**9.19 Copyright – Infringement – Substantial Similarity**

Having discussed access, I’ll now discuss the issue of substantial similarity. [Name of plaintiff] must prove that [name of defendant]’s accused work is substantially similar to [his/her/its] copyrightable expression in the copyrighted work. [Name of defendant]’s accused work is substantially similar in expression to [name of plaintiff]’s if an ordinary [observer/listener] would conclude that [name of defendant] unlawfully took [name of plaintiff]’s protectable expression by taking material of substance and value.

Even if the degree of similarity between [name of plaintiff]’s copyrighted work and [name of defendant]’s accused work is small in quantity, you can still find that there’s substantial similarity if the copied portions of [name of plaintiff]’s copyrighted work are important in quality.

But if [name of defendant]’s copying is minimal or trivial, you shouldn’t find infringement.

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

That an ordinary observer, upon looking at both [name of defendant]’s accused work and [name of plaintiff]’s copyrighted work, would conclude that there are similarities.

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If you answered “Yes,” continue to the next question.

That the similarities are more than trivial?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If you answered “Yes,” continue to the next question.

That, even if the similarities are small in quantity, they are substantial in quality?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If you answered “Yes,” continue to the next question.

That the similarities are sufficiently substantial to cause an ordinary observer to conclude that [name of defendant] unlawfully took [name of plaintiff]’s protectable expression by taking material of substance and value?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

On [name of plaintiff]’s claim that the copyrighted work and the accused work of [name of defendant] are substantially similar we find for (check one):

Plaintiff: \_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant: \_\_\_\_\_\_\_\_\_\_\_\_\_