

## TABLE OF CONTENTS

STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS.....	1
SUMMARY OF ARGUMENT.....	9
ARGUMENT .....	12
STATEMENT OF APPLICABLE STANDARD OF REVIEW .....	12
1.    THE DISTRICT COURT PROPERLY RULED THAT PLAINTIFF SHOWED SUFFICIENT EVIDENCE OF ACCESS.....	13
1.    Prior Creation.....	14
2.    Bouchat=s Meeting With Moag and Moag=s Invitation. ....	16
3.    Bouchat=s Fax to the Maryland Stadium Authority. ....	17
4.    Evidence that the Fax Was Delivered by MSA to the Office Suite of Moag, the Ravens and Modell. ....	18
5.    Evidence that the Ravens and Modell Had Access to the Fax.....	20
6.    The Relationships.....	22
1)    Moag and MSA=s Relationship to Modell and the Ravens.....	24
2)    Modell and Ravens= Relationship with NFLP .....	26
7.    Other Copying by NFLP Designers.....	29
8.    Common Errors in Both Works. ....	30
1.    Striking Similarity. ....	31

J.	Lack of Evidence that NFLP Insulation Policy Was Implemented ...	34
K.	Evidence that Defendants Did Not Independently Create theShield Logo .....	35
II.	THE DISTRICT COURT DID NOT ERR IN ADOPTING STRIKING SIMILARITY.....	39
III.	PLAINTIFF-S WORK QUALIFIES FOR COPYRIGHT PROTECTION .....	42
IV.	THE DISTRICT COURT DID NOT COERCE A VERDICT.....	44
	CONCLUSION .....	50

## TABLE OF AUTHORITIES

### CASES

<i>Bristol Steel &amp; Iron Works, Inc. v. Bethlehem Steel Corp.</i> , 41 F.3d 182 (4th Cir.1994) .....	46
<i>Callaghan v. Myers</i> , 128 U.S. 617 (1888) .....	30
<i>Carter v. Burch</i> , 34 F.3d 257 (4th Cir.1994) .....	13
<i>Eberhardt v. Integrated Design &amp; Const., Inc.</i> , 167 F.3d 861 (4th Cir.1999) .....	28
<i>Feist Publications, Inc. v. Rural Telegraph Service. Co.</i> , 499 U.S. 340 (1991) .....	42
<i>Gaste v. Kaiserman</i> , 863 F.2d 1061 (2d Cir. 1988) .....	40, 41
<i>Green v. French</i> , 143 F.3d 865 (4th Cir.1998) .....	48
<i>Grubb v. KMS Patriots, L.P.</i> , 88 F.3d 1 (1st Cir. 1996) .....	40
<i>Hardware Mutual Casualty Company v. Jones</i> , 363 F.2d 627 (4th Cir.1966), quoting <i>Palmer v. Hoffman</i> , 318 U.S. 109 (1943) ...	44, 45
<i>Hayden, v. Chalfant Press, Inc.</i> , 281 F.2d 543 (9th Cir.1960) .....	30
<i>Keeler Brass Co. v. Continental Brass Co.</i> , 862 F.2d 1063 (4th Cir.1988) .....	14, 35
<i>Estate of Larkins v. Farrell Lines, Inc.</i> , 806 F.2d 510 (4th Cir. 1986), cert. denied, 481 U.S. 1037 (1987) .....	44, 45
<i>Levy v. Kindred</i> , 854 F.2d 682 (4th Cir.1988) .....	41, 42
<i>Lipton v. The Nature Co.</i> , 71 F.3d 464 (2nd Cir.1995) .....	30
<i>M. Kramer Manufacturing Co., Inc. v. Andrews</i> , 783 F.2d 421	

<i>(4th Cir. 1986) .....</i>	13, 30, 42
<i>Meta-Film Associates, Inc. v. MCA, Inc.</i> , 586 F. Supp. 1346 (C.D.Cal. 1984) .....	20, 22, 23, 24
<i>Miller v. Premier Corp.</i> , 608 F.2d 973 (4th Cir.1979) .....	27, 34
<i>Moore v. Columbia Pictures Industries, Inc.</i> , 972 F.2d 939 (8th Cir. 1992) .....	20, 22, 24
<i>Mutual Life Insurance Co. v. Hillmon</i> , 145 U.S. 285 (1892) .....	21
<i>Phoenix Mutual Life Insurance Co. v. Adams</i> , 30 F.3d 554 (4th Cir.1994) .....	21
<i>Selle v. Gibb</i> , 741 F.2d 896 (7th Cir.1984) .....	31, 39, 40, 41
<i>Smith v. Little, Brown &amp; Co.</i> , 245 F. Supp. 451 (S.D.NY.1965) <i>aff'd</i> , 360 F.2d 928 (2nd Cir.1966).....	20, 24
<i>Towler v. Sayles</i> , 76 F.3d 579 (4th Cir. 1996) .....	11, 13, 14, 22, 23, 24, 25, 27, 40, 41
<i>Trandes Corp. v. Guy F. Atkinson Co.</i> , 996 F.2d 655 (4th Cir. 1993) ....	13
<i>Ty, Inc. v. G.M.A. Accessories</i> , 132 F.3d 1167 (7th Cir. 1997) .....	40, 41
<i>United States v. Burgos</i> , 55 F.3d 933 (4th Cir.1995) .....	45, 47
<i>United States v. Calvert</i> , 523 F.2d 895 (8th Cir.1975), <i>cert. denied</i> 424 U.S. 911 (1976) .....	21
<i>United States v. Cropp</i> , 127 F.3d 354 (4th Cir.1997) <i>cert. denied</i> , 522 U.S. 1098 (1998) .....	45, 47
<i>United States v. Martin</i> , 756 F.2d 323 (4th Cir.1985) .....	45, 48
<i>United States v. Pheaster</i> , 544 F.2d 353 (9th Cir.1976), <i>cert. denied</i> 429 U.S. 1099 (1977) .....	21

<i>United States v. Russell</i> , 971 F.2d 1098 (4th Cir.1992) .....	47, 48
<i>United States v. Sawyers</i> , 423 F.2d 1335 (4th Cir.1970) .....	44, 45, 46, 48, 49
<i>United States v. Stanchich</i> , 550 F.2d 1294 (2d Cir.1977).....	21

## RULES

Fed.R.Civ.P 50 .....	9, 27, 34
	FedR.Civ.P 51 .44
Fed.R.Evid. 406 .....	19
Fed.R.Evid. 803(3) .....	22