



Publications

CASES OF INTEREST

LOEB & LOEB adds Depth.

IP/ENTERTAINMENT LAW WEEKLY CASE UPDATE FOR MOTION PICTURE STUDIOS AND TELEVISION NETWORKS

April 27, 2011

Table of Contents

- Latin American Music Co. v. ASCAP
- Brand v. RMM

Latin American Music Co. v. ASCAP, USCA First Circuit, April 21, 2011

 [Click here for a copy of the full decision.](#)

- First Circuit affirms award of attorney's fees to defendant in copyright infringement action, rejecting plaintiff's argument that attorney's fees are not appropriate because plaintiff's copyright was not timely registered, and finding that plaintiff's claim was "objectively weak."

The defendant, the American Society of Composers, Authors and Publishers (ASCAP), prevailed in this copyright infringement action. The district court awarded defendant attorney's fees and costs, and denied plaintiff's motion for reconsideration of this award. The U.S. Court of Appeals for the First Circuit affirmed the award, rejecting plaintiff's arguments that attorney's fees are not appropriate in this case because the copyright at issue was not timely registered, defendant was not a prevailing party, and the award was not reasonable.

The court held that the copyright was timely registered, and that Section 412 of the Copyright Act does not apply to a defendant who is successful in defending claims that it infringed. Section 412 bars recovery of statutory damages under section 504 and attorney's fees under section 505 by copyright owners who fail to register the work before the alleged infringement begins. As the court noted, "there is nothing in the statute that prohibits fee awards in cases, like this one, of noninfringement. The reason is obvious: only copyright owners may register their copyright



Publications

CASES OF INTEREST

LOEB & LOEB adds Depth.

claims, the conduct incentivized by section 412. A defendant accused of infringing someone else's copyright could not possibly comply with the statute's registration criterion."

Plaintiff also challenged ASCAP's status as a prevailing party and the reasonableness of the fee award. Section 505 permits courts, in their discretion, to award reasonable attorney's fees to the prevailing party. The court stated that a showing of frivolity or bad faith is not required; rather, the prevailing party need only show that its opponent's copyright claims or defenses were "objectively weak." In this case, the appeals court concluded that "[t]here is no question that ASCAP is a prevailing party. It initially obtained summary judgment on LAMCO's infringement claims. We affirmed that ruling in significant part, but remanded because of disputed facts concerning one song. On remand ASCAP obtained a favorable jury verdict at trial and successfully defended that verdict in a later appeal." Turning to the district court's award of attorney's fees, the appeals court stated that "[b]ased on its discretion and the weakness of LAMCO's claims, the court awarded ASCAP a majority of those fees. We have carefully reviewed ASCAP's documentation and the court's rescript, and are satisfied that all aspects of the fee award fall comfortably within the court's discretion."

Brand v. RMM, USDC S.D. New York, April 18, 2011

 [Click here for a copy of the full decision.](#)

- Court grants defendant's motion for summary judgment, finding that plaintiff's copyright infringement claim seeking a share of profits for his contributions to a rap song was an ownership claim, which was time-barred because plaintiff failed to bring it within three years of the song's release.

In 1991, defendants RMM and Sergio Georges produced a rap song by Tito Nieves entitled "I'm Gonna Love You Just a Little Bit More Baby" ("Nieves Song"). Georges solicited plaintiff Ronnie Brand to write lyrics to the song, but Brand refused to sign any documents and was not paid for his work.

That year, the Nieves Song was released on the Tito Nieves album *Dejame Vivir*. Plaintiff



Publications

CASES OF INTEREST

LOEB & LOEB adds Depth.

received no royalties or other payment from RMM or Georges in connection with DeJame Vivir. In 1997, the Nieves Song was re-released on the Tito Nieves album I Like It Like That. Again, plaintiff received no royalties or other payments in connection with the release of the 1997 album.

The U.S. Copyright Office issued a certificate for the Nieves Song in 1991, listing RMM Records as the sole copyright claimant. In 1999, plaintiff obtained a sound recording registration certificate from the Copyright Office for the “words, melody of song – rap lyrics” to “I’m Gonna Love You.” Defendant Universal Music Group acquired RMM’s copyright to the Nieves Song in 2001 and “paid over” the song to Warner/Chappell.

In 2004, plaintiff’s attorney sent a claim for compensation to Universal, claiming that plaintiff owned the copyright to the Nieves Song and arguing that the 1991 and 1997 Nieves albums infringed plaintiff’s copyright. Universal and Warner/Chappell responded that it had no record of any agreement or arrangement with the plaintiff.

In 2009, plaintiff sued defendants for copyright infringement, arguing, pro se, that defendants profited from plaintiff’s work without compensating plaintiff for his contribution to the Nieve’s albums. Defendants moved to dismiss or for summary judgment.

Treating the motion as one for summary judgment, the court held that, although styled as an infringement claim, the gravamen of plaintiff’s complaint was that he is the owner of the rap lyrics on Nieves’ song. The Copyright Act provides for a three-year statute of limitations on copyright claims, and a claim involving a dispute over copyright ownership accrues when a plaintiff knows or has reason to know of the injury upon which the claim is premised, and a defendant’s express assertion of adverse ownership or repudiation of plaintiff’s ownership, such as registering the copyright in defendant’s own name, distributing the work with copyright notice identifying defendant as owner, or exploiting the work for years without paying royalties to plaintiff, will trigger the accrual of the statute of limitations. Here, the court held that plaintiff reasonably should have known of the injury when defendant released the song and registered



Publications

CASES OF INTEREST

LOEB & LOEB adds Depth.

the copyright in 1991, or at the latest when the song was re-released in 1997, and that defendant was clearly aware of such releases and registrations by the time his attorney sent his letter in 2004. Because Brand's ownership claim was time-barred, the court held that his infringement claim also fails as a matter of law, citing the Second Circuit's decision in *Kwan v. Schlein* earlier this year for the proposition that "[w]here, as here, the ownership claim is time-barred, and ownership is the dispositive issue, any attendant infringement claims must fail."

For more information, please contact [Jonathan Zavin](mailto:jzavin@loeb.com) at jzavin@loeb.com or at 212.407.4161.

Westlaw decisions are reprinted with permission of Thomson/West. If you wish to check the currency of these cases, you may do so using KeyCite on Westlaw by visiting <http://www.westlaw.com/>.

Circular 230 Disclosure: To assure compliance with Treasury Department rules governing tax practice, we inform you that any advice (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

© 2011 Loeb & Loeb LLP. All rights reserved.