



Moonbug Entertainment Ltd. Wins \$23.4 Million in Copyright Case

August 24, 2023

On July 27, 2023, a California jury awarded Moonbug Entertainment Ltd. (“Moonbug”), owner of the popular CoComelon Nursery Rhymes YouTube Channel (“CoComelon”), \$24,300,000.00 in damages against Chinese competitor Babybus (Fujian) Network Technology Co., Ltd. (“Babybus”).^[i]

CoComelon is one of the most streamed children’s entertainment YouTube channels in the world. In 2022, CoComelon was streamed for more than 37.8 billion minutes.^[ii]

In August 2021, Moonbug alleged Babybus willfully infringed on its intellectual property rights in CoComelon by “blatantly copying” CoComelon’s characters, settings, song titles, lyrics, and images in Babybus’ “Super JoJo” brand.^[iii] For example, in the Complaint, CoComelon alleged Babybus “slavishly copied, frame-by-frame” CoComelon’s “The Boo Boo Song” in “its own, identically titled video.”^[iv] The Complaint included a side-by-side comparison of CoComelon’s work, “The Boo Boo Song” and the infringing Super JoJo video “The Boo Boo Song,” which illustrated the blatant copying of “frame-by-frame graphics, angles, character movements, plot, and specific sequence of events.”^[v] Moonbug alleged that the “pervasive copying” of CoComelon works was not limited to the examples provided in the Complaint, and claimed that Super JoJo’s extensive copying was evidence of its “willful intent to infringe on every element of the CoComelon world.”^[vi]

Babybus argued that the “copyrighted CoComelon works should be afforded only ‘thin’ protection because the range of possible expression of baby cartoon characters in the chosen genre is narrow.”^[vii] Moonbug argued that a broader, “thick” protection was more appropriate.^[viii] The determination as to whether “thin” or “thick” protection should be applied is made by the court on a “case-by-case basis.”^[ix]

The Ninth Circuit has previously explained that “The scope of protection depends on ‘the breadth of the possible expression’ of a work’s ideas. If there’s a wide range of expression ... then copyright protection is ‘broad’ and a work will infringe if it’s ‘substantially similar’ to the copyrighted work. If there’s only a narrow range of expression ... then copyright protection is ‘thin,’ and a work must be ‘virtually identical’ to infringe.” ^[x]

In this case, the Court determined that the main character of the CoComelon series, 3½-year-old “JJ,” was entitled to “thick” copyright protection.^[xi] The Court explained that, “in a copyright infringement case, once the act of copying is found, the Ninth Circuit applies an ‘extrinsic/intrinsic’ test to determine whether the copying constituted an unlawful appropriation.”^[xii] The test requires the jury to determine the similarities between the

works and whether those elements are protectable.

The jury determined that Babybus willfully infringed on thirty nine of the forty-two listed copyrights of Cocomelon. Jurors also found that the main character in Babybus' videos, "JoJo" was not only substantially similar, but also virtually identical to CoComelon's main character, "JJ."

Cullen and Dykman's Intellectual Property team continues to monitor important developments in trademark and copyright law. Should you have any questions about this legal alert, please feel free to contact Karen Levin (klevin@cullenllp.com) at (516) 296-9110 or Ariel Ronneburger (aronneburger@cullenllp.com) at (516) 296-9182.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[i] *Moonbug Ent. Ltd. v. BabyBus (Fujian) Network Tech. Co.*, No. 21-CV-06536-EMC, 2023 WL 4828363 (N.D. Cal. July 26, 2023).

[ii] Kelly Lawler, Exclusive: 'CoComelon' Is Getting Spinoffs. Why The Preschool Show Is Streamed More than 'Grey's Anatomy,' USA Today, Jan 25, 2023, <https://www.usatoday.com/story/entertainment/tv/2023/01/25/cocomelon-why-preschool-show-streamed-more-than-ncis/11111538002/>.

[iii] Complaint at ¶3, *Moonbug Ent. Ltd. v. BabyBus (Fujian) Network Tech. Co.*, 21-CV-06536-EMC, 2023 WL 4828363 (N.D. Cal. Aug. 24, 2021).

[iv] *Id.* at ¶33.

[v] *Id.* at ¶¶ 32-41.

[vi] *Id.* at ¶ 53.

[vii] *Moonbug Ent. Ltd. v. BabyBus (Fujian) Network Tech. Co.*, No. 21-CV-06536-EMC, 2023 WL 4828363, at 2 (N.D. Cal. July 26, 2023).

[viii] *Id.*

[ix] *Id.* (citing *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1446 (9th Cir. 1994)).

[x] *Id.* at 1 (citing *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1260 (9th Cir.), cert. denied, 211 L. Ed. 2d 183, 142 S. Ct. 343 (2021)).

[xi] *Id.*

[xii] *Id.*

Practices

- Intellectual Property

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