

APPENDIX

APPENDICES

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DENISE DANIELS; THE
MOODSTERS COMPANY,

*Plaintiffs-
Appellants,*

v.

THE WALT DISNEY COMPANY;
DISNEY ENTERPRISES, INC.;
DISNEY CONSUMER
PRODUCTS AND INTERACTIVE
MEDIA INC.; DISNEY
INTERACTIVE STUDIOS, INC.;
DISNEY SHOPPING, INC.;
PIXAR,

*Defendants-
Appellees.*

No. 18-
55635

D.C. No.
2:17-cv-04527-
PSG-SK

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding
Argued and Submitted November 6, 2019
Pasadena, California

Filed March 16, 2020
Amended May 4, 2020

Before: Jerome Farris, M. Margaret McKeown, and
Barrington D. Parker, Jr.,* Circuit Judges.

Order;
Opinion by Judge McKeown

SUMMARY**

Copyright

The panel filed (1) an order amending its opinion, denying a petition for panel rehearing, and denying on behalf of the court a petition for rehearing en banc; and (2) an amended opinion affirming the district court's dismissal of an action alleging copyright infringement by the Disney movie *Inside Out* of plaintiffs' characters called The Moodsters.

Affirming the denial of plaintiff's claim under the Copyright Act, the panel held that The Moodsters, lightly sketched anthropomorphized characters representing human emotions, did not qualify for copyright protection because they lacked consistent, identifiable character traits and attributes and were not especially distinctive. The Moodsters also did not

* The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

qualify for copyright protection under the alternative “story being told” test.

The panel also affirmed the district court’s denial of plaintiff’s claim for breach of an implied-in-fact contract under California law, based on her disclosure of information about The Moodsters to various employees of Disney and its affiliates.

COUNSEL

Patrick Arenz, Esq.(argued), Ronald J. Schutz and Brenda L. Joly, Robins Kaplan LLP, Minneapolis, Minnesota, for Plaintiffs-Appellants.

Mark Remy Yohalem, Esq. (argued), Glenn D. Pomerantz, Erin J. Cox, Kenneth M. Trujillo-Jamison, and Anne K. Conley, Munger, Tolles & Olson LLP, Los Angeles, California, for Defendants-Appellees.

ORDER

The opinion filed on March 16, 2020, slip op. 18-55635, and appearing at 952 F.3d 1149, is hereby amended. An amended opinion is filed concurrently with this order.

With these amendments, the panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

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