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## MSK Client Alert

March 7, 2019

On March 4, 2019, the Supreme Court issued a unanimous decision in *Fourth Estate Public Benefit Corp. v. Wallstreet.com LLC* holding that, under §411(a) of the Copyright Act, a copyright claimant may file an infringement suit only *after* the Copyright Office renders a final decision on a copyright application, subject to limited exceptions. Prior to this ruling, circuit courts were split on whether the text of §411(a) granted standing to sue based on the so-called "application approach" (adopted in the 5th, 6th and 8th circuits) or the "registration approach" (adopted in the 10th and 11th circuits). The "application approach" permitted a copyright claimant to commence a lawsuit once a completed application with all three elements (i.e., the application, fee and deposit copy) was properly filed with the Copyright Office. The "registration approach" requires the Copyright Office to render a final decision (either to register or deny a registration) before a claimant may file suit. Justice Ginsburg, writing for the Court, concluded that the plain text of §411(a) "permits only one sensible reading": the "registration approach."

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## attorneys

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## practice areas

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