**9.28 Copyright – Defenses – Affirmative Defense – Copyright Estoppel**

**(Advisory Jury)**

Name of defendant] claims that [name of plaintiff] is barred from asserting his copyright-infringement claim against [name of defendant] by the doctrine of estoppel. To establish estoppel, [name of defendant] must prove each of the following elements by a preponderance of the evidence:

First, you must find that [name of plaintiff] knew the facts of [name of defendant]’s infringing conduct.

Second, you must find that [name of plaintiff]’s statement or conduct (either action or inaction) caused [name of defendant] to believe that [name of plaintiff] wouldn’t pursue a claim for copyright infringement against [him/her/it].

Third, you must find that [name of plaintiff] intended for [name of defendant] to act on [his/her/its] statement or conduct, or [name of defendant] had a right to believe [name of plaintiff] so intended.

Fourth, you must find that [name of defendant] didn’t reasonably believe that [name of plaintiff] would pursue a claim for copyright infringement against [him/her/it].

And fifth, you must find that [name of defendant] was injured as a result of his reliance on [name of plaintiff]’s statement or conduct.

If you find that [name of defendant] has proved these elements by a preponderance of the evidence, your verdict must be for [him/her/it] on the claim for copyright infringement.

**Special Interrogatories to the Jury**

 Did [name of plaintiff] know the facts of [name of defendant]’s infringing conduct?

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

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

 Did [name of plaintiff] make a statement or act in a way that caused [name of defendant] to believe that [name of plaintiff] wouldn’t pursue a claim of copyright infringement against [him/her/it]?

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

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

 Did [name of plaintiff] intend for [name of defendant] to act on his statement or conduct, or did [name of defendant] have a right to believe that [name of plaintiff] intended him to act on [his/her/its] statement or conduct?

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

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

 Did [name of defendant] reasonably believe that [name of plaintiff] would not pursue a claim for copyright infringement against him?

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

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

 Did [name of defendant] rely on [name of plaintiff]’s conduct?

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

If the answer to the above question is “Yes,” answer the next question; if not, you should stop here.

 Was [name of defendant] injured as a result of his reliance on [name of plaintiff]’s statement or conduct?

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

 If the answer to the above question is “Yes,” do you find that the doctrine of estoppel bars [name of plaintiff] from asserting his copyright-infringement claim against [name of defendant]?

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