

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

Civil Action No. 1:22-CV-00457-DDD-SKC

REPORTHOST LLC, a Washington limited liability company,

Plaintiff,

v.

SPECTORA, INC., a Colorado corporation,

Defendant.

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**DEFENDANT SPECTORA, INC.'S MOTION TO DISMISS  
COUNTS I-III AND V-VI OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

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## I. INTRODUCTION

At core, this is a copyright infringement case brought by ReportHost LLC (“ReportHost”) against its competitor, Spector, Inc. (“Spector”). ReportHost and Spector both offer an online platform used by home inspectors to auto-generate inspection reports. Inspectors select basic boilerplate report language about the elements of a building undergoing inspection (“*the stairs were wobbly and should be repaired*”), then auto-generate a final written report. ReportHost claims its boilerplate language is copyrighted. It also claims that Spector’s customers uploaded ReportHost content to Spector’s platform, and that Spector is therefore an infringer. Finally, ReportHost claims Spector displayed ReportHost’s name to promote Spector’s services. Each of those claims fails and must be dismissed:

**The copyright claims fail:** because the asserted registrations are invalid. ReportHost knowingly made a materially inaccurate representation to the Copyright Office—it represented that the at-issue works were “unpublished.” The record before the Court shows the opposite, and that ReportHost knew so when it told the Copyright Office otherwise. This constitutes a fundamental registration error and requires that the registrations be invalidated.

**The Colorado Consumer Protection Act claim fails:** because ReportHost does not and cannot plead facts with enough particularity.

**The claim for permanent injunction fails:** because a permanent injunction is not a cause of action.

Accordingly, Counts I-III, V, and VI of the First Amended Complaint must be dismissed.

## II. THE APPLICABLE LEGAL STANDARDS

### A. Motion to Dismiss

A claim must be dismissed when a plaintiff does not or cannot allege “‘enough facts to state a claim to relief that is plausible on its face.’” *Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.

Ct. 1955, 167 L. Ed. 2d 929 (2007)). In considering a motion to dismiss, the Court can consider facts beyond the bounds of the initial pleading via documents subject to judicial notice. *See Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1146 (10th Cir. 2013).

**B. Copyright Infringement Requires A Valid Registration; The Court Can Invalidate A Registration On A Motion To Dismiss**

A copyright infringement claim is plausible when a plaintiff pleads “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S. Ct. 1282, 113 L. Ed. 2d 358 (1991). Without a copyright registration, “no civil action for infringement of the copyright in any United States work shall be instituted . . . .” 17 U.S.C. § 411(a). If claims of direct copyright infringement fail, so too do claims of indirect infringement. *See La Resolana Architects, PA v. Reno, Inc.*, 555 F.3d 1171, 1181 (10th Cir. 2009) (“both contributory and vicarious infringements require someone to have directly infringed the copyright”). But in order to satisfy § 411(a), a copyright registration must be *valid*, which it cannot be if it contains inaccurate information that “[was] included on the application for copyright registration with knowledge that it was inaccurate; and the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. § 411(b).

The Court has the power to invalidate a copyright registration in deciding a motion to dismiss (*see, for example, Seattlehaunts, LLC v. Thomas Family Farm, LLC*, 2020 WL 1674124 at \*5 (W.D. Wash. Apr. 6, 2020)). But before doing so, it must obtain an advisory opinion from the Register of Copyrights as to whether the Register would have refused registration had it known of the inaccuracies in the application. *See Mambu Bayoh v. Afropunk Fest 2015 LLC*, 2020 WL 229978 at \*4 (S.D.N.Y. Jan. 15, 2020) (“Section 411(b)(2) does not allow a court to

find that a certificate of copyright registration is invalid on the basis of inaccuracy without first making a referral to the Copyright Office.”).

### **C. CCPA Claims Must Be Plead With Particularity**

Colorado Consumer Protection Act (“CCPA”) claims require pleading more than mere plausibility – they must be plead with *particularity* under Fed. R. Civ. Pro. 9(b). *See Int’l Acad. of Bus. & Fin. Mgmt. v. Mentz*, 2013 WL 212640 at \*6 (D. Colo. Jan. 18, 2013). In particular, a plaintiff must plead the following facts with particularity: (1) that the defendant engaged in an unfair or deceptive trade practice; (2) that the challenged practice occurred in the course of defendant’s business, vocation, or occupation; (3) that it significantly impacts the public as actual or potential consumers of the defendant’s goods, services, or property; (4) that the plaintiff suffered injury in fact to a legally protected interest; and (5) that the challenged practice caused the plaintiff’s injury. *Hall v. Walter*, 969 P.2d 224, 235 (Colo. 1998).

### **III. FACTS RELEVANT TO THIS MOTION TO DISMISS**

ReportHost allows its customers—home inspectors—to use its software-based “templates” to choose certain boilerplate for inclusion on a home inspection report. (ECF 13 (“FAC”), ¶¶ 1-2, 19). A home inspector can then provide a completed home inspection report, populated with boilerplate from ReportHost’s system, to the inspector’s client. (*Id.*, ¶ 2).

ReportHost expressly admits that its customers have access to every piece of its boilerplate via ReportHost’s templates. (*Id.*, ¶ 19). Moreover, all of the boilerplate can be further distributed to an inspector’s customers via inspection reports generated using ReportHost’s software in conjunction with its templates. (*Id.*, ¶¶ 2, 22).

Even though ReportHost had been in business since 2007 and the instant copyright dispute with Spectorra had been ongoing since February 2019 (*id.*, ¶ 40), ReportHost did not apply to register its alleged copyrights until March of 2020. (*Id.*, ¶ 46; Ex-1 (“ReportHost is in the process of registering the relevant works with the U.S. Copyright Office.”)). As part of the application process, ReportHost submitted to the Copyright Office deposit copies of the material it sought to register.<sup>1</sup> Those twelve documents (each of which Spectorra will refer to hereafter as a “Deposit Work”) contain the universe of every piece of boilerplate that an inspector could possibly insert into an inspection report created with ReportHost’s software as of March 12, 2020. (Exs-2-12).

Despite the fact that ReportHost offered its boilerplate to consumers at least as of February 23, 2019 (*id.*, ¶ 38), ReportHost represented to the Copyright Office in its applications that each of the Deposit Works identified in the applications was “unpublished.” (Exs-13-14). The Copyright Office accepted ReportHost’s representations and the applications matured into Copyright Registrations TXu002195180 and TXu002195064 (the “Registrations”).

#### **IV. CLAIMS I-III: REPORTHOST CANNOT PLEAD OWNERSHIP OF A VALID COPYRIGHT REGISTRATION**

The record before the Court shows that the Registrations are invalid. This is because ReportHost represented to the Copyright Office in March 2020 that the material to be registered

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<sup>1</sup> The Court may take judicial notice of the Copyright Office’s public records regarding the Registrations (*see Nunes v. Rushton*, 299 F. Supp. 3d 1216, 1244 (D. Utah 2018) (taking judicial notice of records available via Copyright Office’s website)) as well as the deposit copies of the Registration’s underlying works. *See Newt v. Twentieth Century Fox Film Corp.*, 2016 WL 4059691, at \*2-3 (C.D. Cal. Jul. 27, 2016) (judicial notice of deposit copies of works at issue); *O’Neil v. Ratajkowski*, 2021 WL 4443259 at \*3 (S.D.N.Y. Sep. 28, 2021) (same).



was at that time “unpublished.” But ReportHost knew full well that, at least as of February 23, 2019, the material (*i.e.*, the boilerplate) was in fact published. An error as to published/unpublished status is a material ground for invalidating a copyright registration. *See* Section IV.A.2, *infra*. Had the Copyright Office known the truth—that every line of boilerplate recited in ReportHost’s 700-plus pages of Deposit Works was published years prior to March 12, 2020—it would have unquestionably refused to grant ReportHost’s copyright registration applications claiming rights in “unpublished” works. ReportHost’s error was both knowing and material. Accordingly, the Copyright Act requires (and the Supreme Court in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* confirms) that this Court, in consultation with the Copyright Office, invalidate the asserted Registrations under 17 U.S.C. § 411(b). Without registrations, ReportHost has no standing for any infringement claims, and such claims must be dismissed. *See* 17 U.S.C. § 411(a); *see also Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 886-87 (2019).

**A. The Court Should Invalidate The Asserted Copyright Registrations**

Pursuant to 17 U.S.C. § 411(b), the Court must invalidate the Registrations if (1) ReportHost knowingly included inaccurate statements of fact in its copyright application, and (2) had the Copyright Office known the information was inaccurate, it would have refused registration. Both requirements are met on the record before this Court. As established below, ReportHost admits that the boilerplate contained in its Deposit Works had been published by 2019 at the latest, and that ReportHost was aware of its prior publication. But rather than apply

for each piece of boilerplate separately as a published work (*see* Compendium<sup>2</sup> § 1909.3 (separately published parts of a work are *each* considered separate works and require individualized applications, filing fees, and deposits)), ReportHost knowingly misrepresented to the Copyright Office that the contents of the Deposit Works were unpublished. (It likely did so to reduce the number of applications and attendant filing fees.) Had the Copyright Office been aware of the boilerplate’s prior publication, it would have refused ReportHost’s applications for groups of unpublished works. Accordingly, invalidation of the Registrations is warranted under § 411(b). As such, Spector respectfully requests that this Court, prior to issuing a ruling on the instant Motion, seek the necessary opinion from the Register of Copyrights confirming the materiality of ReportHost’s application errors. See 37 CFR § 205.14 (providing §411(b) referral instructions).

# **1. ReportHost’s boilerplate was published at least as of February 2019**

Under either of the Copyright Act’s definitions of “publication,” ReportHost’s boilerplate was published. ReportHost admits this. The admission is established in a letter ReportHost wrote to Spector on March 12, 2020,<sup>3</sup> the same date as the effective date of its copyright

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<sup>2</sup> The Compendium of U. S. Copyright Office Practices (“Compendium”) is a non-binding administrative manual that the Court may consider as persuasive authority. *See Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1510, 206 L. Ed. 2d 732 (2020).

<sup>3</sup> The Court may take judicial notice of the letter. *See Brokers’ Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1103 (10th Cir. 2017) (notice appropriate for documents “referenced in the complaint if they ‘are central to the plaintiff’s claim and the parties do not dispute the documents’ authenticity.”) (internal citations omitted). The letter is referenced in the Complaint (FAC, ¶ 4), is central to ReportHost’s claims, and there can be no dispute of authenticity over a letter ReportHost itself sent.

registrations.<sup>4</sup> In the letter, ReportHost admits that publication occurred prior to the filing of ReportHost’s copyright registration applications. (Ex-1 (“ReportHost is in the process of registering the relevant works with the U.S. Copyright Office.”)).

First, ReportHost admits that it previously licensed to its customers access to report-building software containing the templates and their associated boilerplate-at-issue (the boilerplate being contained in the Deposit Works). (FAC, ¶ 2; *see also* Ex-1 (“ReportHost’s business model is to license this copyrighted material to its clients.”)). This constituted publication by “the distribution of copies . . . of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending...” 17 U.S.C. § 101. Additionally, ReportHost admits that had offered its materials (including all of the boilerplate) for further distribution via its customers providing boilerplate-filled inspection reports to be retained by such customers’ end-users without restriction. (FAC, ¶ 19). This also constitutes publication of the boilerplate via “the offering to distribute copies ... to a group of persons for purposes of further distribution, public performance, or public display...” 17 U.S.C. § 101; *see also* Compendium § 1000.19 (online works published if “the copyright owner authorizes the end user to retain copies . . . of that work”) and § 1905.1 (publication occurs when copies “are distributed to a member of the public who is not subject to any express or implied restrictions concerning the disclosure of the content of that work”).

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<sup>4</sup> A March 12, 2020 effective date means ReportHost prepared its applications *on or before* that date. *See* 17 U.S.C. § 410(d) (“The effective date of a copyright registration is the day on which an application, deposit, and fee ... have all been received in the Copyright Office.”).

In addition to its express admissions, the 2020 letter is proof that ReportHost’s boilerplate was being published to the public in February 2019 in such quantities that it allegedly found its way into Spector’s systems. ReportHost alleges that “...the Spector Library contains unauthorized copies of ReportHost’s data templates,” (FAC, ¶ 31) and complained in its letter that “...ReportHost notified Spector of infringement nearly a year ago [in 2019] and infringement through Spector’s site has only increased.” (Ex-1). But ReportHost has not alleged a trade secret or confidential information violation, nor claimed that Spector accessed computer networks or hired away ReportHost employees, and therefore Spector’s only source of ReportHost material logically must have been ReportHost’s customers. Accordingly the 2020 letter also establishes that for Spector to have allegedly infringed by February 2019, ReportHost *must* have published its boilerplate to the public before then, and certainly before it applied for its copyright registrations in March of 2020. For all of these reasons, the boilerplate was published at the time that ReportHost told the Copyright Office otherwise.

**2. Publication status is material to the validity of a copyright registration.**

Inaccuracies made in a copyright application regarding publication status are material: publication status determines, *inter alia*, the type of copyright application to submit, how many works may be included in a single application, how the works must be deposited with the Copyright Office, the duration of protection, and the availability of statutory damages and attorney’s fees. *See* Compendium § 1903. Accordingly, including published materials in an application for unpublished works is “a fundamental registration error.” *Family Dollar Stores, Inc. v. United Fabrics Intern., Inc.*, 896 F. Supp. 2d 223, 230 (S.D.N.Y. 2012) (*quoting* *Determined Prods., Inc. v. Koster*, 1993 WL 120463 (N.D. Cal. Apr. 13, 1993)); *see also*

*Palmer/Kane LLC v. Rosen Book Collections LLC*, 188 F. Supp. 3d 347, 352 (S.D.N.Y. 2016); *Archie MD, Inc. v. Elsevier, Inc.*, 261 F. Supp. 3d 512, 515 (S.D.N.Y. 2017); *see also* Compendium § 1904.1 (“if an assertion [regarding publication] is clearly contrary to facts known by the Office, a claim may be questioned, or in certain situations, refused”).

Indeed, published versus unpublished status is so material that “[a] supplementary registration cannot be used ... to transform a registration for an unpublished collection or a group of unpublished works into a registration for a single published work. *These types of changes would alter the fundamental nature of the claim, and would undermine the legal presumptions afforded to the initial examination of the works.*” Compendium § 1802.4 (emphasis added). Had the Copyright Office known that all of the boilerplate listed in the Deposit Works was previously published, it would have refused registration. As such, ReportHost’s knowing misrepresentation that its boilerplate was unpublished, when in fact it was published, was material to the registerability of its “unpublished” applications, and as such the Registrations predicated on the same are invalid. *See* 17 U.S.C. §411(b).

#### **B. Recent Supreme Court Precedent Confirms That Invalidation Is Warranted**

The recent Supreme Court decision in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 211 L.Ed.2d 586, 142 S. Ct. 941 (2022) confirms that ReportHost’s Registrations should be invalidated. As in the instant action, the copyright registrations asserted by the plaintiff in *Unicolors* were predicated on inaccuracies in the application that stemmed from a mistake of law. The Supreme Court in *Unicolors* held that § 411(b)’s phrase “with knowledge that [the false information] was inaccurate” applies to either lack of knowledge of fact *or* of law, and upheld the plaintiff’s copyright applications because it was not aware of the “single unit of publication”

requirement for group registrations of published works. *Id.* at 947. But the Court also held that judicial invalidation of a copyright registration under § 411(b) should not be disregarded just because a copyright plaintiff self-servingly claims lack of knowledge of the law at the time of application:

[C]ourts need not automatically accept a copyright holder’s claim that it was unaware of the relevant legal requirements of copyright law. We have recognized in civil cases that willful blindness may support a finding of actual knowledge. Circumstantial evidence, including the significance of the legal error, the complexity of the relevant rule, the applicant’s experience with copyright law, and other such matters, may also lead a court to find that an applicant was actually aware of, or willfully blind to, legally inaccurate information.

*Id.* at 948 (internal citations omitted). All facts admitted by ReportHost indicate that ReportHost was knowingly blind to, if not fully aware of,<sup>5</sup> the fact that its applications for groups of unpublished works contained materially inaccurate information.

First, as established *supra*, by stating in its application that the claimed materials were “unpublished,” with full knowledge that they were not, ReportHost made a registration-dispositive error. (*See* Ex-16 at 7 (“Whether a work is published has important implications...”). Both the Copyright Office’s own guidance and past court decisions establish the primacy of the published/unpublished distinction. *See supra*. And unlike in *Unicolors*, where the plaintiff correctly identified its works as published despite incorrectly combining them into a single application, in the instant case ReportHost failed to get even get the basics correct.

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<sup>5</sup> Whether ReportHost willfully ignored or deliberately circumvented applicable law is immaterial, as “[t]he language in 17 U.S.C. § 411(b) does not require a showing of willfulness or fraud.” *Bruhn NewTech, Inc. v. United States*, 144 Fed. Cl. 755, 796 (2019). Basic knowledge of an inaccuracy, without scienter, is sufficient to invalidate a registration under § 411(b). *Id.*

Second, the rule at issue is simple: was a work published or was it not? The requirement to distinguish between published works from unpublished works is oft-repeated throughout the application process and is easily researched. Indeed, the Copyright Office’s first Circular (“Copyright Basics”), in discussing the importance of determining publication, exhorts care (“When you register your work with the Office, you must determine whether the work is published or unpublished...”) and directs the applicant to Chapter 1900 (“Publication”) of the Compendium. (Ex-16 at 7). The Copyright Office also devotes an entire Circular to registering unpublished works, which also directs the reader to Chapter 1900 for further details. (Ex-17). As a final bulwark against faulty applications, the Copyright Office requires an applicant to acknowledge the eligibility requirements before proceeding with a “group of unpublished works” application:

**Group of Unpublished Works - Registration Process Overview**

<< Back
Start Registration >>

This application has strict eligibility requirements. These requirements are listed below. If your works do not meet all of these requirements, please return to the "Home" screen to select the Standard Application or one of the "Other Registration Options" listed on that screen.

If the Copyright Office determines that your works do not meet all of the eligibility requirements, your application may be refused or there may be delays in the examination of your claim that could require the payment of an additional fee and a later effective date of registration for your claim.

### Eligibility Criteria

- 1. All the works must be unpublished.**
- 2. You may submit no more than 10 works.**  
*Example: 10 poems or 8 drawings or 4 songs.*
- 3. You must submit the same types of work (such as a group of songs or a group of drawings).**  
*Example: This application may be used to register 10 poems, but it cannot be used to register 1 poem, 1 song, 1 video, and 1 drawing.*
- 4. All the works must be created by the same author or the same co-authors, and the author and claimant for each work must be the same person or organization.**
- 5. On the Authors/Claimants screen, you must select a term from the drop-down menu that describes all of the works, and you must select the exact same term for each author and each work**
- 6. You must provide a separate title for each work.**
- 7. You must upload a digital copy of each work.**
- 8. The file name for each work should match the title you provide in the application.**  
*Example: If you are registering two songs titled "The Bachelor Party" and "The Wedding Party" each song should be uploaded in a separate digital file named "the bachelor party.mp3" and "the wedding party.mp3."*

(Ex-15). The record shows ReportHost took no such care in filing its original applications.

Third, ReportHost was significantly experienced with copyright law at the time of its application. ReportHost had already been in dispute with Spectora regarding its claimed copyrights for over a year. More importantly, both the 2020 letter and ReportHost's Registrations originate from ReportHost's intellectual property counsel, establishing that ReportHost was being actively consulted and advised by counsel as to copyright matters during its applications, heightening its experience level. *See, e.g. Church Commun. Network, Inc. v. Echostar Satellite L.L.C.*, 2006 WL 845330 at \*9, 10 (D. Colo. Mar. 17, 2006) (representation by counsel does not allow party to "claim it was misled" or "hide behind its ignorance and benefit from its failure").

Finally, the record evidence provided by ReportHost strongly suggests that ReportHost filed inaccurate copyright registration applications for financial advantage. ReportHost's communications establish that it applied for copyright registrations in 2020 in order to attempt to enforce them against Spectora, with whom it had already been in dispute for a year. But because all published works must generally be registered separately, proper registration of ReportHost's "more than 15,000 narratives" would have required significant financial resources: a group of up to 10 unpublished works may be included in a single \$85 application, whereas published work applications (which must be on a *work-by-work* basis) cost \$45 *apiece*.<sup>6</sup> ReportHost's "ignorance" of the requirement to separately apply for each of its 15,000 pieces of boilerplate allowed it to save tens (if not hundreds) of thousands of dollars in fees that it could otherwise use in business or litigation.

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<sup>6</sup> See Copyright Office Fees (<https://www.copyright.gov/about/fees.html>).



In sum: all evidence, taken directly from ReportHost’s pleadings, establishes that ReportHost applied for group registrations of “unpublished” works with full knowledge that it had published every piece of boilerplate contained therein at least a year prior to application. It should have registered its boilerplate separately, but chose instead to file them as allegedly “unpublished” collections. Had the Copyright Office known of the prior publication of the boilerplate, it would have refused to issue the Registrations. As such, ReportHost’s Registrations should be invalidated under § 411(b), and its claim of direct copyright infringement should be dismissed. Additionally, ReportHost’s claims of vicarious infringement (Claim 2) and contributory infringement (Claim 3) fail without a predicate act of direct infringement, an act which ReportHost cannot establish without its Registrations. *See La Resolana Architects, PA v. Reno, Inc.*, 555 F.3d 1171, 1181 (10th Cir. 2009) (“both contributory and vicarious infringements require someone to have directly infringed the copyright”). Dismissal of all copyright claims is therefore warranted.

**V. CLAIM V: REPORTHOST FAILED TO PLEAD ITS COLORADO CONSUMER PROTECTION ACT CLAIM WITH PARTICULARITY**

As a statute concerned with consumer fraud, a claim under CCPA requires pleading with particularity under Fed. R. Civ. P. 9(b). *See HealthONE of Denver, Inc. v. UnitedHealth Grp., Inc.*, 805 F. Supp. 2d 1115, 1120-21 (D. Colo. 2011). Even given the opportunity to amend, ReportHost still fails to allege facts sufficient to meet the pleading standard.

To plead a CCPA claim of consumer fraud, ReportHost is required to allege specific facts that the defendant “**knowingly** [made] a false association” that “induce[d] a party to act, refrain from acting, or [had] the capacity or tendency to attract consumers,” and which “significantly impacts the public.” *Rhino Linings United States v. Rocky Mt. Rhino Lining*, 62 P.3d 142, 147

(Colo. 2003) (emphasis added); *see Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1236 (10th Cir. 2000) (plaintiff must “set forth the time, place and contents of the false representation”).

ReportHost has pleaded the details of Spector’s alleged false associations. What is not provided are factual allegations of Spector acting **knowingly**. For instance, ReportHost alleges that Spector “encouraged” its clients to use templates with ReportHost’s URL, without describing any details of the “encouragement.” (FAC, ¶ 120).

Moreover, other than generally alleging that Spector’s actions impact ReportHost’s customers, ReportHost has failed to plead with specificity how any of Spector’s allegedly deceptive actions “**significantly** impact the public,” another required claim element. *Rhino Linings*, 62 P.3d at 149 (emphasis added); *see also Dean Witter Reynolds, Inc. v. Variable Annuity Life Ins. Co.*, 373 F.3d 1100, 1113 (10th Cir. 2004) (public impact determined by “(1) the number of consumers directly affected by the challenged practice; (2) the relative sophistication and bargaining power of the consumers; and (3) evidence that the challenged practice has previously impacted other consumers or has significant potential to do so in the future”).

ReportHost’s mere regurgitation of claim buzzwords in its allegations cannot replace pleading actual facts with particularity. *See Twombly*, 550 U.S. at 555 (“a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do”). ReportHost does not meet the pleading standard, and its claim under the CCPA should be dismissed.

**VI. CONCLUSION**

Because the Registrations were predicated upon ReportHost submitting known and material inaccuracies during the application process, ReportHost's copyright Registrations should be invalidated by this Court and ReportHost's claims of copyright infringement should be dismissed. Moreover, its claim of CCPA violation is not pled with particularity, and its claim for permanent injunction is no claim at all. Dismissal of Counts I-III, V, and VI is respectfully requested.

Dated: May 11, 2022

By: /s/ Brian S.S. Auerbach

Lynn E. Rzonca  
Brian S.S. Auerbach  
Carly M. Gubernick  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103-7599  
Telephone: 215.864.8839  
Facsimile: 215.864.8999  
Email: rzoncal@ballardspahr.com  
auerbachb@ballardspahr.com  
gubernickc@ballardspahr.com

*Attorneys for Defendant Spectora, Inc.*

**CERTIFICATION**

As required by this Court's Practice Standard III(A)(4), above-signed counsel hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2022, I caused a true and correct copy of the foregoing **DEFENDANT SPECTORA, INC.’S MOTION TO DISMISS COUNTS I-III AND V-VI OF PLAINTIFF’S FIRST AMENDED COMPLAINT** to be served upon all counsel of record via email.

By: /s/ Brian S.S. Auerbach

Brian S.S. Auerbach