

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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No. 20-1208

MARTY STOUFFER and MARTY STOUFFER PRODUCTIONS, LTD.,

Plaintiffs-Appellants,

v.

NATIONAL GEOGRAPHIC PARTNERS, LLC; NGSP, INC.; NGHT,  
LLC d/b/a NATIONAL GEOGRAPHIC DIGITAL MEDIA; NGC  
NETWORK US, LLC; and NGC NETWORK INTERNATIONAL, LLC,

Defendants-Appellees.

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On Appeal from the United States District Court for the District of Colorado  
Before the Honorable William J. Martinez  
Case No. 1:18-CV-03127

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**BRIEF OF *AMICUS CURIAE* MOTION PICTURE ASSOCIATION, INC.  
IN SUPPORT OF DEFENDANTS-APPELLEES**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amicus curiae* the Motion Picture Association, Inc. states that it has no parent corporation and that no publicly-held company owns 10% or more of its stock.

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## **STATEMENT OF INTEREST**

*Amicus curiae* the Motion Picture Association, Inc. (“the MPA”) respectfully submits this brief in support of Defendants-Appellees (“National Geographic”) with the consent of all parties. *See* Fed. R. App. P. 29(a)(2).<sup>1</sup>

The MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the film industry. Its members are Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures,<sup>2</sup> and Warner Bros. Entertainment Inc. These entities and their affiliates produce and distribute a significant percentage of the filmed entertainment in the United States through the theatrical and home entertainment market. The MPA’s mission today includes safeguarding creativity (including free expression and copyright), fostering innovation, driving economic growth for the industry, and advancing diversity, equality, and inclusion in America’s creative economy.

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<sup>1</sup> The MPA states that no counsel for a party has authored this brief in whole or in part; no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than the MPA and its members has made a monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

<sup>2</sup> Defendant-Appellee National Geographic Partners, LLC, is a joint venture between The Walt Disney Company and the National Geographic Society. Walt Disney Studios Motion Pictures, a part of The Walt Disney Company, is a member of the MPA.

The MPA's members use titles to communicate about their works with their audience. A title typically is the first piece of information that consumers receive about a work, and accordingly it serves as a public statement of a creative work's identity. The MPA and its members thus have a substantial interest in the test this Court uses to secure creators' First Amendment rights of free expression, including in their choice of titles, against encroachment by statutory Lanham Act claims.

At the same time, the MPA's members also have significant expertise and experience on the other side of this issue. The MPA's members are owners of some of the most valuable trademarks in the world. The MPA therefore is well-positioned to provide the Court with a unique and balanced perspective on the proper way to ensure that applications of trademark law in cases involving titles of expressive works do not violate the First Amendment.

By requiring a court to pass judgment on a creator's artistic motives, the district court's proposed test puts the Lanham Act on a collision course with the First Amendment, and thus cannot be the law. This Court therefore should reject the district court's novel test in favor of the test articulated in *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2d Cir. 1989), and adopted by courts around the country, which provides a reasoned and workable "limiting construction to protect First Amendment



interests”<sup>3</sup> in the overwhelming majority of relevant cases, without chilling protected expression.

### **SUMMARY OF ARGUMENT**

In *Rogers v. Grimaldi*, the Second Circuit adopted an objective test designed to recognize the primacy of First Amendment interests in cases involving titles of expressive works. Subsequently adopted by several other circuits,<sup>4</sup> and rejected by

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<sup>3</sup> *Stouffer v. Nat’l Geographic Partners, LLC*, 400 F. Supp. 3d 1161, 1177 (D. Colo. 2019).

<sup>4</sup> The Fifth, Sixth, Ninth, and Eleventh Circuits have expressly adopted *Rogers*. See *Twentieth Century Fox v. Empire Distrib.*, 875 F.3d 1192, 1196 (9th Cir. 2017); *Univ. of Ala. Bd. of Trs. v. New Life Art, Inc.*, 683 F.3d 1266, 1278 (11th Cir. 2012); *ETW Corp. v. Jireh Publ’g, Inc.*, 332 F.3d 915, 928 (6th Cir. 2003); *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 665 (5th Cir. 2000). The Third Circuit implicitly adopted *Rogers* by affirming without opinion a district court decision applying that test. See *Seale v. Gramercy Pictures*, 949 F. Supp. 331 (E.D. Pa. 1996), *aff’d without opinion*, 156 F.3d 1225 (3d Cir. 1998); see also *Hidden City Phila. v. ABC, Inc.*, No. 18-65, 2019 WL 1003637 (E.D. Pa. Mar. 1, 2019) (granting motion to dismiss applying *Rogers* to title of journalistic videos).

District courts in the Seventh Circuit also have applied the *Rogers* test and granted dispositive motions for defendants on that basis. See *Fortres Grand Corp. v. Warner Bros. Ent. Inc.*, 947 F. Supp. 2d 922, 934 (N.D. Ind. 2013) (granting motion to dismiss applying *Rogers* to use in content of film and promotional website); *Dillinger, LLC v. Elec. Arts Inc.*, No. 1:09-cv-1236-JMS-DKL, 2011 WL 2457678 (S.D. Ind. Jun. 16, 2011) (granting summary judgment applying *Rogers* to use in content of video game); *Eastland Music Grp., LLC v. Lionsgate Ent., Inc.*, No. 11 C 8224, 2012 WL 2953188 (N.D. Ill. Jul. 19, 2012) (granting motion to dismiss applying *Rogers* to film title), *aff’d*, 707 F.3d 869 (2013) (affirming without deciding whether *Rogers* applies).

none,<sup>5</sup> the *Rogers* test protects freedom of expression by establishing an “appropriately low threshold of minimal artistic relevance.” *Rogers*, 875 F.2d at 999. If the accused work surpasses that threshold and is not “explicitly misleading,” the Lanham Act does not apply. *Id.*

National Geographic’s title at issue in the district court below (“America the Wild”) easily satisfies both prongs of the *Rogers* test. Instead of applying that test, however, the district court referenced two cases with unusual facts as justification for replacing the consensus *Rogers* test with a multifactor test of its own making. The district court’s test dispenses with *Rogers*’s objective approach and instead requires an inquiry into a creator’s subjective artistic motives (as evidenced by public and private statements and conduct). While the district court ultimately reached the right result—via an ill-defined exception “excus[ing] further inquiry,” *Stouffer*, 400 F. Supp. 3d at 1180—its newly-created “genuine artistic motive” test, if allowed to stand, would profoundly chill protected speech, which ultimately would result in less expression with much less cultural relevance.

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<sup>5</sup> Lynn Jordan & David Kelly, *Another Decade of Rogers v. Grimaldi: Continuing to Balance the Lanham Act with the First Amendment Rights of Creators of Artistic Words*, 109 Trademark Rep. 833, 835 (2019).

## ARGUMENT

### **I. The Test in *Rogers v. Grimaldi* Appropriately and Effectively Protects First Amendment Rights.**

#### **A. This Is a First Amendment Case.**

The issue in this case is whether a content creator has the First Amendment right to choose a title that communicates what its project is about—here, “America the Wild” for a television series about the American wilderness.

Nobody disputes that motion pictures are entitled to full protection under the First Amendment. “Speech that entertains, like speech that informs, is protected by the First Amendment because “[t]he line between the informing and the entertaining is too elusive for the protection of that basic right.” *Cardtoons, L.C. v. Major League Baseball Players Ass’n*, 95 F.3d 959, 969 (10th Cir. 1996) (quoting *Winters v. New York*, 333 U.S. 507, 510 (1948)). Nor can it be “doubted that motion pictures are a significant medium for the communication of ideas.” *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952).<sup>6</sup> Indeed, under First Amendment jurisprudence, restrictions on expressive works are subject to strict scrutiny, *i.e.*, they must be “narrowly tailored to serve compelling state interests.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 395 (1992).

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<sup>6</sup> *See id.* (“[Motion pictures] may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression.”).

These principles apply fully to titles of motion pictures, which have particular expressive value. Titles help creators find and speak directly to audiences. Indeed, titles often are an important factor in the decision to greenlight a project. The *Rogers* court expressly recognized this:

The title of a movie may be both an integral element of the film-maker's expression as well as a significant means of marketing the film to the public. The artistic and commercial elements of titles are inextricably intertwined. Film-makers and authors frequently rely on word-play, ambiguity, irony, and allusion in titling their works. Furthermore, their interest in freedom of artistic expression is shared by their audience. The subtleties of a title can enrich a reader's or a viewer's understanding of a work.

*Rogers*, 875 F.2d at 998. The court then crafted a test to ensure that titles receive First Amendment protection from trademark claims like the ones at issue here. That test has served courts well for more than 30 years.<sup>7</sup>

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<sup>7</sup> See *Jordan & Kelly*, *supra* note 5, at 873-74 (“The universal thread in thirty years of *Rogers* is the consistency with the *Rogers* court’s original concern: that consumer interests for creativity be satisfied, and only in those limited situations where a junior user acted in bad faith and intended to create confusion or trade off the goodwill of the senior user should the Lanham Act appropriately prevail.”).

**B. The *Rogers* Test Is a First Amendment Test.**

The expressive work in *Rogers* was a Fellini film featuring “two fictional Italian cabaret performers,” who “became known in Italy as ‘Ginger and Fred,’” after Ginger Rogers and Fred Astaire. 875 F.2d at 996-97. Ginger Rogers sued for false endorsement under Section 43(a) of the Lanham Act. The Second Circuit affirmed summary judgment in defendants’ favor, articulating the following test:

In the context of allegedly misleading titles using a celebrity’s name, that [First Amendment] balance will normally not support application of the [Lanham] Act unless the title has no artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of the work.

*Id.* at 999. The *Rogers* court did not simply tweak the multifactor test used to determine whether there was a “likelihood of confusion” under trademark law; it created a threshold First Amendment test, giving courts a reasoned and workable way to account for First Amendment interests and dispose of appropriate cases without needing to litigate the merits of the underlying trademark claims. *See id.* at 1001.

*Rogers*’s first prong, artistic relevance, is an objective test. Requiring a title to have some artistic relevance ensures that the use falls within the ambit of protected expression. But courts properly are wary of being placed in the precarious position of having to assign value to expressive content or act as art critics. As the Ninth Circuit put it, “[t]his black-and-white rule has the benefit of limiting our need to

engage in artistic analysis in this context.” *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1243 (9th Cir. 2013) (citing *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903) (Holmes, J.) (“It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits.”)).

Because of the First Amendment interests at stake, and the practical issues involved in protecting those interests, the Second Circuit in *Rogers* and courts since have described the test as an “appropriately low threshold of minimal artistic relevance.” *Brown*, 724 F.3d at 1242, 1243 (“no artistic relevance to the underlying work whatsoever” (citation omitted)); accord *E.S.S. Ent. 2000, Inc. v. Rock Star Videos, Inc.*, 547 F.3d 1095, 1100 (9th Cir. 2008) (“[T]he level of artistic relevance merely must be above zero.”); *Louis Vuitton Malletier S.A. v. Warner Bros Ent. Inc.*, 868 F. Supp. 2d 172, 178 (S.D.N.Y. 2012) (depiction of Louis Vuitton travel bag in film satisfies “purposely low” threshold of artistic relevance). Plaintiffs-Appellants do not dispute that the title at issue here satisfies the artistic relevance prong.<sup>8</sup>

*Rogers*’s second prong inquires whether the title “explicitly misleads,” using the example of a work entitled “Nimmer on Copyright” that has nothing to do with

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<sup>8</sup> Plaintiffs-Appellants’ Opening Brief, *Stouffer v. Nat’l Geographic Partners, LLC*, Case No. 20-1208, Dkt. No. 010110401160, at 45 (filed Sep. 2, 2020) (“[T]he parties do not dispute that NatGeo’s use of confusingly similar titles for the Infringing Series have minimal artistic relevance sufficient to satisfy the ‘low threshold’ of the first prong of the *Rogers* test.”).

Professor Nimmer. *See id.* at 999. After *Rogers*, courts have reinforced that “explicitly misleading” means “explicit indication,” “overt claim,” or “explicit misstatement.” *Brown*, 724 F.3d at 1245 (citations omitted); *accord E.S.S.*, 547 F.3d at 1100; *Mattel, Inc. v. MCA Recs., Inc.*, 296 F.3d 894, 902 (9th Cir. 2002). In other words, when protected expression is at issue, the possibility that consumers might be misled by ambiguity or background beliefs does not suffice to impose liability. Indeed, absent a finding of *explicitly* misleading speech, “no amount of evidence showing *only* consumer confusion can satisfy” this prong. *AM Gen. LLC v. Activision Blizzard, Inc.*, 450 F. Supp. 3d 467, 480 (S.D.N.Y. 2020). As *Rogers* articulated, “that risk of misunderstanding, not engendered by any overt claim in the title, is so outweighed by the interests in artistic expression as to preclude application of the Lanham Act.” *Rogers*, 875 F.2d at 1001.

Taken together, the two prongs of the *Rogers* test “insulate[] from restriction” titles having “at least minimal artistic relevance that are ambiguous or only implicitly misleading.”<sup>9</sup> *Id.* at 1000. This describes (and *should* describe) the vast majority of expressive uses of trademarks in titles. As the Ninth Circuit observed, “[t]he *Rogers*

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<sup>9</sup> Other courts have extended the *Rogers* test to uses within the body of expressive works. *See Twentieth Century Fox*, 875 F.3d at 1196; *see also Cliffs Notes, Inc. v. Bantam Doubleday Dell Publ’g Grp., Inc.*, 886 F.2d 490, 494 (2d Cir. 1989) (discussing relevancy of *Rogers* to whether the Lanham Act applies to a book cover).

test is applicable when First Amendment rights are at their height—when expressive works are involved—so it is no surprise that the test puts such emphasis on even the slightest artistic relevance.” *Brown*, 724 F.3d at 1245 (“[A] balance need not be designed to find each of the sides weightier with equal frequency.”). The *Rogers* court understood that consumers “do not regard titles of artistic works in the same way as the names of ordinary commercial products.” *Rogers*, 875 F.2d at 1000. When people encounter the title of a movie or television show, they know they are “enjoying the results of the author’s freedom of expression,” *id.* at 998—freedom that is fully protected by the First Amendment.

## **II. The District Court’s Subjective, “Genuine Artistic Motive” Test Inappropriately Collapses the First Amendment Inquiry into the Statutory One.**

For the district court, this should have been an easy case. National Geographic’s title “America the Wild” has obvious artistic relevance to a wildlife documentary series set in the United States, and nothing is explicitly misleading about the descriptive phrase itself. Under *Rogers*, the Lanham Act would not apply to National Geographic’s use—as the district court ultimately ruled it did not. *See Stouffer v. Nat’l Geographic Partners, LLC*, 460 F. Supp. 3d 1133, 1146 (D. Colo. 2020). But even though the district court ultimately reached the right result, the test it devised is seriously flawed, and should not be embraced by this Court.



Despite acknowledging that no case “rejected the *Rogers* approach when presented with an artistic use of a trademark” and that Tenth Circuit precedent did not “prevent[] this Court from adopting the *Rogers* test[,]” *Stouffer*, 400 F. Supp. 3d at 1172, 1173, the district court nevertheless refused to use *Rogers* in this straightforward title case.<sup>10</sup> Instead, the district court focused on two cases presenting “unexpected situations.” *See Stouffer*, 460 F. Supp. 3d at 1142. In the first case, the Sixth Circuit held that the artistic relevance of a song title should be decided by a jury, in part due to apparent explicit concessions on the issue by its creators. *See Parks v. LaFace Recs.*, 329 F.3d 437, 452-53 (6th Cir. 2003).<sup>11</sup> In the second case, *Gordon v. Drape Creative, Inc.*, 909 F.3d 257 (9th Cir. 2018), the Ninth Circuit considered a case that it readily described as being at “*Rogers*’s outer limits,” *id.* at 268, and held that the use of a mark alone can explicitly mislead—a conclusion that inappropriately collapses the second *Rogers* prong into the traditional trademark

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<sup>10</sup> For examples of other such title cases, *see Twentieth Century Fox*, 875 F.3d at 1198-99 (“In this case, Fox used the common English word ‘Empire’ for artistically relevant reasons . . . . [and] Fox’s Empire show, which contains no overt claims or explicit references to Empire Distribution, is not explicitly misleading.”); *Mattel*, 296 F.3d at 901 (in case involving “the title of a song about Barbie and Ken, a reference that—at least today —can only be to Mattel’s famous couple,” affirming grant of summary judgment to defendant and writing “[w]e expect a title to describe the underlying work, not to identify the producer, and Barbie Girl does just that”).

<sup>11</sup> Nonetheless, the Sixth Circuit held that if artistic relevance existed, the song would receive First Amendment protection because its title was not explicitly misleading. *See id.* at 459 (“In other words, Defendants did not name the song, for example, *The True Life Story of Rosa Parks* or *Rosa Parks’ Favorite Rap*.”).

inquiry into likely confusion, which courts use in commercial contexts.<sup>12</sup> *Compare id.* at 270 (“A more relevant consideration [under *Rogers*] is the degree to which the junior user uses the mark in the same way as the senior user.”) *with AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348 (9th Cir. 1979) (“proximity of the goods” and “marketing channels used” are relevant to likelihood of confusion).

Simply put, the district court used *Parks* and *Gordon* as straw men, highlighting their flaws as justification for rejecting the consensus test (*Rogers*) and creating its own test instead. That test—whether the defendant has “a genuine artistic motive for using the senior user’s mark,” *see Stouffer*, 400 F. Supp. 3d. at 1179—grafts a subjective inquiry onto *Rogers*’s objective structure, creating a novel Frankenstein monster of a multifactor inquiry.

Not only does the district court’s subjective artistic motive test effectively collapse the First Amendment inquiry into the second *King of the Mountain* factor (“the intent of the alleged infringer in adopting its mark”), *see King of the Mountain Sports, Inc. v. Chrysler Corp.*, 185 F.3d 1084, 1089 (10th Cir. 1999), but it also requires courts to be the *ad hoc* arbiters of whether artists selected their titles for the

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<sup>12</sup> The *Rogers* court carefully separated the two inquiries, writing that a survey “indicates at most that some members of the public would draw the incorrect inference that *Rogers* had some involvement with the film. But that risk of misunderstanding, not engendered by any overt claim in the title, is so outweighed by the interests in artistic expression as to preclude application of the Lanham Act.” 875 F.2d at 1001.

right reasons. Even if courts were well equipped for this task (they are not), this “free-floating test” violates longstanding First Amendment principles. *See United States v. Alvarez*, 567 U.S. 709, 717 (2012) (“In light of the substantial and expansive threats to free expression posed by content-based restrictions, this Court has rejected as ‘startling and dangerous’ a ‘free-floating test for First Amendment coverage . . . [based on] an ad hoc balancing of relative social costs and benefits.’” (citation omitted)).

Procedurally, a court could find it difficult to decide—without full-blown discovery—whether a creator’s private statements and private conduct suggest “a non-artistic motive,” notwithstanding the district court’s construction of a nebulous escape hatch under which “the objective facts may sometimes excuse further inquiry into the junior user’s subjective motives.” *See Stouffer*, 400 F. Supp. 3d at 1179-80. The district court did not provide any guidance as to when this might occur, or how often. Regardless, if a defendant knows it likely must “wait [until trial] to find out if the First Amendment protects his or her use of the mark,” that knowledge is almost certain to “unduly chill expression.” *See id.* at 1178. As this Court instructed in *Cardtoons*:

Intellectual property, unlike real estate, includes the words, images, and sounds that we use to communicate, and “we cannot indulge in the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.”

95 F.3d at 971 (quoting *Cohen v. Cal.*, 403 U.S. 15, 26 (1971)).

### III. The District Court’s Test Would Impose an Actual and Substantial Burden on Free Expression.

As demonstrated in the many cases applying *Rogers*, the test can be used at the early stages of litigation, usually only requiring the court to look at the complaint and the work itself to determine whether a defendant has satisfied the first prong of artistic relevance and the second prong of whether the mark is explicitly misleading.<sup>13</sup> Indeed, *Rogers* and its progeny facilitate “vindicating First Amendment protections through early dispositive motions to avoid chilling speech,” *Rebellion Devs. Ltd. v. Stardock Ent., Inc.*, No. 12-12805, 2013 WL 1944888, at \*4 (E.D. Mich. May 9, 2013)), in recognition that in many instances, “no amount of discovery will tilt the scales of in favor of the mark holder at the expense of the public’s right to free expression.” *Louis Vuitton*, 868 F. Supp. 2d at 178.

The district court’s test would impose a serious burden on creative expression because it would turn courts—and juries—into critics of artists’ subjective motives and would allow room for protracted litigation, necessarily chilling speech. This would be a real and substantial problem. As the court wrote in *Washington Post Co. v. Keogh*, 365 F.2d 965 (D.C. Cir. 1966), “[i]n the First Amendment area, summary procedures are . . . essential” because speakers “tend to become self-censors” when

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<sup>13</sup> See *Jordan & Kelly*, *supra* note 5, at 871-72; *id.* at 873 (“nearly all of the cases applying *Rogers* have done so through early dispositive motions”).

subjected to “the harassment of lawsuits,” *id.* at 968—thus leading to less speech overall.

The glaring inconsistency between the district court’s subjective artistic motive test and the consensus *Rogers* test would only add to this burden on First Amendment expression. See William K. Ford, *Restoring Rogers: Video Games, False Association Claims, and the “Explicitly Misleading” Use of Trademarks*, 16 J. Marshall Rev. Intell. Prop. L. 306, 322-23 (2017) (“While the results in these false association cases are often the same—victory for the media defendant—the inconsistency in the approaches works against creative freedom.”). As Professor McGeveran observed:

Most litigation about . . . “expressive uses” that reached judgment in the last decade or so resulted in decisions that preserved the right to use trademarks for communication, even when the use was unrelated to the traditional purposes of brand identification. . . . Despite the positive trend in ultimate results, significant evidence shows that threats of suit in these situations remain frequent and effective. Decided cases are a small and seemingly unrepresentative sample of overall disputes involving free speech and trademarks. ***For every speaker who fights back in court, countless others cautiously back away.***

William McGeveran, *The Trademark Fair Use Reform Act*, 90 B.U. L. Rev. 2267, 2268-69 (2010) (emphasis added).

**CONCLUSION**

This Court should reject the district court’s subjective artistic motive test, adopt the *Rogers* test, and either affirm the judgment of the district court on that basis or remand for further proceedings consistent with the Court’s opinion.

Dated: November 9, 2020

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Counsel for Amicus Curiae hereby certify that this brief complies with the spacing, typeface, and style requirements of Federal Rules of Appellate Procedure 29 and 32 and that, in keeping with Rules 29(a)(5) and 32(a)(7), this brief contains 3,879 words excluding the cover page, corporate disclosure statement, table of contents, table of authorities, signature block, and certificates of compliance and service.

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I hereby certify that a copy of the foregoing, as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the Windows Defender, Antivirus Version: 1.327.527.0, last updated 2020-11-09 and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made pursuant to 10<sup>th</sup> Cir. R. 25.5.

By: /s/ William H. Brewster



**CERTIFICATE OF SERVICE**

I hereby certify that, on this 9<sup>th</sup> day of November, 2020, I electronically filed the foregoing using the Court's CM/ECF system, which will send notification of such filing to the following:

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