


No. 20-142

In the
Supreme Court of the United States



MICHAEL SKIDMORE
TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST,
Petitioner,

v.

LED ZEPPELIN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**MOTION FOR LEAVE TO FILE
AND BRIEF OF AMICUS CURIAE
CALIFORNIA SOCIETY OF ENTERTAINMENT
LAWYERS IN SUPPORT OF PETITIONER**

STEVEN T. LOWE
COUNSEL OF RECORD
LOWE & ASSOCIATES P.C.
8383 WILSHIRE BLVD.
SUITE 1038
BEVERLY HILLS, CA 90211
(310) 477-5811
STEVEN@LOWELAW.COM

SEPTEMBER 10, 2020

COUNSEL FOR AMICUS CURIAE


SUPREME COURT PRESS

(888) 958-5705

BOSTON, MASSACHUSETTS

No. 20-142

In the
Supreme Court of the United States



MICHAEL SKIDMORE
Trustee for the Randy Craig Wolfe Trust,
Petitioner,

v.

LED ZEPPELIN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**BRIEF OF CALIFORNIA SOCIETY OF
ENTERTAINMENT LAWYERS AS AMICUS CURIAE
IN SUPPORT OF PETITIONER**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
IDENTITY AND INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	7
I. COPYRIGHT LAW EXISTS TO INCENTIVIZE ARTISTS TO CREATE IN EXCHANGE FOR CERTAIN PROTECTIONS.....	7
II. INFRINGEMENT REQUIRES SUBSTANTIAL SIMILARITY . . . BUT WHAT KIND OF SIMILARITY IS SUBSTANTIAL ENOUGH?.....	8
1. <i>Feist</i> is Binding Precedent that Should Have Controlled the <i>En Banc</i> Court’s Analysis.....	8
2. The Lack of a Stable Rule in the Ninth Circuit Has Led to Inconsistent Rulings that Prejudice Creators	11
3. This Court Should Address and Clarify the Current Circuit Split on the Issue of Substantial Similarity in Copyright Infringement Cases	14
CONCLUSION.....	17

TABLE OF AUTHORITIES

Page

CASES

<i>Apple Computer, Inc. v. Microsoft Corp.</i> , 35 F.3d 1435 (9th Cir. 1994).....	4
<i>Atari, Inc. v. N. Am. Phillips Consumer Elects. Corp.</i> , 672 F.2d 607 (7th Cir. 1982)	15
<i>BUC Int’l Corp. v. Int’l Yacht Council Ltd.</i> , 489 F.3d 1129 (11th Cir. 2007)	15
<i>Cavalier v. Random House, Inc.</i> , 297 F.3d 815 (9th Cir. 2002)	4, 5, 9, 11
<i>Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.</i> , 843 F.2d. 600 (1st Cir. 1998).....	15
<i>Dawson v. Hinshaw Music Inc.</i> , 905 F.2d 731 (4th Cir. 1990)	15
<i>F.C.C. v. Fox Television Stations, Inc.</i> , 567 U.S. 239 (2012)	14
<i>Feist Publ’ns, Inc. v. Rural Rel. Serv. Co.</i> , 499 U.S. 340 (1991)	passim
<i>Fleener v. Trinity Broad.</i> , 203 F.Supp.2d 1142 (C.D. Cal. 2001).....	4
<i>Gates Rubber Co. v. Bando Chem. Industries, Ltd.</i> , 9 F.3d 823 (10th Cir. 1993)	15
<i>Gilbert v. New Line Prods., Inc.</i> , 490 F.App’x 34 (9th Cir. 2012)	16
<i>Gray v. Perry</i> , No. 2:15-cv-05642-CAS (JCx), 2020 WL 1275221 (C.D. Cal. Mar. 16, 2020).....	13

TABLE OF AUTHORITIES – Continued

	Page
<i>Harper House, Inc. v. Thomas Nelson, Inc.</i> , 889 F.2d 194 (9th Cir. 1989)	4
<i>Hartman v. Hallmark Cards, Inc.</i> , 833 F.2d 117 (8th Cir. 1987).....	15
<i>Knitwaves, Inc. v. Lollytags Ltd.</i> , 71 F.3d 996 (2d Cir. 1995)	4, 10
<i>Kohus v. Mariol</i> , 328 F.3d 848 (6th Cir. 2004).....	15
<i>L.A. Printex Inds., Inc. v. Aeropostale, Inc.</i> , 676 F.3d 841 (9th Cir. 2012)	4
<i>Mazer v. Stein</i> , 347 U.S. 201 (1954)	7
<i>Metcalf v. Bochco</i> , 294 F.3d 1069 (9th Cir. 2002)	4, 11, 12
<i>Miller v. Miramax</i> , No. CV 99-08526 DDP (AJWx), 2001 U.S. Dist. LEXIS 25967 (C.D. Cal. Sept. 26, 2001).....	4
<i>Peel & Co., Inc. v. Rug Mkt.</i> , 238 F.3d 391 (5th Cir. 2004)	15
<i>Peter Pan Fabrics, Inc. v. Martin Weiner Corp.</i> , 274 F.2d 487 (2d Cir. 1960).....	15
<i>Petrella v. Metro-Goldwyn-Mayer, Inc., et al.</i> , 572 U.S. 663 (2014)	1, 14
<i>Sid & Marty Krofft Television Prods. v. McDonald's Corp.</i> , 562 F.2d 1157 (9th Cir. 1977)	15

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.