Sprague v. Porter*, stated that “[d]ifference of opinion is not legally actionable defamation. ‘[O]pinion without more does not create a cause of action in libel. Instead, the allegedly libeled party must demonstrate that the communicated opinion may reasonably be understood to imply the existence of

undisclosed defamatory facts justifying the opinion.” 2013 Phila. Ct. Com. Pl. LEXIS 368, 48-49 (citing *Baker v. Lafayette College*, 532 A.2d 399, 402 (Pa. 1987)). See *Malia v. Monchak*, 543 A.2d 184, 190 (Cmwlth. Ct. 1988).

3DR’s first blog post (See Exhibit J) published on February 20, 2017 describes in great detail what happened between Loubie and Just Print, offering an opinion as to why Just Print was incorrect in its defense. The blog posts that follow all refer back to the original article and offer various updates as the events continued to unfold. See Exhibit K. 3DR did not accuse Just Print of infringement and misuse with no underlying explanation or factual support. Just Print itself had provided a very lengthy and very public justification of its actions and admitted to wrongdoing while trying to offer a defense. See Exhibit D. The blog posts at issue describe the conduct and offer explanations as to why Just Print was wrong. See Exhibit J-K. There was no implication of “undisclosed defamatory facts” as the court in *Sprague* requires in the instance of an opinion. 2013 Phila. Ct. Com. Pl. LEXIS 368, 48-49. The facts were put online by Just Print and the blog statements concerning Just Print’s actions were made based on its own published admissions and justifications.

3DR also characterizes the actions of Just Print as “hilarious,” “insane”, “cringe-inducing,” “chicanery,” and “ploy.” See Exhibits J-K. All of these descriptions are simply the opinions of the writers and cannot be proven to be true or false, thus making it pure opinion. See *Malia v. Monchak*, 543 A.2d 184, 190 (Cmwlth. Ct. 1988).

D. Just Print's Defamation Claim Fails Because the Information Contained in the Blog Posts was a True Statement of the Facts and Law.

To prevail on a defamation claim, Just Print must prove the following:

- (1) The defamatory character of the communication.
- (2) Its publication by the defendant.
- (3) Its application to the Plaintiff.
- (4) The understanding by the recipient of its defamatory meaning.
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
- (6) Special harm resulting to the plaintiff from its publication.
- (7) Abuse of a conditionally privileged occasion.

42 Pa.C.S. § 8343(a). The defendant has the burden of proving:

- (1) The truth of the defamatory communication.
- (2) The privileged character of the occasion on which it was published.
- (3) The character of the subject matter of defamatory comment as of public concern.

Id. at § 8343(b).

The court in *Joseph v. Scranton Times L.P.* stated that “[u]nder Pennsylvania’s common law regime, the defendant was strictly liable for the publication of a defamatory statement unless he could prove that the statement was true, or that it was subject to a privilege.” 129 A.3d 404, 425 (2015)(citations omitted).

1. Aria the Dragon is Protected by Copyright.

Just Print committed copyright infringement when it downloaded Aria the Dragon and proceeded to sell 3D models on eBay. While Loubie did not have the design registered with the United States Copyright Office, it does not prevent her

design from having copyright protection. According to the Copyright Act of 1976, 17

U.S.C.S. § 302(a):

In general. Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author's death.

Further, under § 102(a)(5)

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: . . . (5) pictorial, graphic, and sculptural works.

17 U.S.C.S. §102(a)(5).

Just Print is under the mistaken belief that its actions were legal because Loubie failed to register Aria the Dragon with the United States Copyright Office. *See* Exhibits A ¶ 8, D. In fact, a copyright existed the second Loubie created Aria the Dragon and the design was protected from infringement. Just Print ignored the law completely when it attempted to sell her design for a profit on eBay.

Further, Loubie had a CC license associated with Aria the Dragon. *See* Exhibit C. This license prevented any non-commercial use of her design and anyone who downloaded the image was notified of the existence of the license. *Id.* Just Print attempted to sell Loubie's design on eBay which is clearly a commercial use of the design. These actions were prohibited by the CC license associated with Aria the Dragon and 3DR was correct in stating these facts in its blog post.

Aria the Dragon is a graphic design made with the use of computer assisted design software (“CAD”) and like any other original creation, is protected by copyright the second it comes into existence. *Id.* Just Print asserts in its online comments that a CAD creation cannot be protected by copyright. *See* Exhibit D. If Just Print’s argument is taken to its logical conclusion, all designs created with CAD software would not have copyright protection. This argument flies in the face of the Copyright Act. It is clear the legislature intended to protect designs created in all mediums, even those not yet contemplated at the time the Copyright Act was drafted. According the legislative history accompanying § 102:

Authors are continually finding new ways of expressing themselves, but it is impossible to foresee the forms that these new expressive methods will take. The bill does not intend either to freeze the scope of copyrightable subject matter at the present state of communications technology or to allow unlimited expansion into areas completely outside the present congressional intent. Section 102 implies neither that subject matter is unlimited nor that new forms of expression within that general area of of subject matter would necessarily be unprotected.

John Hornick, *Copyright Law for Business People: A Handy Guide*, Business Strategies (November 2003),

<http://www.finnegan.com/resources/articles/articlesdetail.aspx?news=84ed379c-ad0c-4211-b393-3516eb4559b5> (quoting H.R. Rep. No. 9401476, 94th Cong., 2d. Sess. 51 (Sept. 3, 1976)). Loubie’s copyright extends to Aria the Dragon and not the code or programming behind CAD software. Aria the Dragon is her own original creation and is subject to copyright protection.

The Copyright Act also protects derivative work. Section 101 defines derivative work as follows:

A derivative work is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. . . .

17 U.S.C.S. § 101

Just Print attempted to print 3D models of Aria the Dragon and while a 3D print is a different form of the original CAD design, it is an art reproduction and therefore a derivative use. *Id.* A 3D print of a design is still protected under the Copyright Act and Just Print's attempts to argue otherwise directly contradict the language of the statute.

Lastly, Just Print asserts a preemption argument in its Brief (Pl's Br. 2). This is a red herring and has no bearing on the facts at issue. Whether or not Loubie can bring an infringement claim and in what court is of no relevance to this action and is a separate issue. As stated above, Aria the Dragon is protected by copyright even though it was not registered. Loubie's causes of action and choice of forum is not at issue nor is it of any concern to the resolution of the case. The salient point is that her design was protected, and regardless of her remedies as a designer, Just Print is not permitted to infringe on her rights or the rights of any designer choosing to share their work on a website such as Thingiverse.

2. Just Print Incorrectly Asserts that Aria the Dragon was Part of the Public Domain.

Just Print incorrectly claims that Loubie's designs, once uploaded to Thingiverse were "public domain." The term of copyright in a work extends either for the life of the author plus 70 years, or for 95 years from the date of its first publication or 120 years from the date of its creation in the case of an anonymous or pseudonymous work, whichever first occurs. *Id.* at § 302. Further, the Berne Convention eliminated the mandatory notice requirements of the Copyright Act for works published on or after March 1, 1989. *Berne Convention Implementation Act of 1988*, Enacted H.R. 4262. This means that copyright exists even if a notice of copyright was not attached to a particular work. *Id.*

A copyright owner does have the option to "abandon" a copyright. *Malibu Media, LLC v. Doe*, 2013 U.S. Dist. LEXIS 55985, 18 (E.D. Pa. 2013). Abandonment occurs when "there is an intent by the copyright proprietor to surrender rights in his work." *Id.* (quoting *Den. V. Russ Berrie Co.*, 290 F.3d 548, 560 (3d. Cir. 2002)(citations omitted).

Loubie never abandoned her copyright associated with Aria the Dragon. She put her design on Thingiverse and complied with the terms of use associated with the website. Further, she attached a CC license to the design, offering further protection for her design. *See* Exhibit B. Just Print's assertions that Loubie's use of Thingiverse automatically placed Aria the Dragon in the public domain hold no merit whatsoever and again, the blog posts at issue were correct in their claims that Just Print infringed on Loubie's valid copyright.

E. Just Print Fails to Meet the Fair Use Standard Under 17 U.S.C.S. § 107

Owners of a copyright have exclusive rights under 17 U.S.C.S. § 106

with some exceptions. The fair use exception states:

Notwithstanding the provisions of sections 106 and 106A [17 USCS §§ 106 and 106A], the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

- (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.S. § 107

Just Print downloaded Aria the Dragon with the express purpose of selling 3D models on eBay for a profit. *See Exhibit D.* Just Print had no intention of using Aria the Dragon for any of the uses contemplated in § 107, and in fact simply wanted to make money. A 3D model is a derivative use as discussed above, and is an exact replica of the design. There is no change made to the original design and Just Print used the entire design in its printing. Just Print's use of Aria the Dragon fails to meet all four factors enumerated in the statute. It is not a fair use or

transformative use as Just Print asserts, but is in fact a clear infringement of Loubie's copyrighted design.

F. Just Print Must Prove that 3DR's Statements were Made with Actual Malice.

Just Print failed to prove that 3DR's blog was the cause of any alleged harm and was done with actual malice. In the case of a media defendant making alleged defamatory comments about a public official, the plaintiff must prove that the comments were made with actual malice. *Rutt v. Bethlehem's Globe Pub. Co.*, 335 Pa. Super. 163, 175 (1984) (citing *New York Times v. Sullivan*, 376 U.S. 254, 279-280, (1964)). The court went on to discuss the two types of public figures, stating:

[i]n some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Id. at 177 (citing *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 351-352 (1974)).

A person can become a limited purpose public figure by "voluntarily injecting himself or becoming drawn into a particular public controversy." *Id.* at 180. (citations omitted). "A public controversy is not simply a matter of interest to the public; it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way. . . . If the issue was being debated publicly and if it had foreseeable and substantial ramifications for non-participants, it was a public controversy." *Id.* at 181-182.(citations omitted).

Here, Just Print created the controversy by its own conduct when it posted a four-page long comment online in the Thingiverse comments section defending its actions. *See Exhibit D.* By doing so, Just Print became a limited public figure in the 3D printing world and it must now prove that 3DR made defamatory statements with actual malice.

3DR had no prior relationship with Just Print and was not aware of its existence until the filing of this lawsuit. Just Print incorrectly asserts malice is proven by an email 3DR sent to Just Print (Pl's Br. 4). This is obviously wrong. 3DR sent the email after Just Print brought this baseless lawsuit against it. At that point 3DR was rightly upset, and the email in no way proves 3DR acted with malice at the time the articles were published.

3DR gains nothing by harming Just Print and in fact is a leader in creating world-wide trade shows on this topic. *Id.* 3DR works to bring like-minded businesses and individuals together to make strides in this area and takes pride in its online content. It seeks to educate the public about on goings in the 3D printing world and to that end publishes approximately 60 articles per week.

<https://3dprint.com/>. 3DR did not publish the blog posts in question with malice and in fact was attempting to correct the false and misleading information put forth by Just Print.

IV. CONCLUSION

WHEREFORE, Defendant, 3DR, respectfully asks this Court to find in favor of Defendant and against Plaintiff, Just Print.

Respectfully submitted,

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