

Media, Entertainment, and First Amendment Newsletter, February 2019

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PRACTICES Anti-SLAPP and First Amendment Rights, Media and Entertainment Litigation, Litigation, Media Entertainment and Sports

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Supreme Court May Decide Whether Litigants Must Await Copyright Registration Decision Before Filing Suit

This term, the U.S. Supreme Court may decide an issue that has been perplexing district and circuit courts for decades—whether a copyright claimant must wait on the Copyright Office to issue (or deny) a registration certificate before filing a suit for copyright infringement. The issue has led to a split among the circuits, with the Fifth and Ninth holding that copyright claimants need only file an application, deposit, and fee in order to file suit (the “application approach”) and the Third, Seventh, Tenth, and Eleventh Circuits holding that claimants must await a registration decision from the Copyright Office – a process that can take 7 to 15 months (the “registration approach”).

The case before the Court is *Fourth Estate Public Benefit Corporation v. Wall-Street.com, LLC*. Fourth Estate is a news organization that had licensed Wall-Street.com to publish content on its website. When the license expired, Wall-Street.com continued publishing 244 of Fourth Estate’s articles in a manner that Fourth Estate contended violated its copyright interests. Although Fourth Estate had not obtained copyright registration certificates for many of the articles, it filed applications upon discovering the infringement, and promptly filed suit before the Copyright Office had made a registration decision. The district court dismissed the lawsuit on the ground that it could not be filed until a registration decision had been made, and the Eleventh Circuit affirmed. Fourth Estate petitioned the case to the U.S. Supreme Court, which granted certiorari.

To read the full article, click [here](#).

U.S. Supreme Court’s Denial of Actress’s Petition Highlights First Amendment Protection of Docudramas

The U.S. Supreme Court denied certiorari this month to Olivia de Havilland, the 102-year-old retired actress famous for her roles in such films as "Gone With the Wind" and "The Adventures of Robin Hood." De Havilland appealed a decision from a California appellate court that dismissed her suit against the creators and producers of the television miniseries "Feud: Bette and Joan" under California’s anti-SLAPP law, a law designed to reduce frivolous lawsuits based on activity protected by the First Amendment. The denial of certiorari leaves in place an opinion that delivered a major win for docudrama creators who take artistic license depicting public figures and highlights the availability of quick dismissal of certain suits under California’s anti-SLAPP law.

To read the full article, click [here](#).

***Iancu v. Brunetti*: FUCT Trademark Battle Heads to the Supreme Courts**

This January, the Supreme Court granted the United States Patent and Trademark Office's petition for a writ of certiorari in the long-running trademark dispute over the L.A.-based fashion label FUCTION. This case follows closely in the footsteps of *Matal v. Tam*, in which the Supreme Court struck down the Lanham Act's bar on the registration of disparaging trademarks. Like *Tam*, *Brunetti* involves a similar First Amendment challenge to Section 2(a) of the Lanham Act, this time addressing the constitutionality of the Act's bar on the registration of "scandalous" trademarks.

To read the full article, click [here](#).

Does the Texas Anti-SLAPP Law Apply in Federal Court? . . . Stay Tuned

Courts' views of whether state anti-SLAPP statutes apply in federal court continue to be a judicial checkerboard across the country, and the United States Supreme Court again in December declined to take the opportunity to clarify the issue. See *Americulture, Inc. v. Los Lobos*, Docket No. 18-89, cert. denied (December 3, 2018).

Since Texas considers itself its own country, not surprisingly, the state has its own judicial checkerboard as to whether the Texas Citizens Participation Act ("TCPA") applies in federal court. The Southern and Northern district courts have applied the TCPA, while the Eastern and Western district courts have refused to do so. This inconsistent approach by the Texas courts was further evidenced in a January decision by Eastern District Judge Amos Mazzant – his third such ruling. See *Star Sys. Int'l Ltd. v. Neology, Inc.*, 4:18-CV-00574, 2019 WL 215933 (E.D. Tex. Jan. 16, 2019) (Mazzant, J.); see also *Thoroughbred Ventures, LLC v. Disman*, No. 4:18-CV-00318, 2018 WL 3472717 (E.D. Tex. July 19, 2018) (Mazzant, J.); *Van Dyke v. Retzlaff*, No. 4:18-CV-247, 2018 WL 4261193 (E.D. Tex. July 24, 2018) (Mazzant, J.).

Williams v. Cordillera was the first case in which a federal court in the Fifth Circuit directly addressed the issue of whether the TCPA applies in federal court, holding that it does. 2014 WL 2611746 at *1. In *Williams*, a high school teacher, who had repeatedly been accused of improper behavior with his students, filed a lawsuit in response to a local television station's investigative series about him. The defendant filed a TCPA motion to dismiss, and the plaintiff responded arguing that the TCPA does not apply in federal court.

To read the full article, click [here](#).