

An Action Figure and an Instagram Post Prove Decisive in Photographer's Copyright Suit Against Miramax

December 9, 2021 – The TMCA

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In 1994, Firooz Zahedi was hired by Miramax to photograph the actress Uma Thurman as her character Mia Wallace in the film *Pulp Fiction*. Miramax paid Zahedi \$10,000 for his work, used one of his photographs of Mia Wallace laying on a bed, legs crossed behind her, smoking a cigarette, in the iconic movie poster, and credited Zahedi as the owner of the photograph on the 1994 script for the movie.

In 2003, Miramax obtained a copyright registration for the poster as a two-dimensional artwork, not a photograph. Over the years, Miramax used the image from the poster on everything from the covers of VHS tapes and laser disks (remember those?) to apparel, and, yes, the packing for a Mia Wallace action figure—which would end up playing a major role in Zahedi's dispute with Miramax. Zahedi never earned any royalties from

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these activities.

Twenty-five years later, after receiving a pair of socks emblazoned with the famous image of Ms. Thurman, Zahedi apparently decided that enough was enough, and registered the copyright in the photograph. Not long after, he sued Miramax (and 26 other defendants), claiming infringement based on the many uses of his photograph to promote and merchandise *Pulp Fiction*.

Atypically for a copyright case, there was no dispute that Miramax was exploiting the photograph. Instead, the question was whether Zahedi even owned the copyright in the first place, and whether, in light of the ownership dispute, Zahedi's claims were timely. Judge Dolly M. Gee of the United States District Court for the Central District of California determined they were not. After bifurcating the case into ownership and damages phases, she granted summary judgment for Miramax.

In the Ninth Circuit, infringement claims grounded in ownership disputes accrue only once: when the plaintiff learns of an express repudiation of their claimed ownership by a party with which it has a close relationship.

Here, the close relationship requirement was satisfied because, although Miramax could not locate the work-for-hire agreement it claimed the parties had entered into (a claim disputed by Zahedi), they clearly had a business relationship relating to the photograph and its use to promote *Pulp Fiction*. After all, Zahedi was paid by Miramax to take the photographs and, at a minimum, granted Miramax an oral license to use the photograph in the iconic poster.

The court was then left to determine when Zahedi had notice that Miramax denied his claimed ownership in the copyright, which brings us back to the Mia Wallace action figure. In 2015, almost five years before he filed suit, Zahedi received the toy as a gift. The *Pulp Fiction* poster image was prominently featured on the packaging, which also had a copyright mark for Miramax and did not credit Zahedi. His stepson posted a picture on Instagram of Zahedi holding the action figure, and included a caption mentioning that Zahedi never received royalties for the famous photograph. The court found that Zahedi's receipt of that gift—time-stamped thanks to the Instagram post—provided actual notice to Zahedi that Miramax had repudiated his ownership in the photograph sufficient to start the clock on his infringement claim. Unfortunately for Zahedi, that clock ran out three years later, well before he finally filed suit.

Had Zahedi never received the action figure or other merchandise using the photograph, his claims may have survived. The court expressed skepticism that the mere fact of Miramax having registered the copyright in the poster, or having asserted copyright in the action figure and other merchandise, would have been sufficient by itself to notify Zahedi of the repudiation and trigger the accrual of his claims.

In the end, Zahedi is left to follow his own advice, which he posted on Instagram back in 2015 in response to his stepson's post: "Sometimes it's best to settle for the little things

in life.”