

Copyright Infringement Litigation: The Case of the Hidden Rugs

We sued for copyright infringement in April 2005, and by August 2005 reached a favorable settlement in Samad Brothers, Inc. v. Jaipur Rugs, Inc. (D.N.J. 05-1999).

Back in 2003, we had sent a demand letter claiming that Jaipur infringed on a Samad rug design. Samad had registered its copyright in a work that added original elements to a design in the public domain. While denying liability, Jaipur supposedly "settled" Samad's claim by paying \$25,000 and agreeing to send its remaining inventory to Samad.

However, in early 2005, we learned that Jaipur had continued to sell rugs that infringed on Samad's design. We sued Jaipur in federal court in New Jersey.

We successfully obtained a temporary restraining order ("TRO") that immediately forbade the defendants from selling the infringing goods, and from transferring any of their other assets outside the ordinary course of business pending further judicial review. The judge not only granted the injunction, but did so on an *ex parte* basis -- that is, without oral argument or giving defendants any other chance to present counter-arguments until 10 days after the injunction. Our evidence showed that without the immediate threat of holding Jaipur in contempt of court, they would continue to infringe on Samad's copyright. Thus, the court determined based on our initial papers, alone, that our client was "likely to prevail" on the merits of the case.

Within ten days, Jaipur responded by moving to dismiss, or to transfer the case to Georgia (where Jaipur has its offices). The court succinctly denied their motion. The judge also granted us a preliminary injunction, confirming the terms of the TRO until the case was fully resolved.

(Jaipur served a notice of appeal, requesting that the Third Circuit Court of Appeals direct the District of New Jersey to dismiss or transfer the case to Georgia. Jaipur also made a motion requesting that the Third Circuit stop all activity in the District of New Jersey case while Jaipur's appeal was pending. Eventually, the appeals court denied their motion, and we settled the case before the Third Circuit addressed their appeal.)

Meanwhile, the case surged forward. The TRO required that Jaipur provide a complete inventory of its infringing rugs, including their location. The inventory confirmed that, as we predicted, Jaipur had sold hundreds of thousands of dollars of infringing product. However, we doubted that Jaipur had instructed its retailers, who had infringing rugs on consignment, to return those rugs to Jaipur, as required by the TRO. We brought a motion for contempt of court.

The court (through a magistrate judge) denied the motion for contempt, but required Jaipur to demonstrate that it had sought return of rugs on consignment.

We received information indicating that Jaipur had transferred large sums of money to their parent corporation in India. We promptly made another motion by order to show cause for contempt of the TRO provision that prohibited payments out of the ordinary course of business. The court declined to hold Jaipur in contempt, but affirmed the provisions of this second order to show cause -- which now prohibited Jaipur making payments to **any** third parties.

Finally, Jaipur requested that we settle the case. The settlement terms included payment of \$150,000; payment of the gross proceeds of rugs sold by consignees; shipment of the remaining infringing rugs to Samad; and payment of Samad's attorneys' fees and costs.

An important element of the agreement was that it was **not** deemed confidential, and that Jaipur admitted to infringing upon Samad's copyright. This not only would result in statutory damages for copyright infringement if Jaipur breaches this second settlement agreement, but also allows Samad to warn would-be infringers that Samad has vigorously enforced its rights -- and will continue to do so.

As the result of our aggressive litigation tactics, we were able to prevent further copyright infringement, reach an agreement reflecting reasonable business terms, and achieve closure for our client.