

May 12, 2010

BY TELEFAX: (212) 805-7941

Honorable Loretta A. Preska
United States Courthouse
500 Pearl Street, Room 1329
New York, NY 10007

Re: *Muench Photography, Inc., v. Houghton Mifflin Harcourt Publishing Company, et.al.*, 09-cv-2669

Dear Judge Preska:

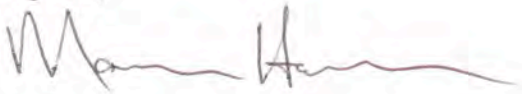
We write on behalf of Plaintiff Muench Photography, Inc. ("MPI"), owned by the Muench family, pursuant to the Court's May 4, 2010 Order (Doc. No. 38) dismissing most of MPI's copyright infringement claims against Defendants. Since the Order, Plaintiff has filed applications for Supplementary Registrations for all the photographs upon which the dismissed claims were based, other than those 20 images registered directly by David Muench and excluded from dismissal. These corrective registrations, which by case law relate back to the original registration dates for all purposes, add the names of David Muench and Marc Muench as authors and state the titles of their works at issue in the Complaint. Upon acceptance of the corrective registrations by the Copyright Office, Plaintiff intends to amend its Complaint to re-file all dismissed claims. Twenty-four infringement claims remain (because of multiple uses of a few of the same images) based upon David Muench's independent registration referenced in the Order.

Plaintiff will file notice of motion for re-argument and reconsideration on or before May 18, 2010. MPI contends that such a motion, often summarily dismissed, would be helpful here, given the complex nature of this important area of copyright law. In Plaintiff's view, the Order confused authorship and ownership, misapplied § 103, and, most importantly, overlooked the effect of § 411(b)(1) and (2) of the October 2008 amendment to the Copyright Act. This new subsection addresses registration deficiencies and is specifically intended to prevent copyright infringers from escaping liability by arguing application inaccuracies. Now, only knowing mistakes, which if not made would have caused the rejection of the application, invalidate previously granted certificates of registration. Plaintiff's view, as well as that of noted copyright scholar and treatise author Professor Nimmer, is that this amendment addresses precisely the issue before the Court and effectively creates a presumption of registration validity for § 411 and § 412 purposes following issuance of a certificate by the Copyright Office. *See 2 Nimmer on Copyright*, § 7.20[B][1] p. 7-212. Unless Corbis knew it was making a mistake – by listing only three authors – in the registration application **and** the Copyright Office would have rejected the application if all authors had been listed, under the new provisions of § 411(b)(1) and (2), the

registration as to the compilation and the underlying discrete works (fully owned by Corbis at the time of registration) remains valid. The statute was precisely designed to avoid the harsh results the Court believed are otherwise compelled by a plain reading of § 409.

Given the novelty and importance of the registration issues involved, MPI respectfully requests, and Defendants do not oppose, an extension of the briefing schedule for its memorandum in support of its notice of motion for re-argument and reconsideration from May 18, 2010 (the due date for filing the notice) to June 17, 2010. This would also accommodate the numerous photographers, trade groups, and stock photography agencies who have expressed their desire to provide, if permitted, amicus curiae briefs in support of re-argument and reconsideration. Because May 18 is less than a week away, Plaintiff respectfully requests the Court's advisement as to the deadline for filing its supporting memorandum.

Regards,

A handwritten signature in dark ink, appearing to read 'Maurice Harmon', written in a cursive style.

Maurice Harmon