

JAN 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TROY WALKER,

Plaintiff - Appellant,

v.

VIACOM INTERNATIONAL, INC.; et
al.,

Defendants - Appellees.

No. 08-16308

D.C. No. 3:06-CV-04931-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Troy Walker appeals pro se from the district court's order granting summary judgment for defendants in his copyright action. We have jurisdiction pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291. We review de novo, *Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006), and we affirm.

The district court properly granted summary judgment because Walker failed to show that his comic strip was substantially similar to defendants' cartoon and thus, he failed to satisfy the extrinsic test for showing infringement. *See id.* at 1077 (explaining that the extrinsic test considers articulable similarities between characters and plot and that “[a] plaintiff who cannot satisfy the extrinsic test necessarily loses on summary judgment”) (citation and internal quotation marks omitted). Accordingly, we do not reach Walker's contentions regarding access and independent creation.

Walker's request to enter new evidence is denied. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988) (“Papers not filed with the district court or admitted into evidence by that court are not part of the clerk's record and cannot be part of the record on appeal.”).

AFFIRMED.