

6/24/20 Alison Frankel's On The Case 21:40:05

Alison Frankel's On The Case  
Copyright (c) 2020 Thomson Reuters

June 24, 2020

Judge reinstates photog's infringement claim v. Mashable over Instagram pic

Alison Frankel

(Reuters) - U.S. District Judge Kimba Wood ruled in April ([2020 WL 1847841](#)) that Pulitzer Prize-winning photojournalist Stephanie Sinclair could not sue the website Mashable for publishing one of her photos without permission because Mashable had a sublicense agreement with Instagram, where Sinclair had posted the image.

But on Wednesday, Judge Wood reinstated Sinclair's copyright infringement case against Mashable, holding that the record did not contain sufficient evidence that Instagram granted Mashable a sublicense to the photographer's work.

Sinclair counsel James Bartolomei of the Duncan Firm said the new ruling is "a first good step." Mashable lawyer James Rosenfeld of Davis Wright Tremaine declined to comment. Judge Wood's new ruling did not reinstate Sinclair's copyright claims against Mashable parent Ziff Davis.

In 2016, Mashable ran a story about women photojournalists that embedded an image Sinclair had posted on Instagram of a teenage Guatemalan mother breastfeeding her child while shucking corn. Sinclair, who had rejected a Mashable offer to license the image for \$50, sued for copyright infringement in 2018.

The key issue in the case is whether Instagram's terms of service, to which Sinclair agreed, permitted Mashable to embed the publicly posted image as a sublicensor.

Judge Wood initially said the answer was straightforward: "Instagram granted Mashable a sublicense to embed the photograph on its website, and Mashable exercised its right pursuant to that sublicense."

But in a June 1 decision in [McGlucken v. Newsweek \(2020 WL 2836427\)](#), a parallel case involving Newsweek's use of an embedded Instagram image, U.S. District Judge Katherine Polk Failla held that although Instagram's terms "clearly foresee" the possibility that websites will embed Instagram users' publicly-posted content, those terms did not expressly grant a sublicense to publish embedded images.

Ruling on Sinclair's motion for reconsideration, Judge Wood agreed with Judge Failla that Instagram's policy was "insufficiently clear to warrant dismissal of plaintiff's claims at this stage of litigation."

#### ---- Index References ----

Company: DAVIS WRIGHT TREMAINE LLP; INSTAGRAM INC; MASHABLE INC

News Subject: (Copyright (1CO88); Information Technology Crime (1IN42); Intellectual Property (1IN75); Legal (1LE33))

Industry: (Financial Services (1FI37); I.T. (1IT96); Information Management (1IN35); Insurance (1IN97); Insurance Industry Legal Issues (1IN64); Insurance Products (1IN13); Intellectual Property Insurance (1IN22); Knowledge Management (1KN91); Online Information Services (1ON58); Security (1SE29))

Language: EN

Other Indexing: (Ziff Davis) (Stephanie Sinclair; Ziff Davis; Alison Frankel; Katherine Polk Failla; James Bartolomei; James Rosenfeld; Kimba Wood)

Word Count: 323

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.