5-1-1993

Copyright - Statute Of Limitations: Makewide Publishing Co., et al v. Alvin Lee Johnson, Sr., et al, No. 91-0879 Sect. B, 1993 U.S. Dist. LEXIS 652 (E.D. La. 1993]

tions to use and defendant invited at least 100 guests. Thus, because 50 percent of the total copies mailed with the plaintiff's permission did not contain proper copyright notice, more than a relative few were distributed without proper notice.

Held: Plaintiff's copyright was divested by the photo's general publication without notice of copyright to the audience of invitation recipients. There are no exceptions that save plaintiff's copyright interest under these facts. *Judgment for Defendant.*

H.C.

TRADEMARK LAW

YANKEE PUBLISHING, INC. AND INTERNATIONAL LICENSING MANAGEMENT, INC. v. NEWS AMERICA PUBLISHING, INC., No. 90 Civ. 8120 (PNL), 1992 U.S. Dist. LEXIS 19385 (S.D.N.Y. Dec. 18, 1992).

Plaintiff, publisher of The Old Farmer's Almanac, brought a suit for trademark infringement and false designation of origin, unfair competition, unjust enrichment, and trademark dilution against the publisher of New York Magazine. The plaintiff claims that *New York's* takeoff on the *Almanac's* cover design violates its trademark rights under federal and state law. Plaintiff argues that the defendant's use of this design caused confusion in the market and dilution of the value of the *Almanac* trademark. The main issue in trademark infringement and unfair competition is whether or not the use is likely to cause public confusion. The defendant contends that its cover reference to the *Almanac* did not cause confusion, and if it did, the interest in free expression protected by the First Amendment outweighs the possible confusion.

Held: The court held that *New York Magazine* made it clear that the reference to the *Almanac* was a joke, and its identity was made clear so that there was little possibility of confusion. If there was any confusion as to the origin, the confusion was minor and outweighed by the First Amendment considerations of free expression and commentary. The court also held that there was no significant dilution of the value of the plaintiff's trademark resulting from the defendant's reference. *Judgment for Defendant.*

J.H.

COPYRIGHT - STATUTE OF LIMITATIONS

MAKEWIDE PUBLISHING CO., ET AL v. ALVIN LEE JOHNSON, SR., ET AL, No. 91-0879 sect. B, 1993 U.S. Dist. LEXIS 652 (E.D. La.

Jan. 19, 1993).

Defendant moved for summary judgment on the grounds that the plaintiff's copyright infringement action was barred by prescription under the Copyright Act of 1976 because the defendant committed no direct acts of infringement during the three year period immediately preceding the filing of this lawsuit. 17 U.S.C. §507(b) states that no infringement action can be brought under the provisions of the Act "unless it is commenced within three years after the claim accrued." Defendant claims that even if plaintiff had any claim against him, the claim had accrued more than three years ago and is thus barred by prescription. Defendant presented evidence indicating that he had officially severed his relationship with the co-defendants in the music business more than six years before the filing of the lawsuit. Thus, the claim could not have accrued against him within the last three years. For the purposes of prescription under the Copyright Act of 1976, there has been conflict among the circuits as to whether or not the accrual of a claim can be applied to acts of infringement not directly committed by the defendant during that three year period.

Held: Copyright infringement is a continuing wrong, and therefore the statute of limitations in 17 U.S.C. §507(b) does not begin to run "until three years after the last alleged infringing act." "The plaintiff's interest in avoiding successive lawsuits outweighs the court's interest in avoiding evidentiary problems and the defendant's interest in being free from suit long after the alleged offense." *Motion denied.*

P.J.

TRADEMARK INFRINGEMENT

BAUSCH & LOMB v. NEVITT, 92-CV-6517L, 1993 U.S. Dist. LEXIS 913 (W.D.N.Y. Jan. 25, 1993).

Manufacturer of Ray-Ban sunglasses sued for trademark infringement, false designation of origin, unfair competition, and false advertising. Defendant developed a line of sunglasses which use the name Rayex written in a script design as its logo. The glasses were intended to be less expensive duplicates of Ray-Ban sunglasses. To succeed on a motion for preliminary injunction in trademark infringement, plaintiff had to establish that its trademark was entitled to protection and that a likelihood of confusion existed. In deciding whether there is a likelihood of confusion, the court is guided by a non-exclusive list of eight factors known collectively as the Polaroid factors.