

IS YOUR COPYRIGHT REGISTRATION VALID? THE NINTH CIRCUIT DETERMINES INACCURACIES IN YOUR COPYRIGHT APPLICATION DEEM COPYRIGHT REGISTRATION INVALID

By: [Jonathan N. King](#)

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[Jonathan N. King](#)

Contact

925.988.3229

jonathan.king@ndlf.com

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In order to enforce your copyright protections, it is necessary to avoid the willful inclusion of inaccurate information in any application seeking United States copyright protection. If you do not do so, you are risking a judicial determination that your copyright registration is invalid, which will then prevent you from enforcing your copyright ownership rights in federal court. The Ninth Circuit recently determined that a Court can invalidate copyright registration pursuant to 17 U.S.C. § 411(b) based on a knowing inclusion of inaccurate information in a copyright application that would have otherwise been a basis for the Copyright Office to deny registration.

Background on the Case

In *Gold Value International Textile v Sanctuary Clothing*, the Court interpreted the PRO IP Act by focusing on the inclusion of inaccurate information in a copyright application and the validity of the resulting copyright registration that served as the underlying basis for the copyright infringement action. The Court ultimately determined, with the assistance of the Copyright Office, that the willful inclusion of inaccurate information in a copyright application was grounds for the non-issuance of copyright protection because the presentation of accurate information in the application would have provided a basis to deny copyright registration. In so doing, the Court determined that valid copyright protection did not exist, which was a prerequisite to bringing a valid copyright infringement action.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 (the “PRO IP Act”)

The PRO IP Act provides that a certificate of registration satisfies 17 U.S.C. § 411(a)’s registration requirement, regardless of whether the certificate contains any inaccurate information. However, the Court’s ruling determined, pursuant to 17 U.S.C. § 411(b)(1), that copyright registration is invalid if (1) the inclusion of inaccurate information in an application for copyright registration with knowledge that it was inaccurate; and (2) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration. In light of such, the PRO IP Act continues to support the premise that a valid copyright registration is required to pursue copyright infringement.

Key Takeaways to Obtain Valid Copyright Registration Necessary to Enforce Your Copyright Protection

The *Gold Value International Textile v Sanctuary Clothing* decision is important in the context of copyright infringement law because it confirms that a valid copyright registration, *that must be based upon accurate information in the copyright application*, is necessary to maintain a copyright infringement lawsuit. In light of such, it is necessary to determine the following fundamental questions before filing a copyright infringement lawsuit in federal court:



1. Is all of the information included within your application for copyright registration accurate?
2. If not, was the inaccurate information knowingly included in the copyright application?
3. If the inaccurate information was known by the Register of Copyrights, would registration still have been granted?
4. If not, do you even possess a valid copyright registration necessary to pursue copyright infringement?

If you do not answer these fundamental questions, you are risking a determination that your copyright registration is invalid, which will ultimately prevent you from enforcing your copyright protections in federal court.

To read the *Gold Value International Textile v Sanctuary Clothing* case, click [here](#).

Jonathan N. King focuses his practice on federal trademark and copyright protection and infringement issues. Jonathan assists his clients with developing strategies to strengthen their intellectual property ownership rights. To learn how Jonathan can help you protect your copyrights, contact him at Jonathan.King@ndlf.com.

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