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This is dictation number five

ready begin

members of the jury both sides having now rested it is my duty to give you the instructions that are to guide and govern you in arriving at a verdict

please listen carefully to these instructions as I read them to you

you will also be given a copy of these instructions to take with you into the jury room when you leave to deliberate on the case

you must consider these instructions as a whole and not single out one instruction and disregard others

the order in which the instructions are given has no significance as to their relative importance

by the language of these instructions a court does not intend to imply what any of the disputed facts in this case are or what your verdict in this case should be

the plaintiff imagination systems brings this action against Becker industries under the federal copyright law

generally copyright protection is the exclusive right to copy

the owner of a copyright has the exclusive right to reproduce the copyrighted work in copies and sound recordings and prepare derivative works based upon the copyrighted work

and owner of a copyright is entitled to exclude others from copying the original elements of the work

originality means that the work was independently created by the author and that it possesses at least some minimal degree of creativity

and owner may enforce the right to exclude others in an action for copyright infringement

original works of authorship reduced in any tangible form of expression from which they can be perceived reproduced or otherwise communicated are protected by the copyright act

works of authorship include literary works pictorial works graphic works and sculptural works

ideas may not be copyrighted only the expression of an idea may be copyrighted

anyone who copies original elements of a copyrighted work during the term of the copyright without the owner's permission infringes the copyright

to prevail in plaintiff's copyright claim against Becker industries plaintiff has the burden of proving each of the following by a preponderance of the evidence

one plaintiff is the owner of a valid copyright and to plaintiff copied original elements of the copyrighted work

in person is liable for copyright infringement by another if the person has a financial interest in the right and ability to supervise the infringing activity whether or not the person knew of the infringement

therefore on plaintiffs claim against Baker industries the plaintiff has the burden of proving each of the following by a preponderance of the evidence

one plaintiff is the owner of a valid copyright

to Becker industries copied original elements of the copyrighted work

three defendant Becker industries had a financial interest in the infringing activity of Becker industries

and for defendant Becker industries had the right and ability to supervise infringing activity of Becker industries

Becker industries does not dispute elements three and four above

with respect to the issue of the validity of plaintiff's copyright the defendants contend that the portions of helping hands at issue in this case are not original

as explained above originality means that the work was independently created by the author and that it possesses at least some minimal degree of creativity

if you find by a preponderance of the evidence that the defendant had access to the plaintiffs copyrighted work and that there are substantial similarities between the defendants work and original elements of the copyrighted work you shall find copying unless the defendants prove by a preponderance of evidence that Becker industries created its commercial independently and did not copy plaintiffs work consciously or subconsciously

thus defendants may rebut any inference of copying by proving by a preponderance of evidence that the allegedly infringing work was created independently of the plaintiff's work

if you determine that the defendants independently created the text of the hands helping hearts commercial that matter how similar it is to plaintiff's work you must find for the defendants

the plaintiff must show by a preponderance of evidence that Carla Marshall of Becker industries had access to the plaintiff's work

you may find that the defendant had access to the plaintiff's work if Ms. Marshall had a reasonable opportunity to view the plaintiff's work before the hands helping hearts commercial was created

access may not be based on mere speculation or conjecture

works are substantially similar if the ideas and plaintiffs copyrighted work and the defendants work are substantially similar and the expression of ideas and plaintiffs copyrighted work and expression of ideas and defendants work are substantially similar

if you find that there are similarities you should determine whether they are of such a nature that they probably could not have occurred without copying or whether there are other apparent explanations for the similarities

the test for determining substantial similarity in the expression of ideas is whether an ordinary reasonable person would find the total concept and feel to be substantially similar

the concepts of access and similarity are to be considered together

if the evidence shows that the text of the hands helping hearts commercial is very similar to the text of helping hands a lesser showing of access is required to create the inference of copying

if the evidence shows that the text of the hands helping hearts commercial is not very similar to the text of helping hands

a greater showing of access is necessary to create the inference of copying

if you find for the plaintiff on plaintiffs claim for copyright infringement you must determine the issue of damages

an infringer of a copyright is liable for the copyright owner's actual damages and any profits of the infringer interminable to the infringement

again a claim for damages cannot be based on speculation or conjecture

the copyright owner is entitled to recover the actual damages suffered as a result of the infringement

the term actual damages means the amount of money that would fairly compensate the copyright owner for use of the copyrighted work