

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 22-cv-02621-PAB-NRN

ANTHONY PROCOPIS (d/b/a Slot It Golf),

Plaintiff,

v.

STEEPWARE LLC (d/b/a Eyeline Golf) and SAMUEL FROGGATTE,

Defendants.

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**DEFENDANTS' MOTION FOR LEAVE TO AMEND FIRST AMENDED ANSWER**

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Pursuant to at least Fed. R. Civ. P. 15(a)(2) and D.C.COLO.LCivR 15.1(b), Defendants Steepware LLC (d/b/a Eyeline Golf) ("Steepware") and Samuel Froggatte ("Froggatte") collectively ("Defendants"), hereby move for leave to amend their First Amended Answer (ECF No. 11) to set forth a claim of copyright infringement for the reasons set forth herein.

**STANDARD**

Under Fed. R. Civ. P. 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." An amendment to the pleadings may only be refused when there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment." Forman v. Davis, 371 U.S. 178, 182 (1962).

## **BACKGROUND**

1. The Complaint in this action was filed on October 7, 2022. ECF No. 1.
2. Defendants filed their Answer on November 3, 2022. ECF No. 8. In response to Plaintiff's Motion to Strike their inequitable conduct affirmative defense, Defendants filed a First Amended Answer on December 9, 2022. ECF No. 11.
3. In furtherance of their defense strategy and counterclaims, Defendant Steepware LLC quickly desired to pursue a copyright infringement counterclaim against Plaintiff Anthony Procopis. Under federal law, counter-plaintiff Steepware LLC could not assert such a counterclaim until it had obtained a copyright registration certificate from the U.S. Copyright Office. See 17 U.S.C. § 411(a); Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC, 586 U.S. \_\_\_, 139 S. Ct. 881, 203 L.Ed.2d 147 (2019).
4. Counter-plaintiff Steepware LLC promptly filed a copyright application for the Speed Trap 1.0 in November 2022.
5. The Copyright Office recently granted and mailed a copyright registration regarding the Speed Trap 1.0, assigning U.S. Copyright Registration No. TX0009209828 with an effective date retroactively assigned back to November 2022.
6. Having received the registration certificate from the U.S. Copyright Office, counter-plaintiff Steepware LLC now desires to amend its pleading to assert a copyright infringement counterclaim against counter-defendant Anthony Procopis and respectfully requests leave to so amend its First Amended Answer.

### **PROPOSED AMENDMENT**

As shown in underlines in the attached Exhibit, Defendants desire to add the following paragraphs to the end of the body of their First Amended Answer to assert a copyright infringement claim against Anthony Procopis and his Slot It Golf swing trainer:

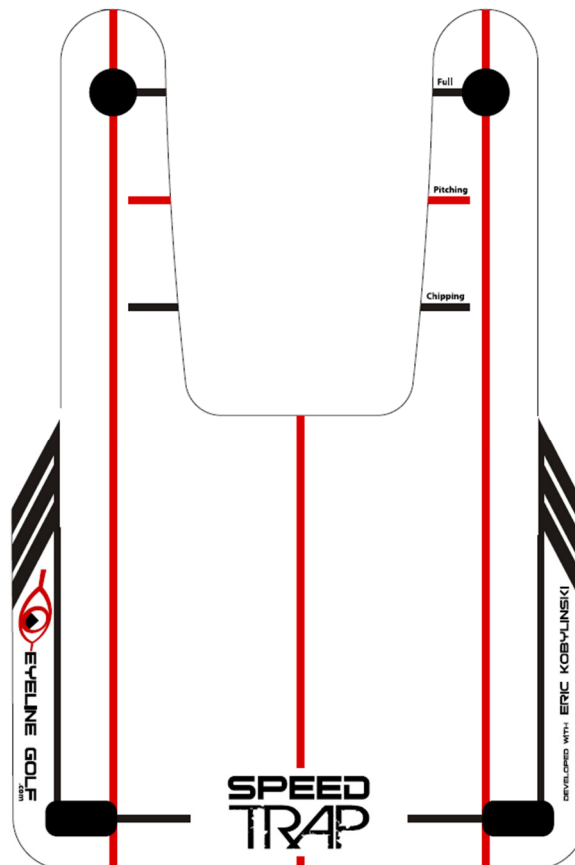
### **COUNT THREE**

#### **(Copyright Infringement of Speed Trap 1.0 and U.S. Copyright Registration No. TX0009209828)**

46. Defendant/Counter-plaintiff Steepware LLC repeats and realleges paragraphs 1 through 19 as if fully set forth herein.

47. Counter-plaintiff Steepware LLC is the owner of copyrighted design artwork embodied in the Speed Trap 1.0 product.

48. The Speed Trap 1.0 copyrighted design artwork is shown as follows:



49. The Speed Trap 1.0 design artwork is an original work of authorship created in 2013.

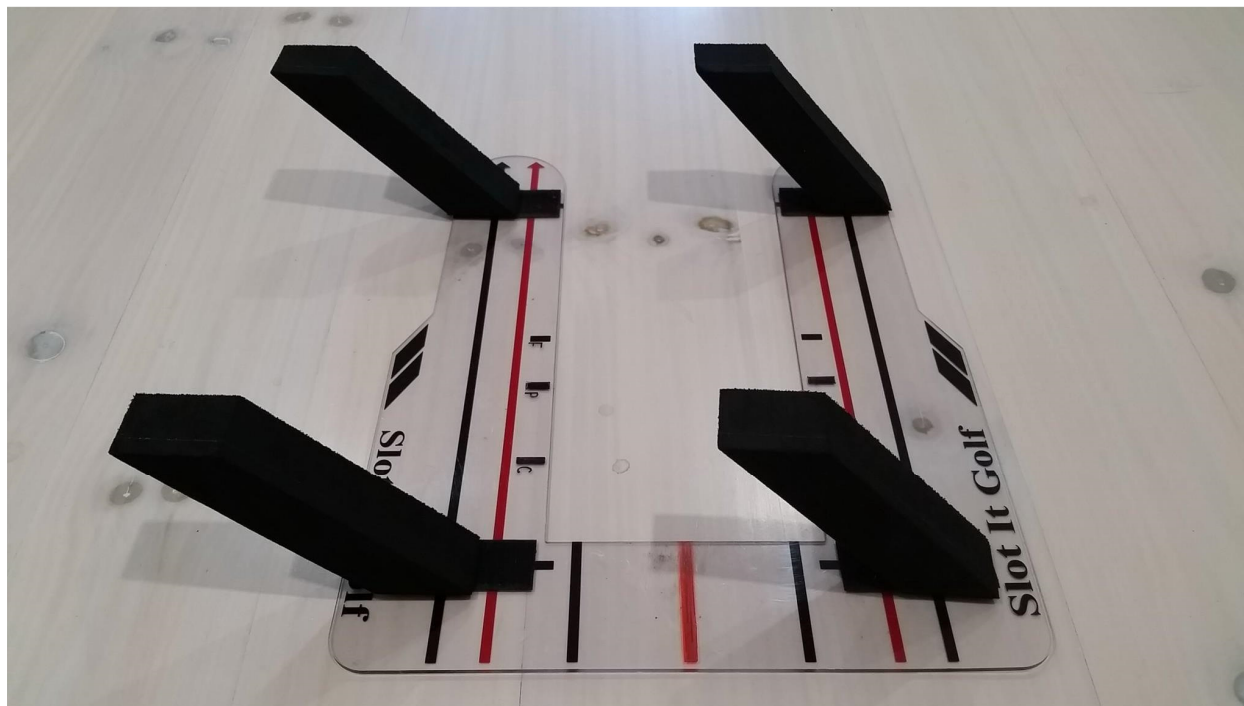
50. The Speed Trap 1.0 design artwork has been published for nearly a decade.

51. Counter-plaintiff Steepware, LLC has at all relevant times owned the right, title, and interest in and to the copyright of the Speed Trap 1.0 design artwork.

52. Subsequent to counter-plaintiff's publication of the Speed Trap 1.0 design artwork, Counter-defendant Anthony Procopis obtained possession of the Speed Trap 1.0 and willfully copied it.

53. Anthony Procopis has previously publicly admitted that he had possession of counter-plaintiff Steepware LLC's design artwork and that he copied the Speed Trap 1.0 design to unlawfully create a copy or derivative work. See, e.g., <https://ecomcrew.libsyn.com/2018>, Ep 209, 19:44-20:23 ("The other idea is ... or to actually go straight to the brand name who I sort of copied but improved upon their product...").

54. The early prototype of Counter-defendant Anthony's Procopis's Slot It Golf swing trainer is exemplarily shown as follows:



55. Counter-defendant Anthony Procopis intentionally modified the design of his prototype to copy even more of the counter-plaintiff's copyrighted Speed Trap 1.0 design.

56: Counter-defendant Anthony Procopis's commercially sold Slot It Golf swing trainer is exemplarily shown in the following images:





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