

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 17 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TOM BEAN,

Plaintiff - Appellant,

And

DENNIS KUNKEL MICROSCOPY,
INC.,

Plaintiff,

v.

PEARSON EDUCATION, INC.,

Defendant - Appellee.

No. 13-16977

D.C. No. 3:11-cv-08030-PGR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Paul G. Rosenblatt, Senior District Judge, Presiding

Submitted October 10, 2014**
Phoenix, Arizona

Before: WALLACE, SILVERMAN, and M. SMITH, Circuit Judges.

* 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).

Tom Bean appeals from the district court's May 17, 2011 dismissal of certain of his copyright infringement claims against Pearson Education. The district court held that Bean had not alleged he met 17 U.S.C. § 411(a)'s pre-suit copyright registration requirement as to photographs contained in compilations, because the registration applications for the compilations did not contain the necessary information under 17 U.S.C. § 409 to *individually* register the images. We have jurisdiction pursuant to 28 U.S.C. § 1291, *Cosmetic Ideas, Inc. v. IAC/Interactivecorp*, 606 F.3d 612, 614 (9th Cir. 2010), and we **VACATE** the dismissal order and **REMAND** for further proceedings.

We recently held in a similar case, *Alaska Stock, LLC v. Houghton Mifflin Harcourt Publishing Company*, that the registration of a compilation of photographs also registers the individual photographs within the compilation where, as here, the registrant follows Copyright Office practice and does not include the title and author of each individual photograph on the registration application. 747 F.3d 673, 685 (9th Cir. 2014).

In *Alaska Stock*, we further disapproved of the district court's decision in *Bean v. Houghton Mifflin Harcourt Publishing Company*, CV 10-8034-PCT-DGC, 2010 WL 3168624 (D. Ariz. August 10, 2010), the same decision relied upon and adopted by the district court in this case. 747 F.3d at 684 n.50. Accordingly, we

hold that the district court erred in dismissing Bean's action under Federal Rule of Civil Procedure 12(b)(6) on the ground that his photographs were not individually registered.

VACATED and REMANDED.

Costs awarded to Appellant.