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# SUPREME COURT RULES REGISTRATION, NOT JUST APPLICATION, REQUIRED TO SUE FOR COPYRIGHT INFRINGEMENT

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*Doing Business in Florida*

Supreme Court Rules Registration, Not Just Application, Required to Sue for Copyright Infringement

United States Copyright law protects authors of creative works against unwanted copying, distribution, and other acts of infringement. While registration is not required to have rights, federal courts have historically been split on whether registration is required in order to file an infringement lawsuit. However, on Monday, the Supreme Court ruled once and for all that the Copyright Act (17 U.S.C. § 101 et seq.) requires copyright owners to obtain an actual registration from the U.S. Copyright Office before a lawsuit can be filed.

In the unanimously decided Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC, Case No. 17-571 (03/04/2019), Justice Ginsburg's opinion resolved the often-cited split between the Eleventh Circuit Court of Appeals and the Ninth Circuit Court of Appeals—the Eleventh Circuit requires that the alleged copyright owner obtain an actual registration whereas the Ninth Circuit, until today, required only that an application be filed.

The Supreme Court considered the plain language of the Copyright Act and determined that references to "make registration" and "registration…has been made" clearly refer to the actions of the U.S. Copyright Office rather than that of the copyright owner. Accordingly, the Supreme Court pushed aside the Ninth Circuit's more lenient approach in favor of a stricter, registration-first regime.

While Justice Ginsburg recognized that the ruling may have a chilling effect on litigants because copyright owners must now go through a months-long registration process, such delays are not an excuse to twist clear statutory language. Ultimately, according to Justice Ginsburg, it is up to Congress to increase the Copyright office's budget if copyright holders demand a faster registration process.

From a practical standpoint, copyright owners in all jurisdiction need to be more proactive and file their copyright applications as soon as their creative works are ready for publication. Not only does registration prevent unwanted delays in enforcement, but it can also subject infringers to statutory damages and enhanced damages not otherwise available if the copyright owner waits to register until after publication or infringement.

For more information on copyright and intellectual property matters, please contact the author, Geoff Lottenberg, on our Dispute Resolution Team.

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