From: The True Snow White Ltd
Harald Walter Azmann
5 Jupiter House, Calleva Park
Reading, RG7 8NN
United Kingdom

April 05, 2011

To: OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
Avenida de Europa, 4
E-03008 Alicante, Spain

By fax transmission to: +34-96-513.13.44

Re: Observations regarding notice of opposition of Disney Enterprises, Inc.

Number of the opposition: **B 001710063**
Trade mark number: **008752404**
Name of the applicant/holder: **The True Snow White Ltd**

Dear Ladies and Gentlemen,

First of all, let me point out that I wish to deliver The True Snow White's observations concerning The Walt Disney Company's opposing arguments myself, as a privileged and proud citizen of the young and ever evolving European Union.

We possess neither the financial means nor the desire to hire countless lawyers as The Walt Disney Company is quick to do. So much so that many of our colleagues in the media as well as in the entertainment business - rather than admiring and loving Disney - seem to bow to and fear them. Well, not *The True Snow White*, or us.

Relying on a basic general education, or even just plain common sense and sound public opinion, is enough to make clear that Snow White is not an original Disney character. Disney, referring to The Walt Disney Company as a whole, including any of its subdivisions and affiliates, did NOT create Snow White.

Rather, after having been passed on as oral tradition for hundreds of years, this beloved character of ancient lore became part of the groundbreaking compilation of European folk tales collected and edited by German scholars Jacob Grimm (January 4, 1785 – September 20, 1863) and Wilhelm Grimm (February 24, 1786 – December 16, 1859). Their first collection of fairy tales, titled "Children's and Household Tales" ("Kinder- und

Hausmärchen" in German), was published in 1812, and included among many other gems was the original Snow White as we know it today.

Grimm's Fairy Tales have long since entered the public domain and today, with many of her fairy tale companions, Snow White is a vital and beautiful symbol of our shared European heritage. But to have to endure The Walt Disney Company - or anyone else uneducated or ruthless enough – trying to snatch Snow White from the public domain and thus taking public property for private gain is absolutely unbearable. On what grounds should they be allowed to do so?

Neither the character nor the original Snow White story is their creation. A fair Snow White trademark, in whatever form, should sufficiently protect Disney's creative work and interpretation, but it must not keep any future Snow White versions from competing with Disney's extremely successful but outdated 1937 animated feature titled "Snow White and the Seven Dwarfs".

The original German fairy tale already contained all of the Snow White story's key elements, i.e. the lonely Queen, the absent King, the jealous Stepmother, the Magic Mirror, the compliant Hunter, the Seven Dwarves, the Poisoned Apple, the Glass Coffin, the Prince, etc. A 1912 Broadway play even went by the title Disney later used for their film, "Snow White and the Seven Dwarfs".

Consequently, the character "Snow White" should be ineligible for copyright and protection from competition, let alone a trademark, and should be free for ALL to use, as it has been in the public domain for nearly a century.

On December 21, 1937, Disney released the world's first animated feature, titled "Snow White and the Seven Dwarfs", in which Disney apparently added no more to the public domain Snow White than a distinctive new dress, a lighter story, and Disney's choice of names for the wise old Seven Dwarves: Dopey, Sneezy, Bashful, Sleepy, Happy, Grumpy and Doc.

Disney was granted a U.S. word mark "Walt Disney's Snow White & the Seven Dwarfs" by the USPTO on October 5, 2004, which is entirely unobjectionable as that title covers Disney's unique work and interpretation. Interestingly enough, Disney never registered this mark in Europe. Rather, Disney seems to have been relentlessly pursuing any form of protection for their particular Snow White version, to the point of intimidating and eventually eliminating all other creative competition to this day.

More trademarks based on well known characters from the public domain used in works by Disney were sought and granted in the U.S., such as:

Walt Disney's Pinocchio (75545690) 27.08.1998 ● registered
Walt Disney's Dumbo (75544253) 27.08.1998 ● registered
Walt Disney's Bambi (75544252) 27.08.1998 ● registered
Walt Disney's Cinderella (75543711) 27.08.1998 ● registered
Walt Disney's Alice in Wonderland (75544251) 27.08.1998 ● registered

Walt Disney's Peter Pan (75544250) 27.08.1998 ● registered
Walt Disney's Sleeping Beauty (75543891) 27.08.1998 ● registered
Walt Disney's The Jungle Book (75543712) 27.08.1998 ● registered

Disney's fair and reasonable strategy remained in place for many years. It sought no more than to protect Disney's own take on these stories and characters, marked with Disney's name. However, starting in 1990, The Walt Disney Company suddenly went on a rampage of registering additional trademarks of their public domain based products without any "Disney" qualifier.

From then on, in Europe, it was just:

Snow White (5235502) 02.08.2006 ● registered
Pinocchio (5239223) 03.08.2006 ● registered
Cinderella (5238118) 03.08.2006 ● registered
Alice in Wonderland (5618251) 16.01.2007 ● registered
Peter Pan (5235049) 02.08.2006 ● registered
Sleeping Beauty (5235205) 02.08.2006 ● registered
The Little Mermaid (414193) 20.12.1996 ● registered

And in the U.S.:

Cinderella (77130148) 13.03.2007 ● registered
Cinderella (77098334) 02.02.2007 ● registered
Cinderella (74020377) 16.01.1990 ● registered
Sleeping Beauty (77197925) 05.06.2007 ● registered
Sleeping Beauty (77173609) 04.05.2007 ● pending
Princess Aurora (Sleeping Beauty) (77130191) 13.03.2007 ● pending
Sleeping Beauty (77098498) 02.02.2007 ● registered
Princess Aurora (Sleeping Beauty) (77098465) 02.02.2007 ● registered
Ariel (The Little Mermaid) (77098289) 02.02.2007 ● registered

And of course, most important of all, Disney's current "Snow White" word mark application with the USPTO:

Snow White (77618057) 19.11.2008 ● pending

For more background information on Disney's past behavior concerning not only Snow White but many additional characters in the public domain, including real time status information through pertinent links, please refer to my attached Open Letter to Disney of March 26, 2011, cc: David Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) and António Campinos, President of the European Union agency responsible for registering trade marks and designs (OHIM)

Unfortunately, we have to concede that OHIM already granted Disney's request for a plain "Snow White" word mark by letting it go unnoticed or not sufficiently deliberating the sweeping consequences. But surely, it cannot be the intent of modern copyright and trademark law or any of its administrators to counteract the very purpose of the public domain, which is to encourage ongoing creativity, by summarily depriving the rest of the world in favor of individual interests.

All the while there are many open questions concerning Disney's present claims upon which international Intellectual Property specialists have remarked. I paraphrase a few:

1. There is a danger for Disney here. If the Grimm Brothers' tale came first and Disney adapted it to the screen, then Snow White the movie is a derivative work. Which is fine, except it has to say so on the copyright application. You can invalidate a copyright on that basis.

2. The phrase "Snow White" is not used solely to name the fictional character created by the Brothers Grimm. Snow is white and so the phrase can reasonably refer to white snow and all creative, real world variations of that theme which is why it is used as a mark to brand different products such as gypsum, rice, flour, cheese, sugar etc. But when the phrase is used to name the fictional character then the phrase MERGES [as "merge" is understood under copyright law] with that character. And because that character is within copyright's public domain, so is the name.

So when Disney claims trademark rights in SNOW WHITE to brand "Production, presentation, distribution, and rental of motion picture films" the scope of those rights is limited to brand those ACTIVITIES only. Those trademark rights cannot prevent, for example, Smith Productions, Inc. from producing, presenting, distributing, or renting a movie called "Snow White" or a movie containing a non-Disney created version of the Snow White character.

Those movies would be PRODUCTS that copyright law freely permits to be made that result from Smith Production's film making activities. I think Disney's trademark rights as described above would merely preclude others from naming a film production company "Snow White" or "Snow White Productions" or something confusingly similar. Is this splitting hairs? Yes. Will Disney likely assert the SNOW WHITE trademark rights described above to try to stop others from producing Snow White movies? Probably.

3. Disney might have a copyright and even a trademark in their drawings of Snow White, but it is highly dubious whether the character without the Disney-fied drawings functions as a mark. Indeed, the character-alone issue aside, and Disney's Snow White usually seen with the Seven Dwarfs, there doesn't seem to be any bona fide claim by Disney in the word mark SNOW WHITE.

4. Trademark infringement requires confusion. If there is a strong enough disclaimer, as we believe there is in "The True Snow White" over "Snow White and the Seven Dwarves" or even just "Snow White", then one can get away with using a mark. If we entitled our movie "The True Snow White" with a tag line "It's not your father's Disney version," then Trademark infringement is that much harder.

Look at the recent Betty Boop decision of the US Ninth Circuit. It revives an old idea that where you have a copyright or patent, you cannot then convert it to a trademark

upon expiration. That is dictum in a famous patent opinion by Justice Brandeis (which, IIRC, deals with a breakfast cereal). Good to see this notion making a comeback.

In short: Blatantly taking advantage of what Danny Silverman has aptly described as "Trademark is soooo the new copyright", over the years, The Walt Disney Company has been stealthily trying to morph a popular character like Snow White from public domain through copyright into trademark.

In contrast to other forms of intellectual property like patents and copyrights, a registered trademark theoretically lasts forever. That's why Disney insists on a plain "Snow White" trademark that would confer a bundle of exclusive rights upon them, including exclusive use of that mark. Thus, if Disney were granted a "Snow White" trademark, they could start legal proceedings to prevent ANY unauthorized use. This is how it stands in Europe already, and maybe soon in the U.S. as well. And here we are talking about a public domain character Disney never owned in the first place!

We don't understand, to say the least, and neither does the rest of the world. Disney has every reason to be much more confident than this in both their own creative genius and their financial resources to hire abundantly available creative talent, rather than fearing any creative competition whatsoever.

And if Disney were to "own" Snow White on both sides of the Atlantic, what about the unprecedented number of major Hollywood productions of Snow White currently underway? Will Julia Roberts, Armie Hammer, Charlize Theron, Kristen Stewart et al. do a job no one will ever see, because the respective companies may produce their Snow White versions but won't be allowed to market them?

No, Disney has long ceased to be synonymous for what's good and wholesome in this world. The fact that insatiably greedy suit and tie businesses like Disney can turn even the most uplifting message of joy and hope into one of darkness and standstill says something about America's state of mind today.

In conclusion, we request that The Walt Disney Company be required to file a statement of use concerning their current European "Snow White" word mark only - just as Disney is currently required by the USPTO in the U.S. - upon which we shall prove our public use of "The True Snow White" long before Disney ever applied for their word mark to OHIM on 02.08.2006.

We also wish to point out that our current application to OHIM is based on an earlier right in "The True Snow White" word mark granted by the Austrian Trademark Office on 10.06.2008, and surely what's considered permissible and legal in one country of the European Union shall be deemed permissible and legal in the other member countries as well. At least, this has been our understanding so far. Is this not the case?

We are prepared to offer every assistance we can in this important decision, and if OHIM requires further information or documentation beyond what we have supplied to date, we ask to be given an appropriate additional amount of time to further substantiate our position.

Yours sincerely,

Harald Walter Azmann

Public Domain? Why, it's Disney's Domain!

In today's global society, the world keeps moving closer together while unbridled mega corporations still seem to think they own it all. The Walt Disney Company continues its legacy of abusing the public domain, claiming some of humanity's most beloved characters like "Snow White" as their exclusive trademarks. And all too compliant trademark offices around the world do nothing but look on.

Open letter to:

The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521-0007
USA

March 26, 2011

Attention: Robert Iger, President & CEO / John E. Pepper, Jr., Chairman / Anne Sweeney, President of Disney-ABC Television Group and Co-Chair of Disney Media Networks / Andy Bird, Chairman of Walt Disney International / Steve Jobs, Member of The Walt Disney Company's Board of Directors, co-founder & CEO of Apple Inc., and largest individual Disney shareholder

Cc: David Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) / António Campinos, President of the European Union agency responsible for registering trade marks and designs (OHIM)

Re.: Stop Disney's abuse of the Public Domain

Dear Bob, John, Anne, Andy and Steve,

I well remember my first movie theater experience as a young child, Disney's 1967 *The Jungle Book*, leaving a lasting impression on my mind about the possibilities outstanding filmmaking offers our dreams and imagination. Incidentally, it was the last animated film to be produced by Walt Disney, who died during its production.

In today's global society, the world keeps moving closer together while unbridled mega corporations still seem to think they own it all. And in a way we have gotten used to them. But who would have expected a legendary benefactor of universal human values like Disney to engage in the sort of patently unfair business practices we have seen over the years?

Consider, for example, Disney's relentless activities concerning works in the public domain, that marvelous treasure trove of the collective human experience. Previously, fifty years after the death of its author, an original work would become a resource available for anyone who wished to adapt, draw on or build upon it. It's a brilliant system that opens up the great works of humanity to the next generation of artists and audiences.

Yet despite having been one of its greatest beneficiaries and generating tremendous profits since the early 1920s, Disney seeks to keep its own creations from entering the public domain for as long as possible, successfully lobbying U.S. Congress in the 1990s to extend the term of copyright to the life of the author plus 70 years, a campaign that resulted in the 1998 Copyright Term Extension Act (CTEA), or "Mickey Mouse Protection Act".

And as if The Walt Disney Company's astonishing ability to influence U.S. and even international legislation were not enough, its ongoing attempts to turn public domain characters into Disney property result in nothing less than Disney's exclusive right to use them.

The Walt Disney Company currently has a trademark application pending with the US Patent and Trademark Office, filed November 19, 2008, for the name "Snow White", which would cover all live and recorded movie, television, radio, stage, computer, Internet, news, and photographic entertainment uses, except literature works of fiction and nonfiction. (US Patent and Trademark Office: Snow White trademark status)

We realize that Disney has been pulling these stealthy maneuvers for years with barely a murmur from the public, as most people have been unaware of them or have simply failed to appreciate the potentially sweeping consequences.

But we sincerely hope there will be a public outcry across the globe soon, for if Disney continues its depletion of the public domain – as it has already succeeded in doing within the European

Union, snatching up *Snow White*, *Pinocchio*, *Cinderella*, *Alice in Wonderland*, *Peter Pan*, *Sleeping Beauty* and *The Little Mermaid* - there won't be another *Snow White* or *Pinocchio* or *Cinderella* or *Sleeping Beauty* movie other than Disney's or with Disney's permission, ever.

Works in the public domain are, by definition, freely available for public use. Yet, assisted by all too compliant trademark offices around the world, The Walt Disney Company keeps taking some of humanity's most beloved characters not only from us today, but also generations of children yet to come.

While writing and beginning to develop *The True Snow White* into a timeless live action movie, we always wondered what was behind the standard industry rumors that Disney effectively "owns" *Snow White* and will never give her up.

How could Disney substantiate such a claim? Especially today, given the unprecedented number of competing *Snow White* movie versions that have gone into development since *The True Snow White* was published online on November 26, 2007: 1. Relativity Media's *The Brothers Grimm: Snow White*, 2. Universal Picture's *Snow White and the Huntsman*, and 3. Disney's own contribution titled *Snow and the Seven*.

There is no way of knowing just how far Queen Hollywood will go in her current *Snow White* frenzy to reestablish who truly is "the Fairest one of all". Or if and when Disney will actually take the gloves off regarding its purported "ownership" of the *Snow White* trademark in Europe – and maybe soon in the United States as well.

In anticipation of this possible struggle, and to ascertain the current state of affairs, *The True Snow White* sought and was eventually granted trademark status in Austria on June 10, 2008. Next, we proceeded to register European trademark No. 8752404, published in Bulletin 2010/88. However, Disney opposed this trademark registration, as was to be expected, and we have now been given the opportunity to explain our position.

Part of that position is as follows. If The Walt Disney Company wants to act in good faith and operate on fair and equal terms with its creative contemporaries, we suggest that the company:

1. Stop registering trademarks that seize titles and characters of works in the public domain;

2. Release all such trademarks Disney never should have been granted in the first place by voluntarily returning them to the public domain;

3. And change your applications, if you insist on having any rights to public domain fairy tale characters at all, to truthfully stating *Walt Disney's Snow White* and so on, as you have already done

with *Walt Disney's Snow White & the Seven Dwarfs*, *Walt Disney's Pinocchio*, *Walt Disney's Cinderella*, etc. You understand the concept.

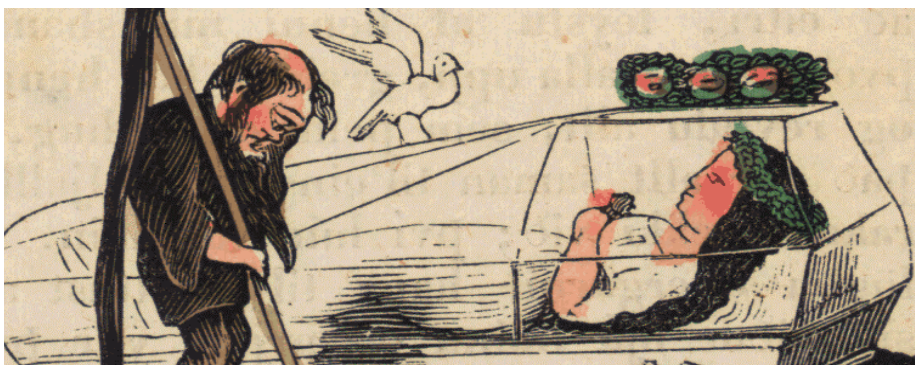
The central point is: What's the purpose of trademarking "Snow White" without a "Disney" qualifier if not to unfairly eliminate all other competition?

What's more, we urge the United States Patent and Trademark Office (USPTO), the European Union agency responsible for registering trade marks and designs (OHIM) and other legislators around the world to stop assisting this abuse by enacting any necessary changes to effectively safeguard works in the public domain from being seized by any party, regardless of claim or legal title. For either the public domain is shared by all or surrendered to a select few just because they always seem to have the necessary means and funds to get their way.

Now, we are experienced enough to know that what we are taking on here may seem like a futile David versus Goliath – or indeed Snow White versus her jealous Stepmother – struggle. At first glance, it always appears easier and safer to just sit back and do nothing. But we are all witnessing greater unjust power structures stumble and fall these days, and surely suffocating global media conglomerates are not immune from such an outcome.

As for me, I don't know whether the world is ready for *The True Snow White* to return from her time with the Seven Dwarves and come into her rightful inheritance. But I know that in the end, as always, it will be ordinary men, women and children around the world who, once they take matters into their own hands, determine the future course of events.

In conclusion, let us not make light of a world that is full of injustice as it is. And any added oppression, even in fun and entertainment - such as Disney's ongoing efforts to keep any updated *Snow White* from outdoing its 1937 animated version - makes us feel all the smaller and more hopeless about the possibility of one day living in a better one.



No one can ever "own" *Snow White*, or should be allowed to try to, especially through blatant trademark bullying. Snow White's legend is centuries old. Its original author or authors are unknown. Both Snow White's name and her story have become part of our collective heritage in the field of arts and literature.

We deem these points to be so self-evident that they shouldn't have to be defended time and time again. Indeed, the United States Patent and Trademark Office (USPTO) has just recently requested public comments concerning Trademark Litigation Tactics, and for good reason. When will our modern civilization return to and rebuild a legal world everyone can understand and support?

Of course, *The True Snow White* is just my own take on the traditional story. I am making no claim that it is or should be the only one. As I said in its preface, anyone is free to either love it or leave it. But it has always been one of my greatest aspirations that generations of children yet to come will be motivated and inspired by Snow White's adventures as I have been over the years.

My ambition was only to pick up and carry the young princess's torch. For that is the power of the marvellous creative momentum of the public domain, and the very reason *Snow White* and many other old stories still exist: The more of us who carry its light, the longer a legend lives on.

I always saw The Walt Disney Company as a fellow traveller in this regard. And I would call for Disney, if I could and anyone would hear me, to appreciate and respect the stories it so casually snatches from the public domain for far more than just their money-making potential.

What in the world could be so terrible about simply returning to plain old fairness and sound business practices? To working for and earning the results of one's efforts by just means as all the rest of us are expected to? That's all we ask of the Mickey Mouse empire. Are we asking too much?

With best regards,

Harald Walter Azmann
Author of *The True Snow White*

Permalink:
http://thetruesnowwhite.wordpress.com/open-letter-to-disney