

Intellectual Property, Copyright and Trademark Litigation: Case Descriptions

- ***ABKCO Music & Record, Inc. v. Stellar Records*, (U.S. District Court for the Southern District of N.Y. 1995), *aff'd*, 96 F.3d 60 (2d Cir. 1996):** Won preliminary injunction holding that copyright in sound recording was infringed by manufacturer of karaoke (CD&G) disc which had only obtained compulsory license.
- ***ABKCO Music Inc. v. Westminster Music Ltd.* (U.S. District Court for the Southern District of N.Y.):** Won jury verdict involving synchronization rights to classic Mick Jagger/Keith Richards compositions.
- ***Allen v. Beaver Music* (AAA – N.Y.):** Won arbitration to recapture copyright to one of client’s best known songs as well as damages in case where the issue was construction of a form industry contract from the 1930s.
- ***Arden v. Columbia Pictures*, 908 F. Supp. 1248 (S.D.N.Y. 1995):** Won summary judgment prior to discovery on copyright infringement and related claims brought by novelist against producers of film *Groundhog Day*.
- ***Bakalar v. Vavra* (U.S. District Court for the Southern District of N.Y.):** We represent David Bakalar, the plaintiff and counterclaim-defendant in a dispute commenced in 2005 regarding the ownership and provenance of an Egon Schiele drawing alleged to have been confiscated by the Nazis during World War II. In August 2011, Judge William H. Pauley ruled in favor of Bakalar, finding that Bakalar was a good faith purchaser of the artwork and that the counterclaimants and their predecessors had unreasonably delayed in suing for replevin of the art, and that such delay had caused a loss of important evidence that unduly prejudiced Bakalar’s ability to defend his title. The available evidence supported that the Schiele work had been sold to a Swiss art gallery by the former owner’s sister-in-law after she was able to escape Nazi-occupied Austria. The case is currently on appeal to the U.S. Court of Appeals for the Second Circuit.
- ***Barris-Fraser Enters. v. Goodson-Todman Enters.*, 1998 U.S. Dist. LEXIS 146 (S.D.N.Y. 1998):** Successfully defended production company against declaratory judgment claim that plaintiff’s game show did not infringe upon defendant’s game show and obtained judgment that plaintiff’s show constituted an infringement.
- ***Beverage Marketing USA, Inc. v. South Beach Beverage Co., Inc.*, 2007 WL 1187975, 841 N.Y.S. 2d 217 (N.Y. Sup. 2007) and 2009 WL 146578, ___ N.Y.S. 2d ___ (2d Dept. 2009):** Won summary judgment dismissing claims of trade secret misappropriation, breach of fiduciary duty and unfair competition brought by owner of “Arizona Iced Tea” beverages against manufacturer and founder of “SoBe” beverages

- ***Beverage Marketing USA Inc., v. South Beach Beverage Corp.*, 2000 U.S. Dist. LEXIS 16504 (S.D.N.Y. 2000), *aff'd*, 36 Fed. Appx. 12 (2d Cir. 2002)**: After defeating earlier motion for preliminary injunction, won motion for summary judgment dismissing trade dress, dilution and copyright claims brought by the owner/manufacturer of “Arizona Iced Tea” beverages against the owner/manufacturer of the “SoBe” line of beverages
- ***BMI v. Claire’s Stores*, 754 F. Supp. 1324 (N.D. Ill. 1990), *aff’d*, 949 F. 2d 1482 (7th Cir. 1991)**: Won judgment on behalf of a retailer sued by BMI for playing radios in its stores without obtaining a performance license. This was a case of first impression, interpreting §110(5) of the Copyright Act of 1976.
- ***Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F. Supp. 177 (S.D.N.Y. 1976), *aff’d*, *ABKCO Music Inc. v. Harrisongs Music Ltd.*, 722 F.2d 988 (2d Cir. 1983)**: Won at trial, establishing that George Harrison’s *My Sweet Lord* infringed copyright in our client’s song *He’s So Fine*.
- ***CBS Inc. v. Liederman*, 866 F. Supp. 763 (S.D.N.Y. 1994), *aff’d*, 44 F.3d 174 (2d Cir. 1995)**: Defeated preliminary injunction motion in trademark infringement action brought by network against restaurant owner seeking to use name *Television City*; affirmed on appeal.
- ***Chafir v. Carey* (U.S. District Court for the Southern District of N.Y.)**: Obtained summary judgment for clients Mariah Carey, Jermaine Dupri, Manuel Seal, Johnta Austin, EMI April Music, BMG Songs and others in music copyright infringement case regarding song *It’s Like That* from Carey’s successful album, *The Emancipation of Mimi* on grounds that: (a) there was no evidence that any of the writers of *It’s Like That* had access to plaintiff’s song and the uncontroverted evidence proved the independent creation of this song at recording studio in Atlanta; and (b) plaintiff had failed to submit admissible evidence of “striking similarity” under the law and that, based on the testimony of Pryor Cashman’s expert, the alleged “similarities” between the two songs were nothing more than generic, commonplace musical elements found elsewhere in popular music.
- ***Cherry River Music Co. v. Simitar Entertainment, Inc.*, 38 F. Supp. 2d 310 (S.D.N.Y. 1999)**: Obtained preliminary injunction and recall order on behalf of music publisher with respect to defendant’s CDs of professional wrestlers’ theme music based on defendant’s having failed to properly obtain compulsory licenses or negotiated mechanical licenses, despite expert testimony that defendant’s actions were consistent with industry custom.
- ***Clonus Associates v. DreamWorks, LLC* (U.S. District Court for the Southern District of N.Y.)**: Represented two film studios in copyright infringement lawsuit concerning motion picture *The Island*.
- ***Columbus Rose Ltd. v. New Millennium Press*, 2002 U.S. Dist. LEXIS 9130 (S.D.N.Y. 2002)**: Won rare preliminary injunction on behalf of best-selling author David Baldacci preventing publication of anthology of mystery stories, including one by Baldacci, with “big book look” intended to give readers mistaken impression that book was Baldacci’s newest novel.
- ***Cousins v. EMI, Jay-Z, Kanye West* (U.S. District Court for the Northern District of Ill.)**: Successfully defended copyright infringement claims brought by the plaintiff and obtained dismissal of his claims with prejudice prior to any discovery.

- ***DeClemente v. Columbia Pictures*, 860 F. Supp. 30 (E.D.N.Y. 1994)**. Obtained directed verdict after jury trial dismissing trademark and right of publicity claims brought by plaintiff who owned federal registration for the name *Karate Kid* against defendants seeking damages for the three *Karate Kid* feature films which grossed \$598 million.
- ***Denker v. Uhry*, 820 F. Supp. 722 (S.D.N.Y. 1992), *aff'd without op.*, 996 F.2d 301 (2d Cir. 1993)**: Won summary judgment dismissing copyright infringement claim involving film and play *Driving Miss Daisy*.
- ***The Friars Club v. 9900 Santa Monica, Inc., Darren Schaeffer* (U.S. District Court for the Central District of California)**: Obtained summary judgment for client The Friars Club, in Lanham Act and Anti-Dilution lawsuit claiming that defendants infringed and diluted The Friars Club's trademark by operating "Friars of Beverly Hills" and by falsely claiming that it was the successor to the Friars Club of California.
- ***Gaste v. Kaiserman*, 863 F.2d 1061 (2d Cir. 1988)**: Won trial verdict and appeal for plaintiff in copyright infringement claim against the musical composition "Feelings."
- ***Green v. Lindsey*, 885 F. Supp. 469 (S.D.N.Y. 1992), *aff'd*, 9 F.3d 1537 (2d Cir. 1993), *cert. denied*, 510 U.S. 1202 (1994)**: Won dismissal of copyright infringement claim against best-selling romance novel; affirmed on appeal.
- ***Greenfield v. Philles Records Inc.*, 98 N.Y.2d 562, 750 N.Y.S.2d 565 (2002)**: Obtained landmark contract and intellectual property law ruling from N.Y. Court of Appeals on behalf of record producer Phil Spector and other defendants against royalty claims by the former group The Ronettes.
- ***James v. Universal*, 2005 U.S. Dist. LEXIS 4442 (S.D.N.Y. 2005)**: Won summary judgment dismissing complaint brought by two songwriters for misappropriation and unjust enrichment based on proof that album at issue had never been commercially released or otherwise exploited in the U.S. by defendants, establishing that court lacked subject matter jurisdiction.
- ***Leifer v. Castle Rock* (N.Y. Supreme Court. N.Y. County)**: Won summary judgment dismissing plaintiff's idea misappropriation, breach of fiduciary duty and contract claims concerning *Seinfeld* episode against producers and writers of show, based on plaintiff's disclosure of idea to one of the writers.
- ***Monster Communications Inc. v. Turner Broadcasting System, Inc.*, 935 F. Supp. 490 (S.D.N.Y. 1996)**: Defeated preliminary injunction motion bought by proprietors of documentary film *When We Were Kings* about the historic Ali-Foreman championship fight in Zaire, against cable broadcast of Turner film *Muhammad Ali: The Whole Story*, which allegedly contained some of plaintiff's copyrighted film clips.
- ***Morris v. Castle Rock Entertainment*, 246 F. Supp. 2d 290 (S.D.N.Y. 2003)**: Won dismissal of suit brought by two screenwriters against Castle Rock Entertainment Inc., Aaron Sorkin, Rob Reiner and others alleging that they were entitled to credit in connection with film *The American President* and television show *The West Wing*.
- ***New Line v. Recycled Paper Greetings* (U.S. District Court for the Southern District of N.Y.)**: Obtained injunction against manufacturer of unauthorized Austin Powers line of greeting cards.

- ***New Line-Heron Venture v. Columbia Pictures Industries Inc.*** (U.S. District Court for the Southern District of N.Y.): Won summary judgment dismissing copyright infringement claim by proprietor of film *The Hidden* against television mini-series *Something Is Out There*.
- ***Pannonia Farms Inc. v. USA Cable*, 2004 U.S. Dist. LEXIS 23015 (S.D.N.Y. 2004), *aff'd*, 426 F.3d 650 (2d Cir. 2005)**: Obtained summary judgment dismissing claims involving television motion picture *A Case of Evil* and ownership of rights to fictional characters Sherlock Holmes and Dr. Watson; affirmed on appeal. Also obtained award of over \$100,000 in attorneys' fees and an additional \$25,000 in sanctions against plaintiff's counsel.
- ***Parenting Unlimited v. Columbia Pictures Television Inc.*, 743 F. Supp. 221 (S.D.N.Y. 1991)**: Won denial of preliminary injunction against sitcom *Baby Talk* sought by publisher of magazine with identical name.
- ***P.C. Films Corp. v. Turner Entertainment Co.*, 954 F. Supp. 711 (S.D.N.Y. 1997), *aff'd*, 138 F.3d 453 (2d Cir.), *cert. denied*, 525 U.S. 1017 (1998)**: Won dismissal of claims relating to duration of distribution license of 1961 film *King of Kings*.
- ***Rogers v. Grimaldi, MGU/UA*, 695 F. Supp. 794 (S.D.N.Y. 1988), *aff'd*, 875 F.2d 994 (2d Cir. 1989)**: In this seminal case concerning the conflict between trademark rights and the First Amendment, Pryor Cashman won dismissal of the Lanham Act and publicity claims filed by Ginger Rogers against the title of the Fellini film *Ginger and Fred* on First Amendment grounds. The two-pronged test articulated by the Second Circuit in its affirmance has since been adopted by numerous other circuits and expanded to cases involving not just the titles of expressive works, but to their content as well.
- ***Sandoval v. New Line Cinema*, 973 F. Supp. 409 (S.D.N.Y. 1997), *aff'd*, 147 F.3d 215 (2d Cir. 1998)**: Won dismissal of copyright and privacy claims concerning use of plaintiff's photographs in scene in motion picture *Seven*. First case to establish *de minimis* doctrine as a full defense to unauthorized use of graphic works in motion pictures and television.
- ***Santrayall v. Burrell, Capitol Records*, 1998 WL 60926 (S.D.N.Y. 1998)**: Won jury verdict on behalf of rap artist M.C. Hammer in case where he was charged with copyright infringement related to his composition *Here Comes the Hammer*.
- ***Scarlet Moon v. Sony Music Entertainment (California Superior Court)***: Represented music publishing companies in defense and settlement of class action lawsuit, arising out of the terms of defendants' prior settlement with MP3.com of their copyright infringement claims based on the MP3.com service.
- ***Seale v. Gramercy Pictures*, 964 F. Supp. 918 (E.D. Pa. 1997), *aff'd without op.*, 156 F.3d 1225 (3d Cir. 1998) and 949 F. Supp. 331 (E.D. Pa. 1996)**: Won trial and subsequent appeal on claims for false light invasion of privacy, right of publicity and Lanham Act violations brought by former chairman of Black Panther Party against producers of motion picture *Panther*; additional claims previously dismissed on summary judgment.

- ***Singer Management Consultants, Inc. and Live Gold Operations, Inc. v. Anne Milgram* (New Jersey 2007)**: Obtained temporary restraining order against N.J. Attorney General's allegedly unconstitutional enforcement of New Jersey's newly enacted "Truth in Music Act" that had the effect of nullifying unregistered trademark rights of two Pryor Cashman clients who had three music groups operating under unregistered trademarks (The Platters, The Cornell Gunter Coasters and The Elsbeary Hobbs Drifters). Although 17 other states had recently enacted similar statutes, Pryor Cashman's successful motion was the first legal challenge to such laws.
- ***Michael Snyder v. Sony/ATV Songs LLC, Toby Keith, Scotty Emerick* (U.S. District Court for the Southern District of Florida 2007)**: After taking plaintiff's deposition, obtained dismissal with prejudice of copyright infringement lawsuit filed against our clients Sony/ATV Songs LLC and songwriter Scotty Emerick that popular country and western song *I Love This Bar*, recorded by Toby Keith and co-written by Keith and Emerick, infringed upon plaintiff's song.
- ***Stromback v. New Line Cinema*, 2002 U.S. Dist. LEXIS 21969, 2002 WL 31548620 (E.D. Mich. 2002), aff'd, 384 F.3d 283 (6th Cir. 2004)**: Won summary judgment dismissing plaintiff's copyright infringement, Lanham Act and state law claims against Adam Sandler's film *Little Nicky*.
- ***Sunenblick v. MCA Records, Inc., (Uptown Records v. Uptown Records)*, 895 F. Supp. 616 (S.D.N.Y. 1995), aff'd, 101 F.3d 684 (2d Cir. 1996)**: Won dismissal of trademark infringement claim brought by competing jazz record label against popular rap record label Uptown after full trial.
- ***Sylvestre v. Oswald*, 1993 U.S. Dist. LEXIS 7002 (S.D.N.Y. 1993)**: Summary judgment denied in a music copyright case on issues of access and striking similarity involving the hit song *Heaven*.
- ***Torah Soft Ltd. v. Michael Drosnin* (U.S. District Court for the Southern District of N.Y.)**: Won jury trial verdict for author of *The Bible Code* on plaintiff's \$18 million damage claim in case which involved copyright issues and protectibility of computer programs under Israeli and U.S. law of contracts.
- ***Vera Bradley Designs, Inc. v. Target Corporation* (N.D. Ind. 2006)**: Represented Target and Isaac Mizrahi in action by Vera Bradley against them for copyright infringement relating to skirts and bikinis sold by Target under Mizrahi label.
- ***Youngblood v. Score* (U.S. District Court for the Southern District of N.Y.)**: Won dismissal of plaintiffs' claims of copyright infringement against defendant Warner Bros. relating to unauthorized use of plaintiffs' music as background music in television soap opera after full trial.