

# Play It Safe

*There are many benefits to registering your copyright*

Last week, apparel manufacturer Original Outerwear called me in a panic. One of its biggest competitors, Copy Cat Designs, had knocked off its recent catalog. Copy Cat had published a catalog that incorporated the look and feel, layout and other significant features of Original's catalog. The only difference with Copy Cat's catalog was the name and specific products contained in the catalog. When asked what could be done, my first question to Original was "Do you have a copyright registration for your catalog?" The response was a resonating "huh?"

There appears to be a popular misconception that the only thing necessary to have copyright protection is to place the designation © or a notation that "All Rights Are Reserved" on materials for which copyright protection is sought. While that may be true—at least in part—one cannot sue under the federal Copyright Act for infringement unless the copyright is registered with the United States Copyright Office.

The Copyright Act permits a copyright owner to sue for infringement and to recover, among other things, statutory damages of up to \$150,000 for each copyright infringed. Damages are set by the statute in a fixed amount as an alternative to actual damages. Statutory damages are often sought when actual damages are difficult to determine. The Copyright Act also permits the copyright owner to recover actual damages—it is the plaintiff's choice and, logically, a plaintiff will elect to recover statutory damages if that amount exceeds actual damages.

In addition, the U.S. rule is that parties pay their own attorney fees in litigation. However, as a remedy for infringement, the Copyright Act permits a copyright owner to recover its attorney fees and costs. One cannot recover these remedies without a registered copyright.

In certain jurisdictions, an action for infringement may be brought under the Copyright Act if an application for registration is filed before or at the time of registration. This is what we did in the case of Original Outerwear v. Copy Cat Designs—filed for registrations at the time we filed suit. However, without an actual registration, Original cannot seek statutory damages or attorney fees. The rem-



edies are limited to injunctive relief (to stop and prevent further infringement) and actual damages. Thus, it is apparent why registering your copyright is important.

There are other benefits to registering your copyright, including:

- The registration is a public disclosure of your copyright; nobody can claim that they were unaware of it.
- If your copyright is registered within a five-year period, the registration is prima facie evidence that the copyright is valid.
- If your work is registered three months after publication and before any infringement occurs, the owner may recover statutory damages and attorney fees and costs in an infringement action brought under the Copyright Act.
- You can file the information on your copyright registration certificate with United States Customs and Border Protection to prevent the importation of infringing goods. Registering your copyright with the Copyright Office is straightforward and relatively inexpensive. This small step can make all the difference if you have to sue for infringement.

BY LISA A. LORI, ESQ.

*Lisa A. Lori, Esq., is a partner in the litigation department at Klehr, Harrison, Harvey, Branzburg & Ellers, LLP. Lori represents clients in a full-range of complex commercial litigation matters, including employment, intellectual property and general business torts. She also counsels clients on a variety of issues, including advertising, marketing, branding and regulatory compliance.]*

