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4 UNITED STATES DISTRICT COURT  
5 CENTRAL DISTRICT OF CALIFORNIA  
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7 ) No. CV 04-912 WJR (PJWx)  
8 LOREE RODKIN MANAGEMENT CORP., )  
9 a California corporation, )  
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Plaintiff,  
v.  
ROSS-SIMONS, INC., a Rhode  
Island corporation,  
SMARTBARGAINS, INC., a  
Delaware corporation, CHARLES  
WINSTON ENTERPRISES, LLC, a  
California company, STRONG  
TRADING, INC., a California  
corporation, B.H. MULTI COM  
CORP., a New York corporation,  
AHTRA N.J., INC., an entity of  
unknown origin and type, AND  
Does 1 through 10,  
Defendants.

OPINION AND ORDER

21 Having considered the motion, the papers filed in support thereof  
22 and in opposition thereto, the oral argument of counsel, and the file  
23 in the case, the Court now makes the following decision.  
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25 **BACKGROUND**  
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27 Loree Rodkins Management Corporation ("LRMC") designs and  
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1 produces unique high-end jewelry that has garnered clients from the  
2 Hollywood elite and adulation in the pages of fashion magazines.  
3 Between November 24, 2003 and January 16, 2004, LRMC submitted separate  
4 copyright applications with proper fees for five jewelry designs to the  
5 U.S. Copyright Office. On February 10, 2004, LRMC commenced the  
6 instant action alleging copyright infringement against various  
7 defendants arising from these five jewelry designs. However, LRMC had  
8 not yet received an official registration certificate from the  
9 Copyright Office by that date. In fact, the application for copyright  
10 registration is still pending at this time. Consequently, Defendant  
11 Charles Winston Enterprises, LLC moves to dismiss the action for want  
12 of federal subject matter jurisdiction.

## 14 **DISCUSSION**

### 15 **I. Legal Standard**

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17 Federal Rule of Civil Procedure 12(b)(1) requires a court to  
18 dismiss a claim if the court lacks subject matter jurisdiction over  
19 it. The jurisdictional provision implicated by the instant motion  
20 is 17 U.S.C. § 411(a), which provides in pertinent part: "no action  
21 for infringement of the copyright in any United States work shall be  
22 instituted until registration of the copyright claim has been made  
23 in accordance with this title."

### 25 **II. Application to the Instant Case**

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27 Defendant's motion raises a single legal issue: can a plaintiff  
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1 bring a copyright suit while plaintiff's application for copyright  
2 registration is pending before the Copyright Office? There is a  
3 rather clear split in authority on the matter,<sup>1</sup> including a decisive  
4 split between various California district courts. Several courts,  
5 as well as the leading treatise on copyright law, have concluded  
6 that a pending registration is sufficient to confer federal  
7 jurisdiction over a copyright infringement claim, as possession of  
8 the actual certificate of registration is unnecessary. See Gable-  
9 Leigh, Inc. v. North Americans Miss, 2001 WL 521695 (C.D. Cal.  
10 2001); Dielsi v. Falk, 916 F.Supp. 985 (C.D. Cal. 1996); Tabra, Inc.  
11 v. Treasures De Paradise Designs, Inc., 20 U.S.P.Q.2d 1313 (N.D.  
12 Cal. 1992); 2 Melville B. Nimmer & David Nimmer, Nimmer on  
13 Copyright, § 716[B][1][a] at 7-155 (citing Apple Barrel Prods., Inc.  
14 v. R.D. Beard, 730 F.2d 384 (5th Cir. 1984)). Other courts have  
15 concluded instead that a certificate of copyright registration from  
16 the Copyright Office is a prerequisite to bringing a copyright  
17 infringement claim. See Brush Creek Media, Inc. v. Boujaklian, 2002  
18 WL 1906620 (N.D. Cal. 2002); Ryan v. Carl Corp., 1998 WL 320817  
19 (N.D. Cal. 1998); Ashlar Inc. v. Structural Dynamics Research Corp.,  
20 36 U.S.P.Q.2d 1402 (N.D. Cal. 1995). Because the Court agrees with  
21 the second set of cases that the plain language of the Copyright Act  
22 unambiguously mandates the actual issuance of a registration  
23 certificate before a copyright action is brought, the Court grants  
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25 <sup>1</sup> The Ninth Circuit is yet to decide the issue. Roth Greeting  
26 Cards v. United Card Co., 429 F.2d 1106 (9th Cir. 1970), is not  
27 controlling on the matter, since it was interpreting the jurisdiction  
28 provision of the 1909 Copyright Act, which contained fundamentally  
distinguishable language than the jurisdiction provision of the 1976  
Copyright Act. See Ryan v. Carl Corp., 1998 WL 320817, \*1 (N.D. Cal.  
1998).

1 Defendant's motion to dismiss, without prejudice.

2 17 U.S.C. § 411(a) prohibits a party from suing for copyright  
3 infringement in any district court "until registration of the  
4 copyright claim has been made in accordance with this title." The  
5 first line of cases believes that the word "registration" refers to  
6 the moment that the plaintiff delivers the fee, deposit and  
7 application to the Copyright Office. The other line of cases  
8 believes that the word "registration" refers to the moment that the  
9 certificate of registration is issued by the Copyright Office. At a  
10 first reading, both interpretations seem plausible. However, the  
11 Court agrees with the Ryan court that a "close reading of the Act  
12 indicates that registration does not occur until after the Copyright  
13 Office issues a certificate of registration." Id. at \*2. The Ryan  
14 Court put it well:

15 [t]he Act states that the Register of Copyrights shall register  
16 a claim and issue a certificate "[w]hen, after examination,  
17 [she] determines that ... the material deposited constitutes  
18 copyrightable subject matter and that the other legal and  
19 formal requirements of this title have been met." 17 U.S.C. §  
410(a). Because it indicates that the Copyright Office, not  
the applicant, registers a claim, and that examination is a  
prerequisite to registration, the section cuts against  
plaintiffs' position of automatic registration.

20 Id. Section 410(a) expressly requires the Register of Copyrights to  
21 both register a claim and issue a certificate after examining the  
22 deposited material and determining that it constitutes copyrightable  
23 subject matter.<sup>2</sup> Therefore, the phrase "register a claim" cannot

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25 <sup>2</sup> Section 410(a) provides: "[w]hen, after examination, the  
26 Register of Copyrights determines that...the material deposited  
27 constitutes copyrightable subject matter and that the other legal and  
28 formal requirements of this title have been met, the Register shall  
register the claim and issue to the applicant a certificate of  
registration under the seal of the Copyright Office." 17 U.S.C. §  
411(a). (Emphasis added).

1 possibly refer to the pre-examination receipt by the Copyright  
2 Office of the applicant's fee, deposit, and application.<sup>3</sup>

3 Language within the jurisdiction provision also supports  
4 Defendant's interpretation. The second sentence of § 411(a) states:  
5 "[i]n any case, however, where the deposit, application, and fee  
6 required for registration have been delivered to the Copyright  
7 Office in proper form and registration has been refused, the  
8 applicant is entitled to institute an action for infringement if  
9 notice thereof, with a copy of the complaint, is served on the  
10 Register of Copyrights." 17 U.S.C. § 411(a). This provision drives  
11 an iron wedge between the act of delivering the deposit, application  
12 and fee to the Copyright Office and the determination of refusal of  
13 copyright registration by the Register of Copyrights. Indeed, the  
14 provision illustrates that *delivery* of the deposit, application, and  
15 fee can occur, yet *registration* can be refused. The argument that  
16 "registration" is complete upon delivery is thus undermined.

17 Plaintiffs cite §410(d) in support of their argument that  
18 registration is complete upon delivery of the deposit, application  
19 and fee.<sup>4</sup> The Court, however, agrees with the Ryan court that  
20 "[c]ontrary to plaintiffs' contention, this section does not mean  
21 that an application is considered registered while the Copyright  
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23 <sup>3</sup> Section 410(a) also reveals that "registering a claim" and  
24 "issuing a certificate" are distinguishable in nature, which obviously  
25 supports the conclusion that § 411(a)'s "registration of the copyright  
claim" language does not refer to "issuing a registration certificate,"  
as Plaintiff argues.

26 <sup>4</sup> Section 410(d) states: "[t]he effective date of a copyright  
27 registration is the day on which an application, deposit, and fee,  
28 which are later determined by the Register of Copyrights or by a court  
of competent jurisdiction to be acceptable for registration, have all  
been received in the Copyright Office." 17 U.S.C. § 410(d).

1 Office is deciding whether or not to accept it; instead, it means  
2 that once an application has been considered and accepted by the  
3 Office, the registration is backdated to the time the application  
4 was received." Id. at \*2. Backdating is significant because  
5 certain remedies are available to a plaintiff only if the  
6 infringement occurred after the effective date of the registration.  
7 See 17 U.S.C. 412; Id. The Court therefore rejects the contention  
8 that section 410(d) supports a finding that registration is complete  
9 upon delivery.<sup>5</sup>

10 It is black-letter law that "[t]he task of resolving the  
11 dispute over the meaning of [a statute] begins where all such  
12 inquiries must begin: with the language of the statute itself."  
13 United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 240, 109  
14 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989). Moreover, "individual  
15 sections of a single statute should be construed together."  
16 Erlenbaugh v. United States, 409 U.S. 239, 244, 93 S.Ct. 477, 34  
17 L.Ed.2d 446 (1972). "A court must therefore interpret the statute  
18 as a symmetrical and coherent regulatory scheme and fit, if  
19 possible, all parts into an harmonious whole." Food & Drug Admin.  
20 v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133, 120 S.Ct.  
21 1291, 146 L.Ed.2d 121 (2000). The Court is convinced that  
22 construing § 411(a)'s prior registration requirement consistently  
23 with its plain language and that of the other portions of the  
24 Copyright Act unavoidably leads to the conclusion that a federal

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26 <sup>5</sup> It should be noted that the Court also agrees with Ryan that  
27 "section 408(a) must be read to mean merely that the delivery of the  
28 application is a step the applicant must take, not that delivery is  
sufficient by itself to obtain a registration." Id. at \*3.

1 district court lacks subject matter jurisdiction over a copyright  
2 claim if the certificate of registration is yet to be issued. The  
3 language of sections 410(a), 410(d), 411(a) and 408(a), if read  
4 harmoniously and coherently, mandates this holding.<sup>6</sup> The Court  
5 shares the sentiments of the Ryan court that, while this is an  
6 "inefficient and peculiar result," id. at \*3, "the Court is not free  
7 to redraft statutes to make them more sensible or just." Id.; see  
8 also Brush Creek Media at \*4. Accordingly, the Court grants  
9 Defendant's motion to dismiss without prejudice.<sup>7</sup>

### 10 11 CONCLUSION

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13 For the foregoing reasons, the Court grants Defendant's  
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15 <sup>6</sup> The district courts within California that have concluded the  
16 opposite have done so after only a brief and superficial analysis of  
17 the matter. See Tabra, Inc. 20 U.S.P.Q.2d 1313, 1317, note 4  
18 (dedicating just two sentences to the matter, and then using a footnote  
19 to erroneously state that the Ninth Circuit, citing Roth and its  
20 progeny, had already decided the matter); Dielsi, 916 F.Supp. 985, 994,  
21 note 6 (dismissing the plaintiff's copyright claim because plaintiff  
22 failed to even *apply* for copyright registration, then finding in a  
23 footnote that mere application is sufficient to meet the prior  
24 registration requirement); Gable-Leigh, Inc. 2001 WL 521695, \*4  
(finding that the court had subject matter jurisdiction after quoting  
25 two sentences from the Dielsi footnote and one sentence from a court  
26 outside of the circuit, see Apple Barrel Productions v. R.D. Beard, 730  
27 F.2d 384, 386 (5 Cir. 1984)). Unlike the Ryan and Brush Creek Media  
28 courts, which analyzed the issue in extensive detail, these three  
courts analyzed the matter only in passing. The Court is persuaded by  
the reasoning of Ryan and Brush Creek Media and, accordingly, rejects  
the conclusion reached by these three other courts.

25 <sup>7</sup> The rather definitive split between federal district courts  
26 within California alone renders this issue particularly fit for Ninth  
27 Circuit review. A clear rule issued by the Ninth Circuit that would  
28 settle the matter within the Circuit and undercut the ever-growing rash  
of conflicting results is highly desirable.

1 12(b)(1) motion to dismiss Plaintiff's copyright claim without  
2 prejudice.

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4 IT IS SO ORDERED.

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9 DATED: April 19, 2004

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WILLIAM J. REA  
United States District Judge  
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