

## [Ninth Circuit Overrules "Prevailing Party" Decision](#)

Posted on July 10, 2009 by [David J. McMahon](#)

In [Cadkin v. Loose](#), 2009 DJDAR 9552, [US Court of Appeals - Ninth Circuit](#), No. 08-55311 (June 26, 2009), the Ninth Circuit reviewed and reversed a decision rendered by the district court holding that the defendant was the “prevailing party” entitled to an award of fees where the plaintiff voluntarily dismissed the action without prejudice.

In *Cadkin*, the plaintiff initiated a lawsuit alleging copyright infringement, as well as other claims. Ultimately, plaintiff voluntarily dismissed the action without prejudice and the defendant sought to recover its reasonable attorney’s fees expended in defense of the litigation. The district court granted the fee application based on “controlling circuit precedent” holding that a defendant is entitled to an award even where the plaintiff has voluntarily dismissed the action without prejudice. See *Corcoran v. Columbia Broadcasting System, Inc.*, 121 F.2d 575, 576 (9<sup>th</sup> Cir. 1941).

The Ninth Circuit reviewed the lower court’s decision in light of the Supreme Court’s holding in *Buckhannon Bd. & Care Home, Inc., v. W. Va. Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001). In that case, in the context of the Fair Housing Amendments Act (FHAA) the United States Supreme Court stated that the determination of prevailing party status should be determined on whether “a material alteration of the legal relationship of the parties” has occurred. In applying *Buckhannon* to the *Cadkin* case the court also explicitly cited to recent Ninth Circuit case law holding that dismissals without prejudice do not “alter the legal relationship of parties” for attorney’s fee award purposes. See *Oscar v. Alaska Dep’t Of Educ. & Early Dev.* 541 F.3d 978, 981 (9<sup>th</sup> Cir. 2008)

The court noted that Copyright Act Section 505 authorizes a court to award “reasonable attorney’s fees to the prevailing party.” However, the panel concluded that the *Corcoran* opinion holding that a defendant is the prevailing party upon voluntary dismissal without prejudice was “clearly irreconcilable” with the controlling Supreme Court authority set forth in *Buckhannon*. Thus, this court reversed the attorney’s fee award, finding that plaintiff’s voluntary dismissal without prejudice still afforded the plaintiff the ability to refile its copyright claims against defendant. Accordingly, defendant was not a prevailing party and was not entitled to an award of attorney’s fees.