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This is dictation #5.

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 do 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, the 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.

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

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

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

Original works of authorship produced 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 on plaintiff's copyright claim against Becker 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 and two plaintiff copied original elements of the copyrighted work.

A person is liable for copyright infringement by another if the person has a financial interest and the right and ability to supervise the infringing activity whether or on the person knew of the infringement.

Therefore, on plaintiff's claim against Baker Industries, the plaintiff has the burden of proving each of the following by a preponderance of the evidence:

1. The plaintiff is the owner of a valid copyright.
2. Becker Industries copied original elements of the copyrighted work.
3. Defendant, Becker Industries, had a financial interest in the infringing activity of Becker Industries.
4. Defendant, Becker Industries had the right and ability to supervise the infringing activity of Becker Industries.

Becker Industries does not dispute elements three and four above.

With respect to the issue of 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 plaintiff's copyrighted work and that there were substantial similarities between the defendant's work and original elements of the copyrighted work, you shall find copying, unless the defendants prove by a preponderance of the evidence that Becker Industries created its commercial independently and did not copy plaintiff's work, consciously or subconsciously,

thus defendants may rebut any inference of copying by proving by a preponderance of the 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, no matter how similar it is to the plaintiff's work, you must find for the defendants.

The plaintiff must show by a preponderance of the 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 hand's helping heart commercial was created.

Access may not be based on mere speculation or conjecture.

Works are substantially similar if the ideas and plaintiff's copyrighted work and the defendant's work are substantially similar and the expression of ideas in plaintiff's copyrighted work and the expression of ideas in defendant's 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 heart 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 heart 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 plaintiff's 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 attributable 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 mean the amount of money that would fairly compensate the copyright owner for use of the copyrighted work.