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The Joan Mitchell Foundation's Claim Against Louis Vuitton

Many recent copyright cases have centered around a company's unauthorized use of copyrighted art in connection with ad campaigns. For instance, in 2004, Apple utilized a song co-written by Eminem, Jeffrey Bass, and Louis Resto and owned by Eight Mile Style entitled "Lose Yourself" as part of an ad campaign for Apple's iTunes service.¹ Eight Mile Style subsequently sued, alleging copyright and trademark infringement as well as state law claims for unfair competition.² The case settled out of court.³ More recently, in 2018, sculptor Anish Kapoor sued the National Rifle Association (NRA) for copyright infringement, contending that the NRA broadcast a video containing an image of the Cloud Gate, shown in its entirety, without Kapoor's permission.⁴ This case also settled out of court, with the stipulation that the NRA remove Cloud Gate from its ads.⁵ Most recently, the Joan Mitchell Foundation has threatened Louis Vuitton with potential legal action for its allegedly unauthorized use of Mitchell's artwork.

Joan Mitchell was a prominent American abstract artist of the postwar period, most known for her large, abstract oil on canvas paintings.⁶ When she died, she left instructions to establish the Joan Mitchell Foundation (the Foundation) in her name, both to guide her legacy and assist working artists.⁷ The Foundation now controls intellectual property rights for the artist's intellectual property.⁸

On February 21, 2023, the Foundation sent a cease-and-desist letter and released a statement regarding Louis Vuitton's use of at least three of Joan Mitchell's paintings in its Spring/Summer 2023 ad campaign.⁹ According to this statement, Louis Vuitton approached the Foundation in late 2022 "to request permission to use works by Mitchell in an upcoming advertising campaign." The Foundation says that it "denied this request in writing in accordance with its longstanding policy that images of [Mitchell's] work be used only for educational

¹ *Defendants Seek Dismissal of Most of Eminem Suit*, 16 ANDREWS ENT. INDUS. LITIG. REP. 7 (2004)

² *Id.*, see also *Eight Mile Style et al. v. Apple Computer Inc. et al.*, No. 04-70651, complaint filed (E.D. Mich. Feb. 20, 2004). 2004 WL 583077, at 1.

³ Ina Fried, *Eminem Settles with Apple Over iPod Commercial*, CNET (May 10, 2005 12:08 PM.), <https://www.cnet.com/tech/tech-industry/eminem-settles-with-apple-over-ipod-commercial/>.

⁴ See *Kapoor v. Nat'l Rifle Ass'n of Am.*, 343 F. Supp. 3d 745 (N.D. Ill. 2018).

⁵ Henri Neuendorf, *Anish Kapoor Declares 'Victory Over the NRA' in a Settlement That Requires the Gun Group to Remove His Art From an Ad*, ARTNET (Dec. 6, 2018), <https://news.artnet.com/art-world/anish-kapoor-nra-settlement-1412923>.

⁶ Christa Blatchford, *A Gift from One Artist to Many: The Joan Mitchell Foundation*, THE BROOKLYN RAIL (Dec. 11, 2018), <https://brooklynrail.org/2018/12/criticspage/Joan-Mitchell-Foundation> (article by the C.E.O. of the Joan Mitchell Foundation).

⁷ *Id.*

⁸ Zachary Small, *Joan Mitchell Foundation Claims Vuitton Ads Infringe on Painter's Copyright*, N.Y. TIMES (Feb. 21, 2023), <https://www.nytimes.com/2023/02/21/arts/design/joan-mitchell-vuitton-ads-copyright-handbag.html>.

⁹ *Statement on Unauthorized Use of Joan Mitchell Artworks in Louis Vuitton Ad Campaign*, JOAN MITCHELL FOUNDATION (Feb. 21, 2023), <https://www.joanmitchellfoundation.org/journal/statement-on-unauthorized-use-of-mitchell-artworks> [hereinafter "Statement"].

purposes”¹⁰ and that it has “never licensed [Mitchell’s] works for use in commercial campaigns or for the promotion of other goods or services”.¹¹ The Foundation relayed the same message to Louis Vuitton when the brand “subsequently reiterated the request [...] several times.”¹² Nonetheless, the Foundation claims that at least the three aforementioned paintings were used without authorization.¹³

It appears that Louis Vuitton had access to the these three works in question (“La Grande Vallée XIV (For A Little While)” (1983); “Quatuor II for Betsy Jolas” (1976); and “Edrita Fried” (1981)) because the paintings were on view at the LVMH-sponsored Fondation Louis Vuitton in Paris, from October 5, 2022 to February 27, 2023.¹⁴ “By permitting these works to be photographed for this purpose and in this manner,”¹⁵ the Foundation claims that the Fondation Louis Vuitton “is in violation of its [license] agreement”, which included a provision that prevents Louis Vuitton from reproducing the artworks in its exhibition without consent.¹⁶

The Foundation stated that if Louis Vuitton does not “promptly halt this campaign and cease the illegal use of Mitchell’s artworks,” it “will promptly take further legal action to address this matter.”¹⁷ Meanwhile, a representative for the Foundation told the New York Times that it plans to send a separate cease-and-desist letter to the Fondation Louis Vuitton for breaching its agreement regarding the display of the paintings.¹⁸

While prior similar cases such as Eminem’s and Kapoor’s settled out of court, such cases will hopefully spur clear court rulings on the matter, or at least deter others from using copyright-protected works without clear authorization.

¹⁰ *Id.*

¹¹ *Id.* See also, Karen K. Ho, *Joan Mitchell Foundation Issues Cease and Desist to Louis Vuitton Over Use of Paintings in Handbag Ads*, ARTNEWS (Feb. 21, 2023, 6:47 PM), <https://www.artnews.com/art-news/news/joan-mitchell-foundation-copyright-claims-louis-vuitton-handbag-ads-1234658446/>.

¹² Statement, *supra* note 4.

¹³ *Id.*

¹⁴ *Claude Monet – Joan Mitchell*, FONDATION LOUIS VUITTON, <https://www.fondationlouisvuitton.fr/en/events/claude-monet-joan-mitchell>.

¹⁵ Statement, *supra* note 4.

¹⁶ Small, *supra* note 3.

¹⁷ Statement, *supra* note 4.

¹⁸ Small, *supra* note 3.