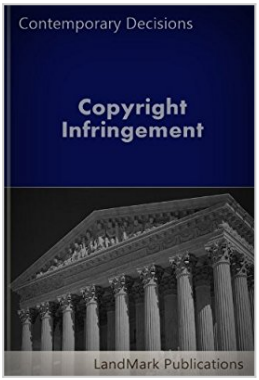

Copyright Infringement (Intellectual Property Law Series)

By LandMark Publications

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THIS CASEBOOK contains a selection of 183 U.S. Court of Appeals decisions that address issues arising from allegations of copyright infringement . The selection of decisions spans from 2007 to the date of publication. For each circuit, the cases are listed in the order of frequency of citation. The most cited decisions appear first.

On March 19, 2013 the Supreme Court ruled that copyrighted works legally purchased abroad can be resold in the United States under the first sale doctrine and that such a resale does not constitute copyright infringement. Kirtsaeng v Wiley & Sons, Inc. (2013)

To establish a claim for copyright infringement, a plaintiff must prove that it owned a valid copyright and that the defendant copied the original elements of that copyright." Lyons P'ship, L.P. v. Morris Costumes, Inc., 243 F.3d 789, 801 (4th Cir. 2001). Copying can be proven through direct or circumstantial evidence. Id. When direct evidence is lacking, a plaintiff "may create a presumption of copying by indirect evidence, establishing that the defendant had access to the copyrighted work and that the defendant's work is 'substantially similar' to the protected material." Id. (citing Towler v. Sayles, 76 F.3d 579, 581-82 (4th Cir. 1996)). Building Graphics, Inc. v. Lennar Corp., (4th Cir. 2013)

To rely successfully on circumstantial evidence of copying, one claiming infringement must first show that it is reasonably possible that the alleged infringer had access to the copyrighted work. "Access may be shown by demonstrating that the infringer had an opportunity to view or to copy the protected material. But this showing must establish more than a 'mere possibility that such an opportunity could have arisen'; it must be 'reasonably possible that the paths of the infringer and the infringed work crossed." Ale House Mgmt., Inc. v. Raleigh Ale House, Inc., 205 F.3d 137, 143 (4th Cir. 2000) (quoting Towler, 76 F.3d at 582). See also Armour v. Knowles, 512 F.3d 147, 152-53 (5th Cir. 2007) ("To establish access, a plaintiff must prove that the person who created the allegedly infringing work had a reasonable opportunity to view the copyrighted work before creating the infringing work. Indeed, a bare possibility will not suffice; neither will a finding of access based on speculation or conjecture." (internal citations, quotation marks, and insertions omitted)); Art Attacks Ink, LLC v. MGA Entm't Inc., 581 F.3d 1138, 1143 (9th Cir. 2009) ("To

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