

The Law Office of Margarita Coale, PLLC

June 13, 2018

Via Electronic Mail



Sarah:

In anticipation of our call on Friday, and because of the extensive damages being incurred by my client, I am herein addressing the DMCA take down notice filed by your client which was forwarded to D2D (attached hereto as “Exhibit A”) on April 19, 2018, and then sent to my client. This matter needs to be resolved expeditiously. My client has given ample time to Blushing Books to address this.

As you know, filing a fake or false DMCA has serious legal consequences, as explained in *OPG v. Diebold*, 337 F. Supp. 2d 1195 (N.D. Cal. 2004). Your client stated in their multiple DMCA’s and in the “settlement letter” sent to my client that they would pursue all rights under Copyright Act. These assertions suggest that a properly registered copyright exists. Moreover, to date even if a properly registered copyright exists we have not been advised of the legal basis for Blushing’s claims except a “strong feeling” and accusations.

As part of our due diligence and in preparation for our call, please see below, where we address point-by-point your client’s allegations. Additionally, please be advised your client has misrepresented what legal rights they hold related to both copyright and trademark. Attached as “Exhibit B” is a representation in one of your client’s books (Addison Cain’s *Reborn* published on Sept. 1, 2016). You will note that it provides a valid trademark exists for “Blushing Books.” However, as documented in attached “Exhibit C” a copy of the United States Patent and Trademark Office report, Blushing Books’ trademark was deemed abandoned by your client’s failure to respond to the Commission’s rejection of its application by January 2014 – over four years ago. I cannot speculate as to the reasons why your client actively advertises in this manner, but, at the least it demonstrates a pattern of misunderstanding and misstating of the law and legal rights granted by US law.

The DMCA your client filed contains at least 31 allegations of similarities (which, as previously discussed at length during our June 1 call, wrongly assume that “ideas” are copyrightable). Out of these 31 *alleged* similarities, 8 are tropes of the Omegaverse standard

expectations, which are well documented online in different forums, and in no way are novel or unique to Ms. Cain's work. Then 11 more are presented in a misleading way that ignores the context, logic, and circumstances that in fact make them different. Finally, and more egregiously, 12 are outright false statements made about the story of *Crave to Conquer* (which is Ms. Ellis' first book). This is further evidence of your client's pattern of disregard for the truth and the legal standard that needs to be complied when filing a DMCA. Furthermore, some of the information provided by Blushing Books about its own work has been presented incorrectly and/or out of context--seemingly to make it similar to *Crave to Conquer* for the purposes of DMCA filings.

Your client has also cited as "evidence" in their DMCA that reviewers stated there were some similarities between the books. The reviews cited by Blushing Books refer to "feelings" and "impressions" that the involved books are similar. But Blushing Books fails to quote – or even mention - that a good number of the 250+ reviews state quite the contrary. And of course, similarities in stories do not constitute a violation of copyright. Further, as previously stated, these "reviews" are extremely dubious in light of evidence that Ms. Cain has manipulated such reviews in the past in violation of Amazon guidelines and rules. (Please see attached "Exhibit D," a few of the posts by Ms. Cain on Facebook [a very quick review shows some correlation between Ms. Cain's fans and those "reviews" cited as evidence], and "Exhibit E," Amazon's guidelines on reviews).

At a minimum your client needs to immediately withdraw her DMCA claims with all vendors. We also need to discuss compensation to my client for losses incurred and those she continues to incur the longer this remains unresolved, and attorneys' fees. Additionally, my client requires a retraction both by Blushing Books and Ms. Cain of these baseless accusations of plagiarism.

Attached please find a response to Blushing's allegations and the reasons why none of them are a legitimate basis for filing a DMCA. The text in blue is our response. I look forward to speaking to you on Friday June 15 at 10 EST.

As filed by Allison West (the "Office Manager" of Blushing Books)—

SENTENCES/LINE COMPARISON (There are more but I am only including a few.)

BtBB - The villain who had the audacity to call himself 'The Shepherd' was massive, the largest Alpha she had ever seen.

CtC - He was the largest Alpha known in the Eastern Lands, and while it was a petty reaction for him to have, he found it bothered something innate within him. [This is part of the trope. Alphas are the largest. This is not a unique idea to BTBB but appears in almost all Omegaverse universes, guides, and Wikis. The Alphas are built that way and separates them from the Betas and Omegas. Furthermore, the Alpha in CTC is recognized as the largest Alpha in the land, but the Alpha in](#)

BTBB is the largest in the experience of the viewpoint character, who kept herself hidden from Alphas. This distinction does not imply the same meaning.

BtBB - Sucking in a ragged breath, swaying as if her legs could not decide which way to run, Claire whispered under her breath, "No... no, no, this can't be happening." Failing suppressants is an Omegaverse trope. Shock and disbelief at this happening will likely include the word, No. While she seeks him out to talk, her heat suppressants stop working. In chapter 1, she is wearing clothing that interferes with her scent, she approaches him and waits.

CtC - "No," Cailyn whispered, taking a step back. "No. It can't..." Failing suppressants is an Omegaverse trope. Shock and disbelief at this happening will likely include the word, No. There is no other word in the English language that covers the denial of something happening as no. While true Cailyn was using blocks (magical ones not suppressants) she wasn't taking pills, she wasn't wearing Beta clothing and her blocks stopped work in relation to magical interference in chapter 5.

BtBB - That urge—the one she had fought her whole life—was making her tremble and prepare to flee, but there was already a commotion all around.

CtC - Cailyn glanced around wildly as she backed away, her whole body tensed and poised to bolt. Incorrect. Only similarities in these quotes are the words 'flee' and 'bolt'. Circumstances depicted are not the same. There is no indication that Cailyn's reason to bolt is because of an 'urge'. Cailyn is a spy. She uses magic and is trained in defense, unlike the heroine in BTBB (Ms. Cain's work).

BtBB - In an instant, an arm as thick as a tree trunk came around her middle, and she was carted off, hanging doubled over, by the swaggering pace of a man staking claim... of the victor of the battle. No indication by this quote that the female is over the male's shoulder as in the CTC quote. Furthermore, a male carrying a female is not unique to Ms Cain nor is it an idea that can be copyrighted. Many firefighters and other romance heroes carry the heroines in such way. This happens in chapter 1 of BTBB.

CtC - Something snapped in Drocco. He swept forward and lifted Cailyn, throwing her over his shoulder before storming out of the Great Hall. A male carrying a female is not unique to Ms Cain nor is it an idea that can be copyrighted. Many firefighters and other romance heroes carry the heroines in such way. Surely removing the heroine from a situation forcefully is not copyrightable. This event doesn't happen until Chapter 5 and its set in a very different setting.

BtBB - Lowered to the floor, her body convulsed in another cramp, drawing out the female's pained groan. She wanted—no, needed—to press her hands between her legs. Again, it's the expression

of a trope of an Omega in heat. Just like having a period which involves blood so is having a heat. This is a well-documented Omegaverse trope.

CtC - She bent over, pressing her hands between her legs, and groaned. We are not sure if Ms. Cain and Blushing allege that they have copyrighted the trope of an Omega in heat. Just like the female anatomy when describing intimate parts an Omega in heat is often described this way. This is a well-documented Omegaverse trope.

BtBB - Omegas had become exceptionally rare since the plagues and the following Reformation Wars a century prior. That made them a valuable commodity which Alphas in power took as if it was their due.

CtC - "The Omegas were dying," she said, bitterly. ... "The Omegas were dying at unnatural rates before their disappearance." [page 43] "There was a serious decline in Omegas from first count to the last. There were too many deaths for it to be a natural occurrence." This is an Omegaverse trope. In many of these universes, Omegas are extremely rare. It could even be said to be standard element of Omegaverse and has been included in many guides and wikis on the topic.

PLOT SIMILARITIES

BTBB: Protagonist is leader of a violent army that has taken over a city. His men follow without question. This 'army' is a violent band of criminals that came from the underground. They are not all alphas.

CtC: Protagonist is leader of a violent army that has taken over a city. His men follow without question. All armies are violent. The army in this world are all trained warrior Alphas and a few had been discovered to be spies, as shown as an example in the first scene (chapter 1). Protagonist is not a criminal nor is his army a group of violent criminals that were trapped in an underground prison. Again, nothing in this concept is protected by copyright.

BTBB: Omegas are dying off from attacks by Alphas. They go into hiding to survive. Incorrect and a misquote of their own book. BtBB quote above provided by Blushing Books states that Omegas became rare due to plague and war, not due to attacks by Alphas. Page 10 from BTBB "We are starving. The Omegas need food."

CtC: Omegas are dying off from attacks by Alphas. They go into hiding to survive. Misleading. This is not happening in the main plot of the book and is part of the history of the world. By the time this story takes place, Omegas are thriving but hidden. They are stolen at a young age by Omega elders in order to protect them (chapter 1 and 8).

BTBB: Main protagonist is searching for the missing Omegas to give them to his soldiers. Misleading quote from their own book. When the Omegas are found, the male protagonist shares them out to his soldiers, however this is incidental and not his main drive and goal in the story, whereas it is the main goal for the protagonist of CTC. Furthermore, Shepherd's main goal in taking Claire (as explained by him) is he needed an heir because Alpha and Alpha pairings do not produce children (as his lover is an Alpha called Savanna) as often as Alpha and Omega pairing does. His main purpose is NOT to provide Omegas for his men.

CtC: Main protagonist is searching for the missing Omegas to give them to his soldiers. Male protagonist is looking to complete the "Alpha/Omega connection", a bond that specific to Ellis' Omegaverse world and seeking to provide this to his warriors. He is investigating the Omegas disappearance from chapter 1 but they are not found until book 3 and the discovery is not incidental. Others can have children but the "bond" is the search for completeness. Also, in Ms. Ellis' world a lot of what Alphas know is word of mouth and memories of older Alphas. Omegas have been disappearing for over 100 years.

BTBB: Protagonist has Beta confidant as second in command. It is the only Beta in the army.

CtC: Protagonist has Beta confidant as second in command. It is the only Beta in the army. The relationship between the Alpha and Beta in each story is different. The Beta in CTC is the protagonist's childhood friend (revealed in book 2), whereas the Beta in BTBB is a member of the army. In general, Betas tend to take subordinate roles in an Omegaverse as they do not have the temperament of Alphas. In particular to Ellis' universe, the male protagonist has a history with the Beta from childhood. If there were no second in command of an army of the size depicted, it would be illogical.

BTBB: Claire (an Omega) approaches protagonist disguised as a Beta in order to help the Omegas. Claire approaches protagonist for food, shelter, and support for her Omega friends by suppressing her Omega scent by use of clothes and suppressants. She is discovered as an Omega soon after her approach in chapter 1. Forced sex between the couple happen in chapter 1 as does the forced bonding by the Alpha. In Ms. Cain's world the Alpha has to bite the Omega and the bond is forced (another Omegaverse trope). In Ms. Cain's world an Alpha and Omega pairing is guaranteed to produce a pregnancy and a child. Which is why the Alpha in this world wanted the Omega, he wanted an heir.

CtC: Cailyn (an Omega) approaches protagonist disguised as a Beta in order to help the Omegas. Incorrect. In fact, the protagonist approaches Cailyn in chapter 1 while she is disguised as Beta through use of magic. Cailyn is spying on him to gain intelligence and information for the Omega cause (there are many Omega spies in Ms. Ellis'). This is preemptive action to find out what he knows about Omegas (since Drocco is looking for them), but she never expected to work with him or even speak to him (chapter 3). She is not seeking him out. She is hired by him and works with him (at his insistence) in an undercover role for a period of three months before she is discovered as an Omega in chapter 5. Sex between the couple happens in chapter 7. No bonding happens in the first two books of the series. No biting or bond is established unlike BTBB.

BTBB: Claire suppresses her scent and estrous by use of drugs so that she can pass for a Beta. Heavily used Omegaverse trope. Omegas use drugs to hide their dynamic or suppress their

heat. There are hundreds of published and free books regarding Omegas handling this part of their characteristic in this way.

CtC: Cailyn suppresses her scent and haze by use of magic so that she can pass for a Beta. Again, heavily used Omegaverse trope. However use of magic is unusual and unique to Ellis' world. Very few Omegaverse books use magic and Omegas in the way it has been used by Ms. Ellis.

BTBB: Claire's drugs fail in a room full of Alpha males. All Alphas who smell her enter a rut. A fight breaks out. Protagonist fights off potential suitors and steals her away. [Alphas fighting over an Omega is a commonly used trope in Omegaverse.](#)

CtC: Cailyn's magic fails in a room full of Alpha males. All Alphas who smell her enter a rut. A fight breaks out. Protagonist fights off potential suitors and steals her away. [Incorrect characterization of this chapter. Cailyn's magic fails in a hall of Alpha males and Beta guests. The male protagonist removes her from the hall immediately \(chapter 5\). An orgy ensues that has been inspired by her scent \(revealed in hidden bonus chapter and book 3 which was not available for publication when DMCA was filed\). The other Alphas who smell her do not enter a rut--no fight breaks out. Protagonist does not fight off potential suitors.](#)

BTBB: Alpha undresses before Omega. "You are fighting your cycle." [Omegaverse trope.](#)

CtC: Alpha undresses before Omega. "You fight your instincts." [Omegaverse trope and a logical plot point if the Omega has gone into heat against her will. Furthermore, the act of a male undressing in front of a female is not unique to Ms Cain and is presently in millions of stories.](#)

BTBB: Omega fights instincts to refuse Alpha's advances. Fails.

CtC: Omega fights instincts to refuse Alpha's advances. Fails. [A heavily used Omegaverse trope that is so integral, not having it would almost call into question whether the story is even Omegaverse. However, in Ms. Ellis's story the heroine fights her haze by creating a barrier and in fact makes all effort to NOT accept his advances.](#)

BTBB: Omega is mindless in her estrous. Has no free will to reject Alpha. [Omegaverse trope. Takes place in chapter 1](#)

CtC: Omega is mindless in her haze. Has no free will to reject Alpha. [Incorrect. Omega rejects the Alpha by creating a magical barrier to prevent him from getting to her while she is in her heat \(chapter 6\). The male protagonist does not get to her until her heat is ending \(chapter 7\) and she falls asleep after days of rejecting him.](#)

BTBB: Shepherd takes advantage of the situation to make the Omega his mate. [Takes place in chapter 1 and its forced by the Alpha.](#)

CtC: Drocco takes advantage of the situation to make the Omega his mate. [Incorrect. In Ellis' world, the Alpha cannot initiate a mate pairing \(as revealed in chapter 8 of book 1\). He does not make the Omega his mate. No bonding happens until Book 3 \(which was initiated by Cailyn the heroine\), which was not available for publication when the DMCA was filed, and furthermore as stated before a bond has to be initiated by the Omega in Ms. Ellis' world. This particularity of the](#)

bond is unique to Ms. Ellis's world and discussed at length in books 1, 2, and 3. Anyone who had read at least the first book in its entirety would have immediately known this.

BTBB: Claire enters a depression once her estrous has ended. She does not want to be mated to Shepherd. Protagonist does not understand why she refuses to behave as an Omega and adore him. He forces her to comply with her nature despite her personal feelings. In Ms. Cain's universe the bond is totally up to the Alpha, and within the first chapters the Alpha bit and raped the Omega and forced a bond.

CtC: Cailyn enters a depression once her estrous has ended. Incorrect. Cailyn does not enter a depression once her haze has ended. She is tortured until she struggles to walk and begins to suffer the long-term effects of captivity and interrogation. Protagonist does not understand why she refuses to behave as an Omega and adore him. He forces her to comply with her nature despite her personal feelings. Incorrect. Cailyn is not mated to Drocco (as we have explained before in Ms. Ellis' world an Alpha CANNOT force a bond) but he wishes her to choose him as her mate. She became depressed due to the torture and interrogation while in captivity. He does not force her to comply with her nature (and in fact in Ellis' world Omegas aren't subservient to Alphas but have their own lives and professions) --he comes angry and almost kills her when she adamantly refuses to accept him and taunts him about being intimate with other men (chapter 8 of book 1).

BTBB: Shepherd does not understand why Claire does not act like an obedient Omega. Shepherd is familiar and somewhat knowledgeable about Omega behavior and does not understand why Claire is acting disobediently (as set up in Cain's world).

CtC: Drocco does not understand why Cailyn does not act like an obedient Omega. Drocco is not familiar with Omega behavior and is unaware that Cailyn's behavior is normal (as set up in Ellis' world.)

BTBB: Protagonist locks Omega away in his room so that she cannot escape. Omega is kept in captivity as a mate by the Alpha. Captivity is frequently used in Omgeaverse.

CtCa: Protagonist locks Omega away in his room so that she cannot escape. Omega is kept in captivity under interrogation (chapter 8). Captivity is frequently used in Omgeaverse and heavily used in Dark Romance. There is nothing unique nor copyright protected. Dark Romance is a genre and not unique to Ms. Cain. Blushing Books themselves have rejected the idea that BTBB a romance. Ms. Cain and Blushing have stated on all books in this series that: 'Addison Cain's exciting, raw, and suspense-filled Omegaverse series is a dark tale with explicit sexual themes and complete power exchange. Though situations may be interpreted as romantic, this is a story about the effect of extreme circumstances on the human psyche and the consequences of obsession—not a standard romance. If such material offends you, please do not purchase.' Whereas Ms. Ellis's books have been marketed as Dark Romance, and by definition Romance expectations call for a happy ending.

BTBB: Protagonist is obsessed with his Omega. Demands she obey despite her vocal rejection of the match.

CtC: Protagonist is obsessed with his Omega. Demands she obey despite her vocal rejection of the match. This is common in Omegaverse, Paranormal Romance and Dark Romance. An idea of “vocal rejection” is not unique to Ms. Cain’s universe and is an integral element of the Dark Romance genre also. Clearly obsession the concept in a Dark Romance cannot be copyrighted.

BTBB: Alpha is given unwanted advice from Beta second in command.

CtC: Alpha is given unwanted advice from Beta second in command. This is incorrect and not what happens in CTC. The Alpha Drocco gives consent for his childhood friend and second-in-command Beta to offer advice (Chapter 9). This is a constant in this book. Drocco trusts Torin, the Beta, and they often discuss issues.

BTBB: Protagonist uses information unwillingly gathered from his Omega to hunt missing Omegas.

CtC: Protagonist uses information unwillingly gathered from his Omega to hunt missing Omegas. Incorrect. Alpha does not hunt the missing Omegas. He revisits his research about them to see if the information he got from the Omega could be true (Chapter 9).

BTBB: Instead of asking Claire why she is unhappy, Protagonist seeks to manipulate her feelings using outside help.

CtC: Instead of asking Cailyn why she is unhappy, Protagonist seeks to manipulate her feelings using outside help. Incorrect. Protagonist seeks to 'correct' his Omega's behavior not manipulate her feelings. He believes she has been brainwashed by her Omega superiors/captors (Chapter 9). It would be illogical for him to question the source of her unhappiness while holding this belief about her.

BTBB: The Omega falls into a deeper depression and desires to die. Worries constantly about missing Omegas.

CtC: The Omega falls into a deeper depression and desires to die. Worries constantly about missing Omegas. Misleading. Omega is upset with herself for being broken by interrogation and worries she has let down her Omega sisters. Suicide is a protocol she has been trained to follow in her circumstance and considers it/tries to find opportunities to follow it when she realizes that she has revealed secrets (Chapters 8 and 10 of the first CTC book).

BTBB: Omega goes on hunger strike. Claire (Ms. Cain’s Omega) goes on a hunger strike after her mate cheated on her while she could hear them mating.

CtC: Omega stops eating. Misleading. This is due to her interrogation and captivity. Willfully going on a hunger strike and ceasing to eat due to loss of appetite because of stress, interrogation and torture are not the same thing.

BTBB: Protagonist is unwilling to change world view, even if it would make the Omega happy.

CtC: Protagonist is unwilling to change world view, even if it would make the Omega happy. Incorrect. Protagonist conducts research to see if the Omega’s beliefs could be true. This shows a willingness to see if he may be wrong. Furthermore, he changes his behavior toward the

Omega in order to try and repair their relationship (chapters 9 and 10), as was suggested to him by the Keeper of Records, and as he continues to do in books 2 and 3.

BTBB: Once contacted, the other hidden Omegas betray Claire. The hidden Omegas betray Claire by hurting her and locking her up and giving her up to Shepherd.

CtC: Once contacted, the other hidden Omegas betray Cailyn. Misleading and mistated. The hidden Omegas show Cailyn a mercy (as understood by them and their plans which is discovered over the next two books) by telling her to return to her Alpha, who is revealed to be her true mate. Cailyn is shown to feel that it is a betrayal, but only because of the actions of her Alpha earlier in the book. She also considers if the Omegas are right. It is indicated that if they had had a more positive relationship, this 'betrayal' could be considered a kindness and even a preferred choice (as confirmed/shown in book 3).

BTBB: Omega begins to develop Stockholm syndrome, questions her reactions and is confused.

CtC: Omega begins to develop Stockholm syndrome, questions her reactions and is confused. Logical and natural thoughts to have while in captivity. Furthermore, the Omega in CTC does not develop Stockholm Syndrome. She hates the male protagonist and escapes as soon as she can. She does not want to be with the protagonist because she has been trained to believe that Alphas will hurt Omegas and make them breeding machines. She doesn't develop emotional feelings for him until book 2, whereas the Omega in BTBB develops feelings in book 1.

BTBB: Protagonist tries to make Claire jealous. This in turn breaks her spirit. Incorrect and a misquote of their own book. The protagonist physically and emotionally cheats with another female within earshot of Claire while bonded to her while Claire is locked in the bathroom. This breaks her spirit and is detailed through the bond the two main characters share.

CtC: Protagonist tries to make Cailyn jealous. This in turn breaks her spirit. Incorrect. Cailyn becomes angry and violent after being taunted about another potential female that does not exist (chapter 10). Cheating does not occur. No bonding has happened. The protagonist does not even approach or seek out another woman. Furthermore, Cailyn remains angry until the next day when she attacks him and escapes (chapter 12). Her spirit is not broken.

BTBB: Claire escapes at first opportunity, jumping off a balcony, escapes into city leaving book on cliffhanger. Claire jumps aiming to die as she is suicidal and withdrawn.

CtC: Cailyn escapes at first opportunity, floating off a balcony, escapes into city leaving book on cliffhanger. Cailyn escapes in her right mind, knowing she will live after attacking and injuring her captor. The balcony used to escape was attached the room of her captivity and she used magic to gain access with the intention of escaping, whereas the heroine in BTBB was escorted outside where she took advantage of the freedom to escape. Furthermore, the book does not end on a cliffhanger at the point of Cailyn's escape. It ends approximately 3,260 words later when she is captured again by another party.

All through the DMCA's filed (and some incorrectly attempting to allege material in Books 2 and 3 that didn't exist) it seems as though attempts have been made to try and make tenuous

links between these two books/series, which share some common Omegaverse tropes (as most of this sub-genre does) and some dark romance tropes but not much else. Crave to Conquer, Crave to Capture and Crave to Claim by Zoey Ellis begins an Epic Fantasy Romance series called the Myth of Omega that has a happy ending, while Born to be Bound, Born to be Bred and Reborn which is the Alpha's Claim by Addison Cain begins a futuristic sci-fi erotic horror series where both main characters are implied to be dead at the end (There is a new series Ms. Cain has started which is irrelevant to this discussion).