

A Unanimous Supreme Court Decides – If Your Copyright Registration Application is Still Pending, You Cannot Sue for Infringement

Article

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On March 4, 2019, the United States Supreme Court brought U.S. copyright law in line with U.S. patent law and U.S. trademark law. Specifically, the Court held that, in order to sue for copyright infringement, the copyright owner now needs to have his or her Federal Copyright Registration in hand before gaining access to the federal court system – which holds exclusive jurisdiction over U.S. Copyrights, Patents, and Trademarks.

This has long been the rule in the area of Patents and Trademarks. Until yesterday, however, a copyright owner could gain access to some federal district courts as long as the copyright owner had a pending registration in the works. In other jurisdictions, the Registration Certificate was required. This obviously led to inconsistent determinations as to when a case as “ripe” for review. With this decision, the Court eliminated this inconsistency. A copyright owner still gets exclusive rights to his or her work as soon as it is published; however, that owner does not have standing to sue for infringement until the Copyright Office has acted on the registration (with a few exceptions, such as live broadcast and preregistration).

The Court also notes that a copyright owner retains the ability to recover damages and/or profits for infringement occurring prior to registration. This is because, unlike patents and trademarks, copyright owners have rights to their work as soon as the work is created. However, with yesterday’s ruling, the copyright owner will need to wait to begin a suit until after a Certificate of Registration is received. Importantly, the average processing time of a copyright registration is well below the statute of limitations for a copyright infringement suit to be brought; thus, while there may be a delay between discovery of infringement and an attempt to file suit to stop the infringement, copyright owners are not losing their ability to enforce their exclusive rights in their works.

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