NJ Federal Judge Rules Copyright Application Can’t Sustain Infringement Lawsuit

by Christine M. Vanek on January 15, 2013

A New Jersey federal judge recently ruled that a copyright application—as opposed to a copyright registration—is insufficient to sustain a copyright infringement lawsuit. The question is turning into a high-profile intellectual property issue, as federal courts across the country have been unable to reach a consensus.

The answer to whether a copyright application alone is enough to bring an infringement lawsuit depends on the approach taken by the federal court. To date, two distinct schools of thought have emerged on how to interpret the Copyright Act. It states, in relevant part, “No civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.” It does, however, allow a civil action for infringement where the application has been submitted to the Copyright Office and refused. The “application approach,” as the name suggests, holds that a pending copyright application is enough to substantiate a suit, while the "registration approach" maintains that a certificate of registration from the U.S. Copyright Office is required.

In *North Jersey Media Group v. Sasson*, 12-cv-3568, U.S. District Judge William Martini was asked to consider if the North Jersey Media Group could pursue an infringement claim for an article and several photographs published in *The Record*. The suit alleged that its former reporter, Victor Sasson, infringed the paper’s copyrights by posting the content on his blog without permission or copyright notice.

In adopting the registration approach, Martini cited several cases in which the courts of the Third Circuit required copyright registration as a prerequisite to filing suit. In *Dawes-Lloyd v. Publish America,* No. 10–3781 (2011), the Third Circuit Court of Appeals affirmed the dismissal of a copyright infringement suit based on a failure to register. It ruled: “An action for infringement of a copyright may not be brought until the copyright is registered.” However, as Martini noted, the author’s of the children’s book in question had never applied for federal copyright protection.

Given that there was an application pending in this case, Martini looked to a 2011 opinion from the Eastern District of Pennsylvania, *Patrick Collins v. Doe*, 1-26, 11-cv-7247. In that case, the court interpreted the Copyright Act to require registration. As District Judge Legrome Davis explained, "If mere submission of a complete copyright application constituted registration under § 411(a), then logic tells us that the Copyright Office could never 'refuse' registration of such an application — registration would be automatic."

On the basis of this reasoning, Martini dismissed North Jersey Media's Group infringement claim with prejudice, indicating that the company could file an amended complaint once its hold a copyright registration. While the issue may not be settled for good in the Third Circuit, this case highlights the importance of pursuing copyright registration as soon as practically possible.

Source: New Jersey Law Journal

If you have any questions about this or would like to discuss how to protect your copyrights, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.