

UNITED STATES DISTRICT COURT
For the
Western District of Oklahoma

QUILL INK BOOKS LIMITED, a
foreign corporation,)
Plaintiff)
) Civil Action No. CIV-18-920-G
v.)
ABCD GRAPHICS AND DESIGN d/b/a)
Blushing Books, et al.)
Defendant)

DEFENDANT’S AMENDED RESPONSE TO COMPLAINT

1. Defendant files this amended answer with leave of the court pursuant to Fed. R. Civ. P. 15(a)(2).

SYNOPSIS OF DEFENSE’S ARGUMENTS

2. Plaintiff’s complaint is filled with conclusory allegations stating that ABCD Graphics (Blushing Books) filed more than a dozen DMCA notices knowing that their position was “false,” “malicious,” and/or in violation of the Copyright Act. In addition, Plaintiff alleges that ABCD Graphics has engaged in similar behaviors previously with other titles/authors, including filing false DMCA take down notices and paying for reviews, specifically to stifle competition and harm other authors.
3. This case is complicated by the fact that both series are set in the Omegaverse world, which, like “vampire” literature, contains shared conventions which are not governable by copyright.
4. The similarities are substantive and go beyond acceptable shared “world” tropes. Ironically, Plaintiff herself actually provides this extensive and factual comparison chart to the court.
5. ABCD Graphics had a good faith belief that:

- a. The first two books in both series contained enough similarities to believe that Zuri Amarcya/Zoey Ellis writing for Quill Books had plagiarized Addison Cain's work.
 - b. That the DMCA system, which does allow publishers to file DMCA notices when substantive similarities exist, was an appropriate avenue to use in this case.
 - c. That the "world" Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. created for her Omega Myth series contained enough substantially similar elements that Book 3 in the series, which was up for preorder at the time of the DMCA notices were originally filed could be legitimately included in the DMCA.
6. Furthermore, in fact, ABCD Graphics:
- a. Has never paid for reviews or compensated reviewers in any way other than with free products.
 - b. Has filed only ONE other DMCA notice against another book/author in spite of publishing MORE THAN six books per week for the last ten years, for a total of more than 3000 titles published since 2005.
 - c. Has never posted publicly about this matter to any forum or social media account and has not harmed Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. reputation in any way.

SUMMARY OF RESPONSE:

7. Plaintiff's Complaint filed October 17, 2018 ("Complaint") is nearly two hundred pages of allegations, arguments, and exhibits. All of these can be reduced to a single question: Were ABCD Graphics and Design/Blushing and/or Rachele Soto (publishing as Addison Cain/Soto) justified in filing a Digital Millennium Copyright Act take down notice

against a series of books written by Zuri Amarcya (publishing as Quill Ink Books Limited/ Zoey Ellis), or did the two entities deliberately and knowingly misuse the system for unlawful financial enrichment?

8. The Complaint's Paragraphs not specifically addressed in this Response are denied.

NATURE OF ACTION

9. Defendant Blushing Books acknowledges that Plaintiff has alleged, inter alia, violations of copyright laws and other torts, but deny that they engaged in any such violations. Except as expressly admitted, Blushing Books denies all of the remaining allegations in Paragraphs 1-107 of the Complaint, particularly as it relates to any wrongdoing or liability.

JURISDICTION AND VENUE

10. Regarding Plaintiff's Paragraph Five: Defendant denies liability, disputes that a claim under Federal Copyright laws exist, submits that the complaint is baseless. As a purely legal matter, the Defendant does not dispute that this court can properly adjudicate copyright subject matter, however Defendant respectfully reminds the Court that this is not a copyright case. Plaintiff has brought an action which alleges that Defendant ABCD Graphics knowingly filed a false DMCA claim to "stifle" competition and is entitled to damages because it acted with malice. No proof whatsoever is offered to support that ABCD Graphics knowingly filed a false claim, did so to stifle competition, or has done so in other instances. In fact, ABCD Graphics acted with care, investigating the claim for several months before making the decision to proceed with the DMCA filing and only doing so after receiving (via Cain) multiple complaints regarding the similarity between

the two series and having an independent reader do a side-by-side comparison of the two titles.

11. Answering Plaintiff's Paragraph Six and Seven: Defendant disputes that they have any minimum contacts with Oklahoma, and maintains this was not the proper forum in which to bring this matter. This Court has already granted Defendant Cain/Soto's Motion to Dismiss for jurisdictional deficiencies. Because Blushing Books has already expended significant resources in defending this case in the current jurisdiction, and the parties estimate the trial only will be three days, Blushing Books has elected not to seek transfer to Virginia. Blushing Books anticipates that because this case at its heart is really an online author rivalry between Zoey Ellis and Addison Cain, that Plaintiff will dismiss this cause of action in Oklahoma and refile in Virginia regardless.

RESPONSE

Blushing Books incorporates by reference their responses to the foregoing Paragraphs as if fully set forth herein.

12. Answering Paragraph Two: Paragraph two makes several strong and inaccurate accusations, implying that Blushing Books is an example of "bad actors attempting to monopolize the industry through misuse of trademark and copyright law," and lumps Blushing Books into a category of individuals engaging in "unlawful practices." Plaintiff does not name or list any other individuals, and further, Plaintiff never provides any evidence that anything Blushing Books did was unlawful.
 - a. Additionally, although the Complaint against ABCD Graphics/Blushing and Cain/Soto cites the Faleena Hopkins "cocky" trademark dispute in Footnote 1 (in a seeming attempt to draw analogies between the two actors), it misrepresents a critical point: Faleena Hopkins applied for **and was granted** a trademark on the

use of the word “cocky” in romance titles. Whether one agrees with the granting of the trademark or not (and based on subsequent amicus filings by Romance Writers’ of America and others, virtually everyone (with the obvious exception of Ms. Hopkins) believes that the trademark should not have been issued) Ms. Hopkins took no legal action against any other authors until after the trademark was granted. Once the trademark was granted, what she did was legally permissible, no matter how much she was criticized for it. Plaintiff’s Complaint uses the Faleena Hopkins situation as an example of an author harassing other authors, but the analogy is misplaced and not on point.

13. Responding to Complaint Paragraph Three: Plaintiff Ellis/ Quill Ink’s complaint makes the allegation that ABCD Graphics/Blushing and Design has engaged in similar acts in the past. This is in fact, the basis of the whole argument: that these tactics are used as known and ongoing business strategies. Specifically, it is alleged that the two entities engaged in some or all of the following: 1) manipulating and/or providing financial compensation for reviews; 2) harassing authors; 3) posting negative information about competitors to social media; and 4) using the DMCA system to stifle competition and harm competitors. **Not a single piece of evidence is provided which supports any of these claims, and Defendant strongly disputes them.** Blushing Books has never published a claim of plagiarism against Zoey Ellis’s books in any online public reader community, nor have they encouraged, solicited or coordinated negative reviews or comments regarding those works.
14. Further, Plaintiff alleges that Blushing Books engaged in these actions not only against Plaintiff Zoey/Amarcya’s books, but against innumerable unnamed other actors. Again,

not a single piece of evidence is provided, and Blushing Books emphatically denies this accusation. Plaintiff's use of "Jane and John Doe" parties speaks to the speculative nature of this lawsuit.

15. Answering Complaint Paragraph Nine: Defendant agrees with the facts stated in Paragraph nine.
16. Answering Complaint Paragraph 10: suggests that Blushing Books is not a pseudonym, but rather a "fictitious name" and because this name is not registered with the Virginia State Corporation Commission, somehow the corporation is operating illegally. Although the company is typically referred to in casual speech as Blushing Books, this is not the legal name of the company. "Blushing Books" is merely a publishing imprint of ABCD Graphics and Design, a duly registered Virginia Corporation. ABCD Graphics and Design also publishes under multiple other imprints. However, all bank accounts, contracts, royalty statements and payments are issued in the name of ABCD Graphics and Design, Inc.
17. Answering Paragraph 11 in Plaintiff's Complaint: Blushing Books does not deny the facts stated in Paragraph 11.
18. Answering Complaint Paragraphs #18-24: Defendant Blushing does not dispute that Omegaverse is a popular, well established forum for fan fiction. Defendant maintains, however, that plagiarism, misappropriation, copyright infringement, and intellectual property theft can exist in this context, and Blushing firmly believes now (and when they filed the Takedown Notices) that Plaintiff Zoey Ellis unlawfully usurped Defendant Cain/Soto's material. Although there are tropes and conventions within Omegaverse, (just as there are conventions within "vampire" literature – e.g., vampires cannot come

out during the day, they drink blood, they live forever, etc.), **Plaintiff Ellis went well beyond this point.** Plaintiff Ellis is writing in the shared literary tradition of Omegaverse, but in addition, she placed her story in a setting **within the Omegaverse** and *then* proceeded to appropriate dozens of plot points. Amarcya/ Quill's argument almost seems to be the polar opposite of copyright: that because there is a shared literary meme or tradition here that cannot be copyrighted, ANY borrowing from another work is permissible.

19. Answering Paragraphs # 25-40: Defendant Blushing denies the allegations contained in these Paragraphs. Plaintiff argues that because this is an established fan fiction universe with common terminology and concepts, they advance the incorrect argument that they are essentially immune from plagiarism. To illustrate: An Omega is a character / creature like a vampire or a werewolf. No one owns vampire or werewolf literature. For purposes of analogy, both "Harry Potter" and "The Lion, Witch and the Wardrobe" feature English schoolchildren who enter a magical world, but no one could successfully make the claim that J.K. Rowling plagiarized C.S. Lewis. In contrast, if someone published a book in which a little orphan girl living with mean relatives got picked up by a guy in a fantastical car and taken to a "sorcerer" school where everyone was divided into three houses, wore robes, and played games on flying horses, it is likely that Rowling's material would be infringed. And if someone published a book in which children entered a magical world through a china cabinet and encountered an evil wizard and a kindly, magical tiger, again this would be too close to C.S. Lewis.
20. Copyright exists and is automatic on publication, and registration is not mandatory... even in DMCA filings. Registration is, however, required before copyright claims are

made in court filings. Copyrights have been filed on all of Addison Cain/Soto's books as of now.

21. Answering Paragraph 56: Defendant denies these allegations. Blushing Books only discovered the suspected plagiarism after random readers identified the issue and brought it to their attention. After an extensive analysis and comparison of the works, Blushing Books was confident that enough similarities existed between the works that filing a DMCA notice was justified.
22. Answering Paragraph 57: For example, Plaintiff states that there was "harassment and defamation" by Defendant, and they give no support for such conclusions regarding these allegations. In light of Plaintiff's failure to assert any specifics for their claim, it is difficult, if not impossible, to further address the allegations pleaded. Plaintiff's allegations and requested relief have no basis in fact or law and do not amount to a legitimate claim.
23. Answering Paragraphs #58: The statement "consistent with their long-standing practice of manipulating commentary ... " is made with no proof whatsoever, is completely false, and has now been posted openly to a publicly accessible website and is defamatory to ABCD Graphics/Blushing. Not one example is provided to show ABCD Graphics/Blushing taking any public or private action against Zoey Ellis' titles with the exception of the filing of the DMCA notices (**which are not public**).
24. Answering Paragraphs #58, #59, #60, #61 – all allege that Soto/Cain/Soto and ABCD Graphics/Blushing manipulate reviews and/or solicited negative reviews and/or did so specifically against Amarcya/Ellis's books. Not a single supporting example or proof is given. While an Amazon account can only leave one review per product, an account can

leave multiple response comments on other customers' reviews. **Cain/Soto's request that fans up-vote and/or down vote reviews is targeted to fans / readers who left reviews on Cain/Soto's own books. These requests have nothing to do with Amarcya/Ellis's titles whatsoever.** This system has been provided as part of the Amazon interface, and one has to assume that Amazon expects people to utilize it. Encouraging fans to use it violates no Amazon guidelines or terms of service and is not the same as soliciting or paying for reviews. Regardless, although Defendant Cain may have engaged in social media discourse (albeit benign), Defendant Blushing made no public comments regarding this dynamic whatsoever. Plaintiff cannot point to any conversation or even passing mention of the book similarities in an online forum (or otherwise) by Blushing Books, because no such statements exist.

25. Answering Paragraph 62: Defendant denies these claims. Further, a vendor has no requirement to remove a book based on a DMCA filing, and although Apple, Barnes and Noble, and Kobo removed the books from sale, Google Play and Amazon did not. Therefore, any loss of income was as a result of the vendor choosing to remove the titles and not as a result of the DMCA filing per se.
26. Answering Paragraph 63: Blushing Books is not mentioned in this Paragraph. To the extend Blushing Books has personal knowledge of this accusation, they deny it.
27. Answering Paragraph 64: Blushing Books does not deny publishing additional works in this genre, and reiterates that universal trends and themes forming common threads in a fictional universe involving particular subject matter (e.g., in most zombie fantasies zombies can be killed by shooting them in the head) do not constitute infringement or plagiarism. Zoey Ellis's books forming the basis for this dispute moved beyond accepted

truths in a shared universe and moved into the realm of substantial similarities. Blushing Books denies that their claims that Zoey Ellis infringed on Addison Cain's intellectual property were false or based on ill will. Finally, ABCD Graphics and Design received no notices either directly or via author Cain that Carolyn Faulkner's works violated Cain's copyright.

28. Answering Paragraph 65. This section alleges ABCD Graphics/Blushing "continued to harass... through emails...." Defendant denies this. The only communication between Plaintiff and Defendant came when the CEO of ABCD Graphics/Blushing contacted Zoey Ellis on one occasion with a polite attempt to resolve the situation. (*Exhibit 14 in the original complaint.*) This was the first contact between the two parties and was made prior to Ms. Ellis retaining counsel. When no response was received, no further emails were sent by any person employed by ABCD Graphics/Blushing. Addison Cain/Soto never contacted Zoey Ellis directly. Her attempts to do so were thwarted by the fact that before she ever attempted to reach out to or contact Zoey Ellis on Facebook, Zoey Ellis had pre-emptively blocked Addison from seeing her Facebook page. The example included (Exhibit 14) contains ONE email. The statement that ABCD Graphics/Blushing "continued to harass Plaintiff and its author through emails to intimidate, embarrass, and to cause harm" is false, and has now been posted openly to a publicly accessible website and is defamatory to ABCD Graphics/Blushing.

COUNT I – MISUSE OF COPYRIGHT RESPONSE TO PARAGRAPHS 66-69:

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

29. Answering Paragraph 66: Defendant does not have the information necessary to respond to this section. Defendant renews its argument that Defendant had a bonafide, legitimate belief that substantial similarities existed between Cain and Ellis's book thereby making DMCA takedown notices appropriate following an unsuccessful attempt to resolve the matter via a cease and desist letter.
30. Answering Paragraph 67: Defendant lacks the personal knowledge necessary to respond to this section.
31. Answering Paragraph 68: Defendant acknowledges that, although, there are innumerable points of differentiation within the works, Defendant possessed significant examples of substantial similarities making a DMCA notice proper.
32. Answering Paragraph 69. Their Complaint makes the statement – “some stories build alternate societal or cultural traditions...” This is one of the bases for Blushing Books' claim – that Alpha's Claim (and specifically Born to Be Bound) as well as copying an overarching plot arc, contains multiple very specific alternate societal “tropes,” virtually all of which were copied in Myth of Omega, and that copying went well beyond what is acceptable in a shared writing tradition like “werewolves” or “vampires.”

COUNT II – MISREPRESENTATION, 17 U.S.C. § 512(f): RESPONSE TO PARAGRAPHS 71-75:

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

33. Plaintiff at times appears to be making a “reverse copyright” argument, implying that because Omegaverse *is* a shared universe with many conventions and unifying elements among the stories, plagiarism is impossible. To give an analogy: It would be difficult for anyone in the U.S. today to be unfamiliar with “The Walking Dead,” a television

program now in its eighth season set in an America decimated by a plague of zombies. Most Americans are also familiar with the Resident Evil series of six films, spread out over fourteen years which also deal with a zombie take-over of America. Although the basic “tropes” of the worlds are identical, (flesh eating zombies caused by the release of a virus decimate mankind) the basic plot lines of Walking Dead and Resident Evil are very different. However, should someone attempt to create a film virtually identical to Resident Evil, adding only “magic” to the plot and changing genders of protagonists, it is likely a lawsuit would quickly result. Plaintiff’s argument at times seems to be that because there are quite a few “conventions” in Omegaverse and because Omegaverse itself is not subject to copyright, (any more than zombies or vampires are) that within Omegaverse, “anything goes” and that plagiarism is not possible.

34. Rather, Blushing gave a formal, corroborated notice in the form of DMCA takedown notices to vendors that they believed their author’s work had been plagiarized.
35. Answering Paragraph 72. Since 2005, ABCD Graphics/Blushing has published in excess of 3000 titles. The company has published 1370 titles since Jan 1, 2015. ABCD Graphics/Blushing is in fact one of – if not the – largest digital-first publisher in the world. This is roughly one book every week day for 13 years. In that time, they have filed two DMCA take down notices against other authors/publishers, **the one filed in this matter being the second**. Addison Cain/Soto has never filed a DMCA take down against another author. The statement that “ABCD Graphics/Blushing and Cain/Soto have engaged in similar acts...” is false. Neither ABCD Graphics/Blushing nor Cain/Soto has ever used this tactic to “stifle competition.” This has now been posted openly to a

publicly accessible website and is defamatory to both ABCD Graphics/Blushing and Cain/Soto.

- a. Answering Paragraph 72. Defendant denies these allegations. Defendant ABCD Graphics/Blushing never has filed any DMCA notices regarding any books in the Omegaverse universe with the exception of Plaintiff Zoey Ellis's Myth of Omega. The Dragon Maiden Post referenced here refers to a blatantly-plagiarized version of Born to Be Bound posted by an author to a free erotic story website, "Literotica." Cain/Soto did not file any legal paperwork. Rather, Cain/Soto complained to the owners of Literotica, the claim was investigated, and the story removed in 2016.

36. Answering Paragraphs 73: DMCA notices were filed against Zoey/Amarcya's titles with a good faith belief that copyright had been violated and that Defendants were in possession of documentation regarding this violation. As of the receipt of the complaint (October 19, 2018), the DMCA filed with Amazon was still open and unresolved. Once a final determination would be received from Amazon, a decision to pursue legal copyright actions would be made. Blushing's decision to not have filed a copyright action as of this time is not proof that Defendants did not believe such an action would be successful or is valid.

37. Answering Paragraphs 74: After consultation with attorneys and an intellectual property expert, Blushing Books chose not to file a lawsuit against Ms. Ellis. It would not make sense to do so in light of the colossal expenses with legal disputes, and the amount of damages ABCD Graphics/Blushing would incur as a result of there being a substantially similar piece of writing (plagiarized or not) on the market.

38. Answering Paragraph 75: Blushing Books is not mentioned in this Paragraph. To the extend Blushing Books has personal knowledge of this accusation, they deny it.
39. Answering Paragraph 76. The exact sequence of these filings is confusing as some notices were filed prior to the release of Book #3 in the Myth of Omega series, while others were filed after. As far as Defendant knows no DMCA was filed for Book #3 prior to the release of Book #3 on May 23rd. However, the basis for Defendants' claim – that extensive alternate societal and cultural traditions created by Addison Cain/Soto in her Alpha's Claim series – exist in Myth of Omega. These traditions would carry on into Book #3 even if Book #3 had not yet been released.
40. Answering Paragraph 77. Although "ideas" and "arcs" are not copyrightable, "plots" – when the "look and feel" are "substantially similar" or when there is significant "congruence" are. It is the good faith belief of ABCD Graphics/Blushing that Ellis/Amarcy's crossed this line with Myth of Omega.
41. Answering Paragraphs 78, 79, 80 - Thirty plot congruencies were listed in a document provided to vendors as part of a DMCA take down filing. ABCD Graphics/Blushing and Cain/Soto/Soto disagree that they were incorrect, purposefully inaccurate, misleading, or "tropes" of the Omegaverse. Although some could be argued as existing within a "gray area," the vast majority of the thirty are very specific plot instances of Alpha's Claim and were reproduced without variation in Myth of Omega, with the exception that the world of "Myth of Omega" brings in a substantial "magic" component (not present in Alpha's Claim) on top of the basic Omegaverse plot. The magic is an adjunct, an "add-on" if you will, put on top of the Alpha's Claim plot, but that if the magic component is removed from Myth of Omega, what remains is fundamentally "Alpha's Claim."

42. Answering Paragraph 82. Defendant denies these claims. The DMCA filings were made under penalty of perjury, a fact of which ABCD Graphic/Blushing are aware. The filings were made with the good faith belief that copyright had been violated and that Defendant Blushing was in possession of documentation regarding this violation. Blushing Books has received no inquiries from any state or federal law enforcement agency investigating perjury, and can assume that Plaintiff has made no such report.
43. Answering Paragraph 83. Defendant denies these claims. Further, Blushing Books has requested documentation of damages (or at least a ballpark figure) purportedly incurred as a result of the takedown notices. Plaintiff has declined to provide these figures, and stated they will not participate in settlement discussions with Blushing Books outside of court-ordered mediation.
44. Answering Paragraph 85 (See Response #33 & 34 – above). Further, Defendant Blushing had no duty to Plaintiffs. They do not work with them, are not in contracts with them, and have no otherwise relationship that would create a legal duty suitable to create negligence liability.
45. Answering Paragraph 86: Although ABCD Graphics/Blushing and Soto filed the DMCA notices, the vendors themselves made the decision to remove the books from sale. This decision was optional. While Draft2Digital's response to Ellis/Amarcyra contains the statement "By law, we are required to remove content upon receiving a DMCA takedown notice...", this is false. The DMCA does not require a service provider to take down allegedly infringing content. Instead, the DMCA gives service providers an incentive to do so by providing that they "shall not be liable for monetary relief" if they comply with a proper DMCA notice. Not all service providers have opted into the DMCA system, and

even those who have opted-in are not obligated to take down content. Moreover, Amazon has never removed Plaintiff Ellis's books and has continued to ignore filings, phone calls, and letters. Therefore, any loss of income can be attributed to the vendors' decision and not the filing per se. This is the checks and balancing system through which the system operates.

**COUNT IV - TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE: Answering Paragraph #87-91**

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

46. Answering Paragraph 87: Defendant lacks the information necessary to respond to this properly.

47. Answering Paragraph 88: Defendant denies this allegation. Because the vendors with which ABCD Graphics/Blushing knows are typically used to publish written work in this field, they filed the DMCA takedown notices with those vendors. Blushing Books has no other knowledge of Zoey Ellis's business contacts.

48. Answering Paragraph 89: Defendant denies this allegation. Defendant has never made a public statement regarding this matter. On the contrary, Plaintiff, Plaintiff's author, and – seemingly - Plaintiff's attorney have now made extensive public statements and even created a website (www.omegaverselitigation.com), purporting to document "DMCA" abuse but which really only discusses ONE case – this one. The complaint includes allegations that ABCD Graphics/Blushing:

- a. Manipulated reviews;
- b. Harassed Plaintiff and Plaintiff's author;

- c. Filed the DMCA only to stifle competition;
- d. Harassed at least one additional author; and
- e. Filed knowing that the allegations are false.

This website serves no other purpose beyond publicizing this specific case, and to damage Blushing Books' (who publishes significantly more works than Quill) reputation. Further, Plaintiff gives zero examples of which business relationships were impacted, (let alone "terminated!") as a result of these takedown notices.

49. Answering Paragraph 90: Defendant denies these allegations. No evidence is provided regarding any of these allegations, because the allegations are false. Defendant ABCD Graphics/Blushing has never posted publicly to any forum regarding this matter, has never alleged that Plaintiff's author has engaged in harassment, and has never discussed this situation with anyone other than Cain/Soto and counsel.

50. Answering Paragraph 91: Defendant denies any liability, and therefore denies that they intentionally interfered with any prospective business relations or expectancies. Indeed, Blushing Books knew nothing about this.

**COUNT V – MALICIOUS INTERFERENCE WITH CONTRACT
OR BUSINESS RELATIONS. RESPONSE TO PARAGRAPHS 92-96**

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

51. Answering Paragraph 92: Defendant lacks the information necessary to respond.

ABCD Graphics filed:

- a. One notice (online) with Barnes and Noble.
- b. One notice (online) with Kobo.

- c. One notice (online) with Apple and one follow up notice, after Apple informed Blushing that Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. was challenging the take down, that we stood by our position.
- d. One notice (online) with Amazon, which was followed up by a phone call and then a notice (written by certified mail) to their legal department.
- e. One notice (online) with Google Play, which was followed up by a notice (written, via certified mail) to their legal department.

ABCD Graphics never refiled notices after Barnes and Noble, Kobo, and Apple reinstated the books. This hardly constitutes online harassment.

52. Answering Paragraph 93: Defendant denies these claims. ABCD Graphics objects categorically that their copyright claims advanced by the DMCA takedown notices were false. They were made in good faith, believing then and continuing to believe now, that Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. did indeed plagiarize Addison Cain's titles. Not a single one of these allegations are supported by a single piece of documentary evidence, and Defendant denies them. Further, Plaintiff, Plaintiff's author, and Plaintiff's attorney (Mr. Lincecum, through omegaverselitigation.com) are engaging in exactly the behavior of which they are falsely accusing ABCD Graphics/Blushing of engaging.
53. Answering Paragraph 94: Defendant denies they acted in any way that was malicious, or unjustified. Indeed, Zoey/Amarcya has posted publicly to a Zoey Ellis Facebook page that her attempts to resolve the issue amicably and instead Defendants "persisted with threats of blackmail and attempted intimidation, as well as continued existing attacks against my character and books in collusion with others." Neither ABCD engaged in no

such behaviors of this nature. Furthermore, they did not “ignore attempts to resolve the issue.”

54. Answering Paragraph 95: Not a single one of these allegations are supported by a single piece of documentary evidence, and Defendant denies them. In addition, Amarcya/ Ellis makes the allegation that they have “similarly targeted” other M/F Omegaverse authors and that one author “abandoned” her story after threats and “take-down” attempts. No documentation of any of this is provided and every word of it is a fabrication, now placed in a public venue which broadcasts this dispute unnecessarily.

55. Answering Paragraph 96: Defendant denies liability for any damages. Blushing filed the DMCA take-downs based 100% on Ms. Cain/Soto’s representations to Blushing, combined with a detailed comparison to the materials. Blushing conducted appropriate research and juxtapositions of the works in question, but did not conduct an independent investigation to include expert retention. What Blushing received contained enough information / evidence for Blushing to state that the two books were “substantially similar.” Furthermore, Ms. Cain/Soto DID file DMCA notices on her own, demonstrating that each individual party made a determination that Cain/Soto/Soto’s works had indeed been plagiarized.

COUNT VI – DEFAMATION Responding to Complaint Paragraphs 97-100:

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

56. Answering Paragraph 97: Defendant denies making false and defamatory statements. In the Spring of 2018, Ms. Cain/Soto, who has many passionate supporters, received information from multiple independent parties that Ellis/Amarcya had plagiarized her books. The subsequent Takedown Letters filed by Defendant Cain/Soto’s publisher,

Blushing Books, were well-researched, well documented, specifically-outlined demonstratives conveying their joint and well-founded beliefs that Zoey Ellis/ Zuri Amarcya had plagiarized Cain/Soto's work.

57. Answering Paragraph 98: Defendant denies anonymously conspiring and colluding to defame Plaintiff. The Plaintiffs have argued throughout the complaint that Blushing has defamed and harassed them. However, the sole piece of communication between Blushing and Plaintiff is a private electronic message wherein Blushing attempts to devise an amicable, discreet method of resolving the dispute. No public communications were made by Blushing Books regarding this dispute.
58. Answering Paragraph 99: ABCD Graphics is accused of "anonymously conspiring," "colluding" "anonymously creating and or contributing to" "multiple online forums" and acting with "malice and reckless disregard." In addition, they are accused of continuing this behavior. No evidence is provided for any of these statements. Defendant ABCD Graphics denies in the strongest possible terms that it ever engaged in any such behavior.
59. Answering Paragraph 100: At the very least, Plaintiff Ellis is a limited purpose public figure. Further, Ms. Cain/Soto's statements on social media are constitutionally-protected and therefore nonactionable, especially because the comments arose from a public online dispute between a prominent writer (Cain/Soto) and one of her rivals. Defamation law supplies robust protection for opinions. Regardless, Blushing Books made zero public comments regarding these issues.
60. Plaintiffs cannot plead and prove actual malice, a federal constitutional requirement for defamation claims asserted by public figures, for the reasons stated above. Thus,

Plaintiffs cannot show any probability that she will prevail on her claim. The Court should disregard this section, because Plaintiffs have not pled, and will never be able to plead, a valid claim for defamation.

61. Because defamation per se does not apply, these claims should be disregarded. Plaintiff must plead and prove actual damages to recover for defamation. Plaintiff has not alleged actual damages. Her only allegations of damages are general allegations that she lost unspecified business as a result of the Takedown Letters. Plaintiff cannot, additionally, establish a causal relationship between the Takedown Letters and damages. Again, the Complaint contains no specific damages or figures corroborating those damages.

COUNT VII – FALSE LIGHT: Responding to Complaint Paragraphs 101-107

Defendant incorporates and cross references each and every response and argument provided throughout this document as if repeated herein.

62. Answering Paragraph 101: Plaintiff denies broadcasting any information regarding this matter. Any negative publicity Plaintiffs experienced as a result of Defendants filing Takedown Letters came as a result of the public controversy they both created and fueled in an online public website. Indeed, shortly after filing the Complaint, **Plaintiff even created a website to broadcast this dispute.** The Complaint does not and cannot specify any economic harm that Plaintiff allegedly has suffered as a result of the Takedown Letters as opposed to the many other aspects of her public internet attack campaign against Blushing Books.
63. Answering Paragraph 102: Further, Plaintiffs do not prove actual malice (reckless disregard for the truth) because the standard requires conscious disregard of actual evidence that the statement is false, i.e., that Blushing, at the time they filed the Takedown Letters, entertained “serious doubts” about the veracity of the statements, that

is, a “high degree of awareness” that the comments were probably false. St. Amant v. Thompson, 390 U.S. 727, 731 (1968). Plaintiff cannot show this, and the Complaint fails even to allege this—it merely pleads that Blushing said something without knowing whether it was true or not. This is not the standard for actual malice. Absent competent evidence that Blushing was actually aware that their comments were false or had information that would cause one to entertain serious doubts about their truth, Plaintiff cannot prove actual malice. This argument will be developed further in Defendant’s Motion for Summary Judgment. ABCD Graphics and Design has never posted to any public forum or made any public statements about this matter. Plaintiff neither offers proof that any online harassment or defamation actually occurred nor that ABCD Graphics and Design was in any way responsible for or even knowledgeable about any “false or malicious” claims.

64. By contrast, Plaintiff has either created or allowed to be created on her behalf a website whose sole purpose is to publicly disseminate information about this case. Plaintiff has linked to this website from her social media accounts. It is in fact Defendant’s reputation that has been harmed by false statements and allegations of malicious actions. Plaintiff’s “publishing company” Quill Inc. has never, in so far as Defendant can determine, ever published a book other than that of Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. ABCD Graphics and Design is one of the largest digital publisher in the world, publishing 12-15 books per month, working with hundreds of authors every year.

65. Answering Paragraph 103: Defendant denies liability for the claims stated within Plaintiff’s complaint. Fururther, Defendant lacks the ability to respond properly given that

Plaintiff has not provided a shred of evidence, documentation, or even information regarding their monetary damages.

COUNT IX – DECLARATORY JUDGMENT: Responding to Paragraphs 108-112.

66. Answering Paragraph 105: ABCD Graphics emphatically objects that the copyright claims were false. They were made in good faith, believing then and continuing to believe now, that Zuri Amarcya/Zoey Ellis/ writing for Quill Books, Inc. did plagiarize Addison Cain's titles.
67. Answering Paragraph 106: Plaintiff states that Cain continued a campaign of manipulating reviews, implying that attempts were being made to manipulate reviews on the MYTH OF OMEGA titles. First, Cain is no longer a party to this law suit and second, again, no evidence is given. Cain's attempts only dealt with asking fans to "like" five-star reviews on Cain's own titles and "down vote" one star reviews. This illustrates yet again Plaintiff's attempt to tell the same claim over and over in hopes that eventually if it is repeated often enough it will become true.
68. Answering Paragraph 107: Defendant denies any wrongful or unlawful activity.
69. Answering Paragraph 108: Defendant denies that a real and actual controversy exists. Defendant maintains that they have committed no wrongdoing and are not liability for any damages. This section seems to indicate that, because Plaintiff Ellis's works may have infringed on Defendant Soto/Cain's intellectual property, that amounts to a controversy such that *this* court must adjudicate the matter. Plaintiff, not Defendants, brought this action, and elected to bring it in an arbitrary forum.
70. Answering Paragraph 109: The Defendant denies the allegations set forth in Paragraphs 109 of the Complaint by Plaintiffs Quill and Ellis.

DEFENSES

71. The Defendant intends to endorse and advance jurisdictional defenses at jury trial, specifically lack of subject matter jurisdiction and lack of personal jurisdiction.

72. The Complaint is insufficient on its face for the court to adjudicate these claims.

Defendant will file a separate, subsequent motion for summary judgment pursuant to 12(b)6) following Discovery disclosures.

CONCLUSION

73. Plaintiff has filed an action which contains literally dozens of conclusory allegations provided with no evidence whatsoever and repeats them over and over. In addition, the Complaint contains allegations that are misleading, stating for example, that Cain (who is no longer a defendant) asked fans to manipulate reviews, when she only asked for fans to vote on reviews of her own books.

74. Defendant has filed one other DMCA notice in ten years of business. Statements made repeatedly that Defendant manipulated reviews, paid for reviews, “shamed” an author, and most damaging, maliciously targeted an author to “stifle competition” and “*has done so repeatedly*” is enormously damaging to Defendant’s reputation.

75. Furthermore, Plaintiff accuses Defendant of publicizing this situation (although providing no proof) while Defendant has either launched a website or allowed it to be launched which supposedly publicizes “DMCA Abuses” but in fact only discusses ONE case – this one, and then has linked to the website from her social medial accounts.

COUNTERCLAIM

76. ABCD Graphics and Design is one of the largest “digital first” publishers in the world.

Furthermore, it is one of the longest lived, out lasting literally dozens of romance

“eBook” publishers, including Ellora’s Cave, Loose ID, Samhain, and many others.

ABCD Graphics’ reputation in the industry is truly its bread and butter.

77. All of that said, it is extremely difficult if not impossible for anyone to gauge how and to

what extent Plaintiff filing this lawsuit has harmed Blushing Books. What is objective,

quantifiable, and verifiable are the losses Defendant has incurred defending this meritless

lawsuit. At this point, Defendant estimates that figure to be in the area of \$11,500 in

legal fees, loss of wages, filing fees, and various other extraneous expenses. Further,

even having an established presence, reputation, and relative success in the online

romance world, Blushing Books is a tiny company in southern Virginia that does not

possess an infinite amount of financial resources. Forcing Blushing Books to defend

against a federal lawsuit, (particularly one involving such vague and unsubstantiated

claims) in a foreign jurisdiction places undue financial and logistical hardship on this

small publishing entity.

78. The lawsuit is particularly troubling and unacceptable given the amount of money

actually at issue as a result of the takedown notices being filed. For example, Defendant

is fully aware of sales of other authors books, through various tracking tools only

available to Publishers. Across dozens of titles Defendant tracks correlation of sales

ranks to sales (on Amazon) and also is well-aware that sales on the secondary vendors

remains a surprisingly consistent percentage of Amazon sales. Based on these metrics,

Defendant can state with confidence that the actual LOSS OF SALES’ related damages

in this case is likely less than \$2000.00 and may be less than \$1000.00.

79. This is not a matter that ever needed to be brought to court given factual circumstances giving rise to the claim, in addition to the minimal amount of lost sales. Defendant has made diligent efforts to resolve this matter to prevent further expenses from being incurred, and Plaintiff has emphatically rejected any settlement option. As a result, Defendant is forced to file this counterclaim in an attempt to mitigate further financial injury pursuant to 12 OK Stat § 12-2013 (2014).

REQUEST FOR RELIEF

80. WHEREFORE, Defendant Blushing Books, requests the following relief:

- 1) Dismissal of the action;
- 2) Defendant Blushing Books' Attorneys' fees pursuant to 17 U.S.C. § 505, other portions of the COPYRIGHT ACT, or as otherwise allowed by law;
- 3) Defendant's recoverable costs; and
- 4) Any further relief as the Court deems just and equitable.

Respectfully Submitted,
/s/ Rebecca Briggs

Rebecca Briggs, #40626 (CO) & #91362 (VCC)
(Also licensed in Federal Western District of Oklahoma)
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Dated: February 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February 2019, I electronically transmitted the attached document to the Court Clerk using the ECF System for filing. Based on the records

currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Gideon A. Lincecum glincecum@holladaychilton.com

Dylan D. Erwin derwin@holladaychilton.com

/s/ Rebecca Briggs