Copyright protection can be a useful tool for fashion and luxury goods companies to protect designs, especially jewelry, fabric and certain clothing designs.

Of course, copyright covers a broader range of creative works, including literature, music and computer software. Court decisions involving these other types of copyrighted works can at times provide valuable insights for luxury goods companies.

A recent copyright case involving a top-of-the-charts song illustrates the importance of early copyright registration, before any infringement begins.

The case also highlights an effective strategy for those defending against copyright infringement claims, especially in cases involving “copyright trolls.”

No mere song and dance
Miley Cyrus in 2013 wrote and performed a hit song, “We Can’t Stop.” Michael May, a Jamaican reggae artist, claimed she appropriated the phrase “We Run Things, Things Don’t Run We” from his song.

Mr. May sued for copyright infringement in the Manhattan federal court. Ms. Cyrus moved to dismiss the claims at an early stage, before any of the facts were developed, based solely on the complaint.

The court rejected most of the arguments.

Although Mr. May’s claim had many apparent holes, because, at that early stage, a court has to assume that all facts in the complaint are true and give him every reasonable inference, there was no basis to dispose of the claims entirely.

But Ms. Cyrus did win one part of her motion.

The complaint alleged that the infringement began when Ms. Cyrus released her song in 2013. But although Mr. May’s song was written and released five years earlier, in 2008, he did not register it with the Copyright Office until 2017, four years after Ms. Cyrus allegedly began her infringement. That severely limited the possible damages.
Damages under the Copyright Act
The Copyright Act permits a copyright plaintiff to obtain either his actual damages or the defendant's profits from the infringement, to the extent that they do not overlap.

But it also permits, as an alternative, the election of what are known as "statutory damages," which are a range of damages imposed at the court's discretion, of $750 to $150,000 per work infringed.

Statutory damages often can become inflated far beyond actual damages, especially in cases involving multiple works.

The Copyright Act also allows for an award of attorney’s fees to a prevailing plaintiff.

However, there is an important legal limitation, which Ms. Cyrus was able to exploit.

To bring any copyright case, a copyright plaintiff must first register the copyright in the work. And to collect statutory damages or attorney fees, the registration had to take place before the alleged infringement began.

How Miley Cyrus used that to her advantage
This limitation even applies to “an ongoing series of infringing acts,” which the court applied in the Miley Cyrus case.

Each time her song is sold, is a separate act of infringement, as is each time she performs it live, in video or on other media.

If Ms. Cyrus is indeed found to infringe, then she has likely performed hundreds of acts of copyright infringement since 2013.

But the court in her case ruled that did not matter – the series of infringements began in 2013, when the song was initially released. The fact that the same song was sold and performed hundreds of time since made no difference.

The plaintiff had registered his copyright too late, and now cannot collect either statutory damages or attorney fees.

The court also limited Mr. May's damages in another way.

The Copyright Act has a three-year statute of limitations. The alleged infringements took place from 2013 to the present.

The statute of limitations meant that Mr. May’s damages were limited to acts of infringement that took place in the three years prior to the complaint – he could not collect for earlier infringements.

The net result was that while Mr. May’s claims could go forward, his damages were limited to a three-year window, and he could not collect either statutory damages or attorney fees, but was limited to actual damages, which are generally both harder to prove and lower.

THE MORAL of the story for copyright owners is clear: for commercially important designs and other creative works, register the copyright as early as possible.

Later registration will not preclude suit, but it will limit the relief you can collect. In some cases, that limitation may turn what seems like a winning case into a loser.

For those defending against copyright claims, often brought by “trolls,” the lesson is to scrutinize early on when the registration was filed in comparison to the alleged infringement.

Lawsuits are about more than who is liable – they are also about remedies, including how much to pay in damages.

If there is a way to limit the awardable damages, that can go a long way towards disposing of a suit.

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