

Susman Godfrey Upholds Wins, Reverses Setbacks on Copyright Claims Against Client Zillow

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Ninth Circuit Court of Appeals finds that Zillow reasonably believed it was not infringing.

The trial law firm Susman Godfrey LLP has won a major appellate victory in the Ninth Circuit Court of Appeals for client Zillow. The court issued a ruling March 15 in *VHT Inc. v. Zillow Group Inc. et al*, that affirmed the trial court's rulings for Zillow against claims that it infringed copyrights in tens of thousands of VHT's real estate photos, and vacated both a \$4 million award against Zillow and a finding of willful infringement for a smaller number of other photos.

The opinion by U.S. Circuit Judge M. Margaret McKeown for the unanimous three-judge panel found that the jury was improperly instructed that it could make a separate award of potentially many thousands of dollars in statutory damages for infringement of each independently valuable photo in VHT's master database. The appeals court ordered the district court to determine instead whether that database is a "compilation" for which VHT could receive only one award of statutory damages in lieu of its actual damages, which the jury found were \$2.84 per photo. It also overturned the jury's finding of willful infringement, concluding that Zillow demonstrated it takes steps to remove infringing material, and also requires third parties to certify that they own the rights to photos they upload to the real estate listing website.

"This is a very important victory for Zillow and we are pleased for our client," said Susman Godfrey partner [Ian B. Crosby](#), who led Zillow's appeal and tried the original case along with Susman Godfrey partners [Edgar G. Sargent](#) and [Genevieve Vose Wallace](#) and associate [Jenna Farleigh](#). "We are grateful the Ninth Circuit supported our view both of the award and finding of willful infringement. VHT has already shown that its database is a compilation in sworn statements it made to the Copyright Office in order to get its registrations, and we look forward to holding VHT to those statements before the trial court."

VHT brought this suit in 2015, accusing Zillow of infringing copyrights in tens of thousands of photographs that Zillow received in property listings from many sources. The Ninth Circuit's opinion found that Zillow reasonably believed that these sources had properly licensed the uses that VHT claimed were infringing, and that it had designed its systems effectively to respect those rights.