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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

HILLER, LLC,

Plaintiff-Appellee,

v.

SUCCESS GROUP INTERNATIONAL LEARNING ALLIANCE,
LLC, et al.,

Defendants,

CLOCKWORK IP, LLC,

Intervenor-Appellant.

No. 19-6115

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 3:17-cv-00743—Jon Phipps McCalla, District Judge.

Argued: August 6, 2020

Decided and Filed: September 23, 2020

Before: SUHRHEINRICH, GIBBONS, and BUSH, Circuit Judges.

COUNSEL

ARGUED: Brad R. Newberg, MCGUIRE WOODS LLP, Tysons, Virginia, for Appellant. Jeffrey J. Catalano, FREEBORN & PETERS LLP, Chicago, Illinois, for Appellee. **ON BRIEF:** Brad R. Newberg, MCGUIRE WOODS LLP, Tysons, Virginia, Lucy Jewett Wheatley, Brian D. Schmalzbach, MCGUIRE WOODS LLP, Richmond, Virginia, for Appellant. Jeffrey J. Catalano, FREEBORN & PETERS LLP, Chicago, Illinois, Jason P. Stearns, FREEBORN & PETERS LLP, Tampa, Florida, for Appellee.

OPINION

SUHRHEINRICH, Circuit Judge. Appellant Clockwork IP, LLC intervened in this copyright case to claim that it—not the plaintiff and registered copyright holder Hiller, LLC¹—owned the allegedly-infringed work, a customer-service training guide for HVAC technicians (the Guide). The jury rejected Clockwork’s sole request for relief: a declaration invalidating Hiller’s copyright in the Guide.

Clockwork makes two arguments on appeal.² First, Clockwork contends that the district court erred by denying its motion for judgment as a matter of law because no reasonable juror could have found that Hiller owns a copyright in any part of the Guide. Second, Clockwork asserts that the district court improperly instructed the jury that Hiller could hold a copyright in the Guide, even though it contained Clockwork-copyrighted material, so long as that material did not “pervade[] the entire work.”

Clockwork is wrong on both points. The jury reasonably concluded that Hiller created enough original material to gain copyright protection,³ and the district judge correctly instructed the jury that the Guide’s incorporation of some Clockwork-copyrighted content did not invalidate Hiller’s copyright in the Guide’s original parts. We affirm.

I. BACKGROUND

Hiller, LLC provides plumbing, heating, cooling and electrical services (referred to collectively as home services) to residential and commercial customers. Jimmy Hiller, Sr. began his career as a plumber’s apprentice and founded Hiller as a one-man operation in 1990. Hiller

¹Hiller, LLC is distinct from its owner, Jimmy Hiller, Sr. All uses of “Hiller” in this opinion refer to the LLC, not to Mr. Hiller.

²The defendant in the action below, Success Group International, also appealed, but later settled its dispute with Hiller and voluntarily dismissed its appeal before the briefing stage.

³As discussed below, Hiller’s copyright may not cover everything in the Guide, but we have not been asked to define the scope of Hiller’s copyright, only to review the jury’s conclusion that it exists.

grew to be the largest home-services company in Tennessee, employing roughly 400 service technicians.

In 1999, Hiller began paying a monthly fee to be a “member” of Success Group International, an organization that offers management advice and customer-service training to home-services companies. At that time, a company called Clockwork Home Services, Inc. owned Success Group, and Success Group conducted training courses using manuals copyrighted by Clockwork (the Manuals). Hiller sent its employees to those courses, and they had access to the Manuals.

In 2014, Clockwork (by that time operating as Clockwork IP, LLC) sold Success Group to a collection of investors doing business as Aquila Investment Group, LLC. Rebecca Cassel (a former Clockwork employee) led Aquila’s efforts, and she convinced Jimmy Hiller, Sr. to invest in Aquila as well. As a part of the transaction, Clockwork retained ownership of the copyrights in the Manuals but granted Aquila a perpetual license to use the Manuals in the normal course of Success Group’s training business.

In March of 2015, Hiller hired a company called the Bob Pike Group to create the Guide. Hiller planned to use the Guide (instead of the Manuals) to train its technicians how to conduct a service appointment (referred to in the industry as a call). Jimmy Hiller, Sr. hoped that Pike could design training materials that were “more interactive” and “more engaging” than the Manuals.

Pike had no expertise in the home-services industry, so it could not create the Guide without first learning the practices that Hiller wanted to teach its employees. To do so, Pike conducted a two-day workshop designed to elicit Hiller’s goals, its “metrics for success,” and the “behaviors required to achieve these metrics.” Pike employee Vicki Lind and a Pike subcontractor named Janice Horne led the workshop. Jimmy Hiller, Sr., Hiller’s director of training Mitch Mobley, and other Hiller employees attended the meeting on behalf of Hiller. Rebecca Cassel attended on behalf of Aquila and Success Group. The workshop participants referred to at least one of the Manuals for ideas during the workshop.

Horne began by asking the participants to brainstorm the objectives of the Guide, including the techniques that make up a successful service call. They wrote their ideas on 4x6 notecards, and then, as a group, “decided what to leave in, what to cross off, and the most important concepts.” The group then organized the behaviors under discrete headings, which became a “roadmap” for the project. Someone took pictures of the arrangement of notecards, and, from those pictures, Pike created an outline for the Guide.

Based on that outline, Horne constructed the Guide. The Guide is 117 pages long. Its first section, “Need to Know” sets out the six steps to a successful service call: (1) prepare for the call, (2) set the tone, (3) diagnose issue, (4) get approval, (5) do the work, and (6) close. The second section, “Nice to Know,” contains a glossary of industry terms, “sample scripting” for typical interactions with customers, and technical diagrams about whether to repair or replace an appliance.

For some passages of the Guide, Horne simply incorporated content generated at the design workshop. For example, in the “prepare for the call” section, Horne listed four steps: (1) prepare self, (2) prepare truck, (3) review service history, and (4) confirm directions. These headings correspond closely to a list created at the design workshop.

For other sections, Horne asked Hiller for content to fill the gaps left after the design workshop. In August of 2015, for example, Horne asked Hiller for a “[l]ist of 10-12 words (or phrases) to lose and what [the technicians] should use instead.” In October, she asked for examples of “objections that would be typical coming from the customer” and “[e]xamples of Sincere [sic] compliments.” Some of this gap-filling content was taken directly from the Manuals. For example, much of the “sample scripting” is lifted word-for-word. In addition, the Guide includes a graphic meant to juxtapose the cost of keeping a current appliance with the cost of replacing it instead. That graphic was taken from the Manuals.

Horne also added original text in the Guide’s section regarding communication skills. For example, the Guide contains a graphic describing four personality types and their corresponding traits. Horne created that passage based on her knowledge of “DISC,” which is “a personality profile that’s common in the work world.”

When Horne completed the textual content of the Guide, one of Pike's graphic designers added pictures and made final revisions to the formatting and layout. Pike delivered the final version of the Guide in December of 2015 and later assigned its copyright in the Guide to Hiller.

The events giving rise to this lawsuit occurred not long after completion of the Guide. In January of 2016, Success Group (led by Rebecca Cassell) conducted a class called "Service Essentials" using a workbook that closely resembled the Guide. In June of 2016, Hiller ended its Success Group membership, and Jimmy Hiller, Sr. sold his shares in Aquila. In July, Hiller's attorneys demanded that Success Group stop using the Service Essentials workbook. In March of 2017, Hiller registered its copyright in the Guide, and in April Hiller sued Success Group and Rebecca Cassel for copyright infringement. In December of 2017, Clockwork moved to intervene in the case, alleging that "Clockwork . . . is the owner of the intellectual property that Hiller claims has been infringed by Defendants Success Group International Learning Alliance, LLC . . . and Rebecca Cassel" and seeking declaratory relief to that effect. The district court granted Clockwork's motion to intervene.

The district court conducted a jury trial over the course of seven days in March of 2019. The jury heard testimony from (among others) Jimmy Hiller, Sr., Rebecca Cassel, Janice Horne, and Clockwork's vice president of training, Lance Sinclair. The jury reviewed the Guide, the Manuals, and the allegedly infringing Success Group workbook. The jury concluded that Hiller had a valid copyright in the Guide and that the Success Group workbook copied protected elements of the Guide. The jury rejected Clockwork's request for declaratory relief invalidating Hiller's copyright. Clockwork moved for a judgment notwithstanding the verdict, which the district court denied.

II. ANALYSIS

A. **Sufficient evidence supports the jury's verdict that Hiller owns a copyright in the Guide.**

Clockwork argues that the district court should have granted its motion for judgment as a matter of law, which sought a declaration that Hiller does not own a copyright in any part of the Guide. That argument is two-pronged. First, Clockwork asserts that the Guide lacks

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