



# Civil Resolution Tribunal

Date Issued: August 24, 2020

File: SC-2020-003019

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Derek Mailhiot (dba The Junk Guy) v. 1095148 B.C. Ltd.*,  
2020 BCCRT 945

B E T W E E N :

DEREK MAILHIOT (Doing Business As The Junk Guy)

**APPLICANT**

A N D :

1095148 B.C. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

### INTRODUCTION

1. This is a dispute over alleged copyright infringement.
2. The applicant, Derek Mailhiot (dba The Junk Guy), says the respondent, 1095148 B.C. Ltd., used his business logo (Logo) without licence or permission in its

advertisements for commercial purposes. Mr. Mailhiot says that he owns the copyright in the Logo. Mr. Mailhiot seeks damages of \$5,000 for alleged copyright infringement.

3. 1095148 B.C. Ltd. operates under the name “Anything Junk”. Anything Junk denies that Mr. Mailhiot owns the copyright in the Logo. It says the Logo is based on a stock photo or “clip art” and not subject to copyright. It also says that Anything Junk’s logo is different from Mr. Mailhiot’s Logo.
4. Mr. Mailhiot is self-represented and Anything Junk is represented by its principal.
5. For the reasons that follow I have dismissed Mr. Mailhiot’s claims because I find he has not proven that he owned the copyright to the Logo.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did Mr. Mailhiot own the copyright to the Logo?
  - b. If so, did Anything Junk infringe Mr. Mailhiot's copyright and what, if any, are the appropriate damages?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. I find that Mr. Mailhiot contracted with a graphic designer, Maryna Beskorovaina through an online platform to create the Logo for \$100. Ms. Beskorovaina completed the Logo for Mr. Mailhiot in about May 2017. Contrary to Anything Junk's submission, I am satisfied on the images in evidence that Anything Junk substantially copied the Logo's images and used it for its own advertisement. I understand that Anything Junk has since changed its own logo.
13. As mentioned above, Mr. Mailhiot argues that he owns the copyright to the Logo and Anything Junk used it for commercial purposes without his consent.
14. Copyright is governed by the federal *Copyright Act* (CA). The CA defines "copyright in works" as the sole right to produce or reproduce a work or any substantial part of it in any material form. If the work is unpublished, it includes the sole right to publish the work or any substantial part of the work. Under section 13 of the CA, the work's author is the first owner of the copyright. Section 27 of the CA says that it is an

infringement of copyright for any person to, without the copyright owner's consent, do anything only the owner of the copyright has the right to do. Sections 34(1) and 38.1 (plus other sections not relevant here) of the CA provide statutory remedies for copyright infringement. Mr. Mailhiot seeks \$5,000 as a remedy for the alleged copyright infringement under the CA.

15. I find on Mr. Mailhiot's correspondence with Ms. Beskorovaina and the work-in-progress images in evidence that the Logo was not a replica of "clip art". However, I find that some of the Logo's design was derived from an "iStock" photo. It is unclear on the evidence whether Ms. Beskorovaina was the original iStock photo artist or had the copyright to it. In any event, Mr. Mailhiot undisputedly did not create the iStock photo or own the iStock photo copyright.
16. As for the Logo's original elements, I find that Mr. Mailhiot provided some input and feedback. However, I find Ms. Beskorovaina was the artist who created (or authored) the Logo's images apart from the iStock elements. While a person can register a copyright under the CA, I find the Logo was not registered. However, it does not need to be registered for a copyright to exist. I find Ms. Beskorovaina was the first owner of the Logo copyright under section 13 of the CA. This is subject to any other copyright that might exist in the iStock photo, which I find no need to determine here. The material point is that there is no evidence Mr. Mailhiot ever registered the Logo or has any copyright to it. There is also no written agreement in evidence or proof that the Logo's copyright was ever transferred to Mr. Mailhiot.
17. I find that Mr. Mailhiot has not proven on a balance of probabilities that he owns the copyright in the Logo even though it was created for his business. I find therefore, that Mr. Mailhiot has no legal right to bring a claim for copyright infringement for Anything Junk's use of the Logo's images. I dismiss Mr. Mailhiot's claim.
18. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the unsuccessful party, I find that Mr. Mailhiot is not entitled to

reimbursement of his CRT fees. Anything Junk did not pay CRT fees and neither party claimed dispute-related expenses.

## **ORDER**

19. I dismiss Mailhiot's claims and this dispute.

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Trisha Apland, Tribunal Member