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COURT DENIES BANKRUPTCY PROTECTION TO DEBTOR DOING BUSINESS WITH CANNABIS GROWERS

BY ANGELA J. BENOIT AND KENNETH C. PICKERING

As the marijuana industry in Massachusetts continues to grow, individuals and organizations that provide goods or services to cannabis-based businesses may face legal consequences they may not have considered, specifically potential bankruptcy ramifications. Businesses that grow, distribute or sell marijuana are aware that their actions violate federal law even though they may be legal in the state in which they operate. Most individuals involved in marijuana businesses have considered the consequences of the federal government enforcing federal criminal law. But those within the marijuana industry — as well as those who lease space or sell equipment or supplies used in the production, distribution or sale of marijuana — may not have considered what would happen if their businesses fail.

Bankruptcy law and bankruptcy courts are creatures of federal law. A bankruptcy court cannot enforce the protections of the Bankruptcy Code in aid of a debtor whose activities constitute a federal crime. The federal law criminalizing marijuana creates challenges when businesses are contemplating filing bankruptcy, putting not only marijuana businesses at risk, but those who do business with them as well.

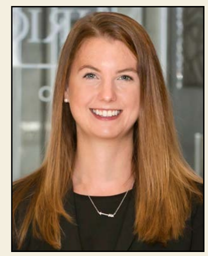
THE CONTROLLED SUBSTANCES ACT

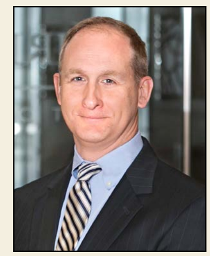
The Controlled Substances Act (CSA) makes it illegal to “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense, a controlled substance.” 21 U.S.C. § 841(a)(1). The CSA also prohibits possession or distribution of “any equipment, chemical, product or material which may be used to manufacture a controlled substance … having reasonable cause to believe, that it will be used to manufacture a controlled substance[.]” 21 U.S.C. § 843(a)(6).

Drugs classified under Schedule 1 are considered the most dangerous, with potentially severe psychological or physical dependence, and having a high potential for abuse. Marijuana is currently listed as a Schedule 1 drug and remains illegal under the CSA. As a result, under federal law, it is illegal to sell any equipment that will be used to manufacture marijuana.

MARIJUANA GROWERS

It will come as no surprise that businesses directly involved in the marijuana industry are denied the protections of federal bankruptcy law. In a case involving a marijuana growing facility, the bankruptcy court found that in order for the bankruptcy trustee to take control and liquidate the growers’ assets, the trustee would necessarily violate the CSA. *In re Arenas,* 514 B.R. 887 (Bankr. D. Colo. 2014). The court found that any payments pursuant to the bankruptcy would be funded by a criminal enterprise in violation of federal law. The Bankruptcy Appellate Panel upheld the determination that a marijuana business debtor could not obtain relief in federal bankruptcy court. *In re Arenas*, 535 B.R. 845 (10th Cir. BAP 2015).





ANGELA J. BENOIT is an associate and **KENNETH C. PICKERING** is a partner with Mirick, O’Connell, DeMallie & Lougee LLP in Worcester.

OTHER BUSINESSES

In another Colorado case, a warehouse owner knowingly rented a portion of its warehouse space to a marijuana growing operation. The bankruptcy court noted that although the marijuana growing operation was legal under Colorado law, the landlord knowingly violated federal law. As a result, the court dismissed the landlord’s bankruptcy petition due to violations of the CSA. *In re Rent-Rite Super Kegs West Ltd.,* 484 B.R. 799 (Bankr. D. Colo. 2012).

Other bankruptcy courts have reached similar conclusions dismissing bankruptcy petitions where:

- The debtor’s claims arose from credit knowingly extended in furtherance of a marijuana business, *In re Medpoint Management LLC*, 528 B.R. 178 (Bankr. D. Ariz. 2015);
- The debtor was a licensed caregiver and marijuana grower under the Michigan Medical Marihuana Act, *In re Johnson,* 532 B.R. 53 (Bankr. W.D. Mich. 2015); and
- The Chapter 13 plan was to be funded with income generated from sales of medicinal marijuana, *In re McGinnis*, 453 B.R. 770 (Bankr. D. Or. 2011).

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Courts have denied bankruptcy relief in part because allowing such a case to continue may require that the bankruptcy trustee possess and administer assets in violation of federal law, and would necessitate support of the debtor's criminal enterprise.

RECENT DECISION FROM COLORADO BANKRUPTCY COURT

A recent Colorado case addressed whether a debtor that sold equipment to both marijuana and non-marijuana businesses could seek bankruptcy relief. The Colorado case involved several debtors that operated retail outlets that sold hydroponic and gardening-related supplies. *In re Way to Grow Inc.,* No. 18-14330 (Bankr. D. Colo. Dec. 14, 2018). The debtors' equipment could be used for many crops, but the expansion of indoor gardening supply sales is largely dependent on the growing cannabis industry in Colorado.

The bankruptcy court was called upon to determine if the debtors violated the CSA by conspiring or aiding and abetting the manufacture, possession or distribution of marijuana, or sold equipment having reasonable cause to believe it would be used to manufacture a controlled substance. The debtors were found to have participated in cannabis industry trade shows, given away promotional materials associated with marijuana use, engaged in cross-promotions with cannabis dispensaries, and contributed prize money to "grow-offs." The court also took into account that many of the debtors' largest customers used aliases when making purchases.

To aid and abet, debtors must have the specific intent to assist in the violation of the CSA. To conspire to violate the CSA, debtors must have entered into an agreement to violate the law. The court noted that one cannot "stumble into aiding and abetting liability" by inadvertently helping another in a criminal scheme unknown to the debtors.

The court did not find sufficient evidence that the debtors had either the intent to conspire, or to aid and abet, the manufacture or distribution of marijuana pursuant to section 841. Selling hydroponic equipment to both marijuana- and non-marijuana-based businesses did not demonstrate a specific intent to assist customers in violating federal law. However, the bankruptcy court found that the debtors did meet the lower standard prohibiting the distribution of "equipment, chemical, product or material … knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance" under section 843. The court found that the debtors had reasonable cause to believe that the equipment sold would be used to grow marijuana. As a result, the court dismissed the debtors' bankruptcy petition.

A NOTE OF CAUTION

Businesses who derive income from the sale of products used by marijuana businesses face significant risks, and may be denied protection afforded to debtors pursuant to the federal Bankruptcy Code. One need not sell products that could only be used for cannabis cultivation or sale, so long as the products could be used for such purposes and the seller has "reasonable cause to believe" that the products may be used to manufacture or distribute a controlled substance. As more cannabis-based businesses open in Massachusetts, landlords, vendors and suppliers — as well as service providers — must carefully consider the potential risks of establishing business relationships with entities operating in violation of federal criminal law. ■

AMERICAN AIRLINES' CLASH WITH THE U.S. COPYRIGHT OFFICE SETS THE DIVIDING LINE FOR LOGO PROTECTION

BY ANDREW T. WARREN

Copyright protection for logos can be a contentious issue between companies and the United States Copyright Office. A conflict between the Copyright Office and American Airlines (AA) recently concluded following two and a half years of rejections and reconsiderations.[1] The result should be viewed as a dividing line for logos to gain federal copyright protection.

AA hired FutureBrand North America to design a new logo for the airline. On Jan. 17, 2013, the commissioned logo was unveiled worldwide. Three and a half years later, AA filed an application for copyright protection of the new logo. The Copyright Office Review Board (CORB) described the AA logo as follows:

"The Work is composed of a trapezoid with two curved corners overlaid in the middle by a triangle with a curved right point, justified to the left edge of the trapezoid. The top of the trapezoid is blue, the bottom of the trapezoid is red, and the triangle is white. All of these elements have some shading. The trapezoid is reminiscent of an airplane's tail, while the triangle could be described as an abstraction of a bird's head."

The initial application and two subsequent requests for reconsideration were rejected by the CORB.[2] The initial reason for the rejection was that the work lacked "the authorship necessary to support a copyright claim." Under U.S. copyright law, a work must be fixed and original. 17 U.S.C. § 102 (2016). The rejections that followed added that the logo did not contain enough creativity to be original and was comprised of common geometric shapes that did not rise to the level of copyright protection.

In denying AA's applications, the CORB relied on the Supreme Court's decision in *Feist Publ'ns Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991), which held that while only a "modicum of creativity is necessary" for copyright protection, some works do not meet that standard. The CORB also quoted *Feist* for the proposition that there can be no copyright protection when "the creative spark is utterly lacking or so trivial as to be virtually nonexistent."

In *Feist*, the court had affirmed a ruling by the CORB that an alphabetized phone directory did not surpass the "de minimis" level of creativity required for copyright protection. *Feist* held that while it was true that some work was involved in compiling the facts from which the directory was made, that work was irrelevant due to the lack of creativity.

The CORB's comparison of the alphabetized directory in *Feist* to the AA logo was misplaced. Indeed, the CORB's description of the logo as geometric shapes, while conceding that those shapes appear to be specific objects as an "abstraction," is contradictory. Abstraction is a departure from traditional representation or reality using imagery

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or art.[3] An abstract work, by definition, cannot lack creativity unless it is not original.

Section 308.2 of the Compendium of U.S. Copyright Practices attempts to define “creativity” for purposes of copyright registration.[4] The second paragraph, after the introduction to the section, references and captures *Feist*. “[T]he requisite level of creativity is extremely low.” Even a “slight amount” of creative expression will suffice. “The vast majority of works make the grade quite easily, as they possess some creative spark, ‘no matter how crude, humble or obvious it might be.’” Here, once AA made the creative choice to use an abstraction, the logo ceased to be merely geometric shapes and became a fixed, original and creative visual work. At that moment, the logo gained copyright protection, which the examining attorney and the CORB failed to recognize, and thus should have been registered as a protected work.

FutureBrand North America subsequently won a CLIO Award, a prestigious distinction in the advertising and design industry, for the AA logo. The award for Corporate Identity Design was the first for design work completed for an airline. While the work involved in creating a design, or “sweat of the brow,” is not relevant in U.S. copyright law, the fact that the AA logo was recognized for its creativity and originality completely contradicted the CORB’s findings.

The recourse for a party that receives a second refusal is to file suit in federal district court against the register of copyrights. *See* 5 U.S.C. 500 (1999). AA prepared and served a complaint to the CORB, but did not file. The Copyright Office then took the unusual step to re-review AA’s second request for consideration. AA effectively achieved a third reconsideration of its logo, although the Copyright Office warned that such a review would not be normal protocol moving forward.

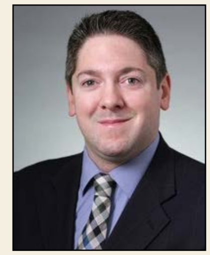
In its third review, the CORB finally reversed its decision and granted AA’s copyright registration. First, the CORB stated that additional materials changed its view on the matter of creativity. AA re-submitted a higher quality, larger and more brightly colored version of the original logo. There is no discernible difference between the logos in relation to originality or creativity. The more recent logo is a slightly better example, but includes nothing extra that should lead to a new result. More likely, the CORB did not want to admit it erred, and this was an attempt at a face-saving explanation.

The CORB conceded that while parts of the work are geometric in origin, they were modified in a way that surpassed the low threshold for creativity. The CORB then noted the curvature of the aircraft tail while acknowledging that alteration makes it unlike a trapezoid, rectangle or typical geometric shape. The CORB finally followed its own guidance from the Copyright Manual’s § 308.2 definition for creativity, stating that “copyright protection is available so long as there is some ‘creative spark, no matter how crude, humble or obvious it might be.’”

The CORB correctly realized that there is a low level of creativity for copyright protection, but a humbler work may receive limited protection. A painting with many elements may be protected so that others cannot use many of those elements together. However, a simple logo with only three elements, such as AA’s, may only have protection from copying the exact logo, or close to it. There are always degrees of protection in intellectual property, depending on the protected subject and its details.

Had the AA logo been painted on a canvas instead of presented as a logo, it is unlikely that the work would have been rejected. Modern art is full of simplistic paintings consisting of a few lines or shapes, which are granted registration. The Copyright Office seemingly treats logos in a distinct manner, although nothing in the Copyright Act specifies that a logo is distinguishable from other visual works. The test should always be whether the work is fixed, original and rises to the low level of creativity needed to register.

Companies and attorneys need to take inventory of the long procedural process between AA and the Copyright Office. AA was prepared to litigate the issue in federal court, and only then did the Copyright Office reconsider its action. The reversal marks the AA logo as the current dividing line for logos to achieve registration. When a company commissions a logo, it is crucial to take note of the elements of the AA logo and attempt to reach or exceed them to ensure copyright registration. ■



ANDREW T. WARREN is the principal attorney of Trenholm Warren LLC in Boston and represents clients in copyright, trademark, sports, media and employment law matters. Warren is also active in creating legal branding and IP protection strategies for cannabis startups in Massachusetts.

1. Registration Decision Regarding American Airlines Flight Symbol; Correspondence ID 1-28H4ZFK; SR 1-3537494381(U.S. Copyright Office, Dec. 7, 2018), https://www.copyright.gov/rulings-filings/review-board/docs/american-airlines.pdf.
2. Second Request for Reconsideration for Refusal to Register American Airlines Flight Symbol; Correspondence ID: 1-28H4ZFK; SR#: 1-3537494381 (U.S. Copyright Office, Jan. 8, 2018), https://www.copyright.gov/rulings-filings/review-board/docs/american-airlines-flight-symbol.pdf.
3. Abstract Art, Dictionary.com, https://www.dictionary.com/browse/abstract-art.
4. Compendium of U.S. Copyright Office Practices (3rd), § 308.2 at 6 (2017).

How to Submit Articles

To inquire about submitting an article to the *ComCom Quarterly*, contact Jessica G. Kelly (JGKelly@Sherin.com).

THE ECONOMIC LOSS DOCTRINE AND ITS LIMITS

BY KAILEIGH A. CALLENDER

We may consider it a forgone conclusion that, in Massachusetts, economic losses cannot be recovered in tort actions absent personal injury or property damage. This principle is most often referred to as the "economic loss rule" or "economic loss doctrine" (ELD). At its core, the ELD is a judicially-created doctrine that defends the boundary between contract and tort law by limiting the remedies available in tort actions. While easy to define in concept, the doctrine is more difficult to delimit in practice. This is because the ELD often produces illogical or undesirable outcomes that courts look to avoid.

To understand the ELD, we need to understand the context in which it emerged. During the early 20th century, courts struggled to address the increase in litigation initiated by persons injured by defective products. At the time, individuals injured by such products could bring suits under both negligence and warranty theories. Yet there were also significant barriers to recovering under either theory, such as disclaimers and privity requirements. Strict liability emerged to provide a viable remedy by eliminating many of the defenses historically available in response to negligence and warranty claims. But the potency of this new remedy introduced its own problem: the ease of recovery. To nudge the pendulum back in the other direction, the ELD was created and widely adopted to limit the recovery available to consumers.

Bay State-Spray & Provincetown S.S. Inc. v. Caterpillar Tractor Co. was among the earliest formal endorsements of the ELD in Massachusetts, in which the Supreme Judicial Court (SJC) held that the recovery of economic loss on a tort-based strict liability theory was not available on breach of implied warranty claims. 404 Mass. 103 (1989). *Bay State-Spray & Provincetown S.S.* followed on the heels of the 1986 United States Supreme Court maritime decision in *East River S.S. Corp. v. Transamerica Delaval Inc.*, where the court held that "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." 476 U.S. 858 (1986). The court's decision in *East River S.S. Corp.* would hint at later exceptions to the ELD by explaining that the distinction between contract and tort recovery is not arbitrary, but rather rests on honoring each party's reasonable expectations. As the court explained, contract law is best suited to manage commercial controversies "because the parties may set the terms of their own agreements. The manufacturer can restrict its liability, within limits, by disclaiming warranties or limiting remedies. In exchange, the purchaser pays less for the product." The court acknowledged, however, the need for redress in cases of unanticipated or unbargained for risk insofar as the "cost of an injury and the loss of time or health may be an overwhelming misfortune, and one the person is not prepared to meet." While contract set the parties' commercial expectations, tort law was not entirely excluded from protecting consumers from harm.

Economic loss is classically defined to include "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits without any claim of personal injury or damage to other property." *Berish v. Bornstein*, 437 Mass. 252 (2002). Importantly, therefore, the doctrine does not prevent plaintiffs from recovering economic losses resulting from damaged property or injury. It prevents the recovery of economic loss resulting from the product defect itself (i.e., from the product "injuring itself").

The ELD has grown from these narrow roots into a broadly applicable rule that limits tort recovery on contract-based claims. But to prevent the rule from producing unfair or illogical results, the courts have carved out notable exceptions. One exception covers negligent misrepresentation claims. These claims often involve foreseeable and detrimental reliance on a professional service rendered pursuant to a contract. A related exception covers claims based on defective professional services. As the SJC has explained, "[w]here a contractual relationship creates a duty of care to third parties, the duty rests in tort, not contract, and therefore a breach is committed only by the negligent performance of that duty, not by a mere contractual breach." *LeBlanc v. Logan Hilton Joint Venture,* 463 Mass. 316 (2012). Thus, in some instances, tort will supplant contract in providing the governing duty and remedy.

Similarly, Massachusetts courts have not applied the ELD to claims based on the negligence of a fiduciary, such as claims for legal malpractice. This general exception is rooted into the notion that the ELD presumes that parties were in a position to bargain freely concerning the allocation of risk. Fiduciaries, like lawyers and their clients, do not deal with their principals at arm's length. Thus, fiduciaries owe a duty to avoid causing economic injury that in Massachusetts survives the ELD.

Finally, the SJC's decision in *Wyman v. Ayer Properties LLC* suggests that courts will consider the purpose of the ELD and the consequences of its application in deciding whether to enforce it. 463 Mass. 316 (2014). The factual setting of *Wyman* is narrow. But its holding is potentially broader. In holding that the ELD did not prohibit the condominium trustees from recovering for this damage, the SJC stated:

> An examination of the purpose of the economic loss rule guides our decision. The rule was developed in part to prevent the progression of tort concepts from undermining contract expectations.
>
> *Id.* at 70.

The SJC went on to quote the Appeals Court's conclusion that "[t]he fundamental purpose of the rule is to confine the indeterminacy of damages, not to nullify a right and remedy for a demonstrated wrong and its harm." *Id.* at 71. As the court explained, "The rationale for applying the rule is made even weaker where the trustees seek damages that are finite and foreseeable. The rule is intended to preclude recovery for intangible and unknown damages for lost contract or economic opportunity." *Id.*

The logic of the *Wyman* holding suggests that courts will consider the practical implications of applying the ELD in connection with its stated purpose. The SJC declined to apply the rule in a circumstance where doing so arbitrarily precluded the recovery of finite and foreseeable damages. Yet it also did not formally limit the ELD. Practitioners would be well advised to consider both the purpose and impact of the ELD in arguing for or against its application. *Wyman* provides a view of the factors and considerations that courts may find persuasive in these arguments. So while the ELD may be alive and well in Massachusetts, it has its limits, and practitioners should know what they are. ■

KAILEIGH A. CALLENDER is a litigation associate at Goulston & Storrs PC. Her practice is focused on assisting and advising clients through a range of complex commercial disputes.

CASE COMMENT

SJC HOLDS THAT THE APPEARANCE OF BIAS ALONE DOES NOT INVALIDATE AN APPRAISAL

BY KENNETH N. THAYER

In *Buffalo-Water 1 LLC v. Fidelity Real Estate Co.*, 481 Mass. 13 (2018), a significant new decision concerning the rights and obligations of parties contracting for the purchase and sale of real estate, the Supreme Judicial Court (SJC) held that the mere appearance of an appraiser's bias in favor of one party over the other, without more, will not invalidate the appraisal or be deemed a violation of the duty of good faith and fair dealing.

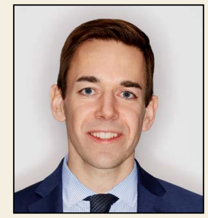
The case arose out of a dispute between Buffalo-Water 1 LLC (Buffalo-Water), as owner of a commercial property in Boston known as the Winthrop Building, and Fidelity Real Estate (Fidelity), a longtime lessee of the building. At the outset of Fidelity's lease, the parties had entered into an option-to-purchase agreement that gave Fidelity the right to buy the building. In August 2016, Fidelity exercised its option and, in accordance with the terms of the agreement, both parties retained their own appraisers. Buffalo-Water's appraiser valued the property at $36 million, and Fidelity's at $17 million. In this situation, the option agreement called for the appointment of a third appraiser, and the parties chose Cushman & Wakefield (Cushman).

In April 2017, the Cushman appraiser valued the building at $22.9 million and, in connection with the appraisal, submitted a certificate stating that Cushman had no bias with respect to the property or the parties. Notwithstanding that certificate, however, Buffalo-Water learned that Fidelity had retained a Cushman affiliate company in December 2016 on a significant project. In light of this, Buffalo-Water alleged impermissible bias and demanded a new valuation. Fidelity refused, and Buffalo-Water filed suit in the Superior Court's Business Litigation Session, alleging violation of the covenant of good faith and fair dealing for Fidelity's failure to disclose its prior business relationship with Cushman.

The Superior Court (Sanders, J.) dismissed Buffalo-Water's claims, ruling that the undisclosed relationship between Cushman and Fidelity did not amount to bad faith, fraud or corruption necessary to invalidate the agreed-upon appraisal. Buffalo-Water appealed, claiming that the appraisal was invalid and that Fidelity violated its duty of "good faith and fair dealing by taking advantage of an appraisal process it knew to be biased." The SJC transferred the case on its own motion.

In affirming the Superior Court's dismissal, the SJC first looked to whether the appraisal contract entered into between Fidelity, Buffalo-Water and Cushman contained language that would have required Fidelity and/or Cushman to disclose their prior dealings. While the contract did contain a provision requiring the individual appraiser at Cushman to disclose any prior dealings that he personally had with either party, the court held that the plain language of this provision did not extend beyond the individual to cover Cushman as a whole.

The SJC then considered whether the appearance of bias here (i.e., the existence of an undisclosed prior relationship between Fidelity and the appraiser's employer, Cushman) was sufficient standing alone to: (a) invalidate the appraisal under common-law principles, or (b) constitute a violation of Fidelity's duty of good faith and fair dealing. The court answered no on both counts, reasoning that "the appearance of bias alone does not support a finding of fraud, corruption, dishonesty, or bad faith." Moreover, the SJC also expressly ruled that the covenant of good faith and fair dealing cannot impose new duties on parties beyond those provided in their contract and, here, the parties' contract did not "require disclosure of potential conflicts of interest that could create the appearance of bias." The court explained that to insert such a disclosure requirement into the contract would be to allow the covenant of good faith and fair dealing to impermissibly expand the terms of the contract itself. ■



KENNETH N. THAYER is counsel at the boutique litigation firm of Sugarman, Rogers, Barshak & Cohen PC. He represents technology companies, manufacturers and other businesses in a broad range of commercial, employment, real estate and regulatory disputes.

CASE COMMENT

FOURTH ESTATE PUBLIC BENEFIT CORP. V. WALL-STREET.COM LLC, ET AL

BY ANDREW T. WARREN

On Monday, March 4, 2019, the United States Supreme Court resolved a circuit split in a unanimous decision holding that a litigant cannot bring a civil action for copyright infringement before the Copyright Office has granted copyright registration. This decision will affect the timing of when a copyright infringement suit may be brought. Statute of limitation concerns should not arise if the copyright owner acts prudently.

The case, *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC*, No. 17-571, --- S. Ct. --- (2019) centered on the interpretation of § 411(a) of the Copyright Act, which states that a copyright infringement action may be brought when "registration of the copyright claim has been made." The dispute in the case was whether § 411(a) referred to submission of a copyright application or actual registration by the Copyright Office. These two approaches are known respectively as the "application approach" and "registration approach."

The plaintiff, Fourth Estate Public Benefit Corporation (Fourth Estate) sued Wall-Street.com (Wall-Street) for copyright infringement while Fourth Estate's news articles were awaiting approval by the Copyright Office. Fourth Estate reasoned that § 411(a) intended for copyright registration to be "made" when the registration application was filed. The reasoning was based on other provisions of the Copyright Act that tied the language "make registration" to the action of the copyright holder instead of the Copyright Office.

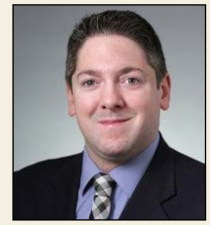
The court found Fourth Estate's interpretation defective both in the context of § 411(a) and in Congress' reaffirmation of that section in the 1976 Copyright Act. The court also highlighted the inclusion of specific preregistration exceptions as evidence of congressional intent to require copyright registration in all other instances.

The exceptions under § 408(f)(2) allow preregistration for types of works with a history of predistribution infringement, such as movies, sound recordings, musical compositions, books, computer programs (including video games), live broadcasts, and advertising and marketing photographs. In these cases, a suit for copyright infringement may be brought following preregistration. The copyright owner, however, must fully register the preregistered work within a month of known infringement and no later than three months after publication. If not, a court must dismiss a copyright infringement action that occurred before publication and within two months after publication.

The court also relied on another notable exception within § 411(a) as evidence in favor of the registration approach, which states that a civil action for infringement may be brought once registration is refused if a copy of the complaint is served on the register of copyrights. The court explained that the exception would be unnecessary if Congress intended the application approach for copyright infringement suits.

There are practical implications to the decision, which the court attempted to speak to. Copyright protection attaches inherently upon creation of a work and protects those works and their owners from infringement. The court reasoned that registration of works does not alter those rights. An owner may still recover damages for past infringement that occurred prior to registration.

The related concern for copyright owners is the statute of limitations. The statute of limitations for copyright infringement is generally three years from notification of the infringement. The Copyright Office, however, is known to be underfunded and slow to grant registration. A basic registration costs \$35–\$55 and takes seven months on average to be decided upon. Ninety-four percent of copyright applications are resolved within 15 months. An application may be expedited within five working days for a fee of \$800. There should be little danger of missing the statute of limitations if an applicant acts diligently.



ANDREW T. WARREN is the principal attorney of Trenholm Warren LLC in Boston and represents clients in copyright, trademark, sports, media and employment law matters. Warren is also active in creating legal branding and IP protection strategies for cannabis startups in Massachusetts.

The more immediate issue is for copyright owners seeking a preliminary injunction. An injunction is impractical while waiting seven months or more for registration. The solution is to pay \$800 and have the registration expedited by the Copyright Office, but at an increased cost.

Neither Fourth Estate, Wall-Street nor their amici were able to unearth cases that lead to concern on the statute of limitations created if an owner must wait until registration before filing suit. The Copyright Office remaining overwhelmed is the greater concern. The court's decision could have real consequences if Copyright Office registration times balloon past a year or 18 months. Congress and/or the Copyright Office would need to implement an improved process at that juncture. Copyright owners must be able to bring suit without nearing the statute of limitations for those actions. ■