

November 2023

California Federal Court Grants Summary Judgment for Defendants in Ad Astra Copyright / Idea Theft Case

By David Aronoff and Josh Bornstein

PUBLISHED IN: [MediaLawLetter November-December 2023](#)

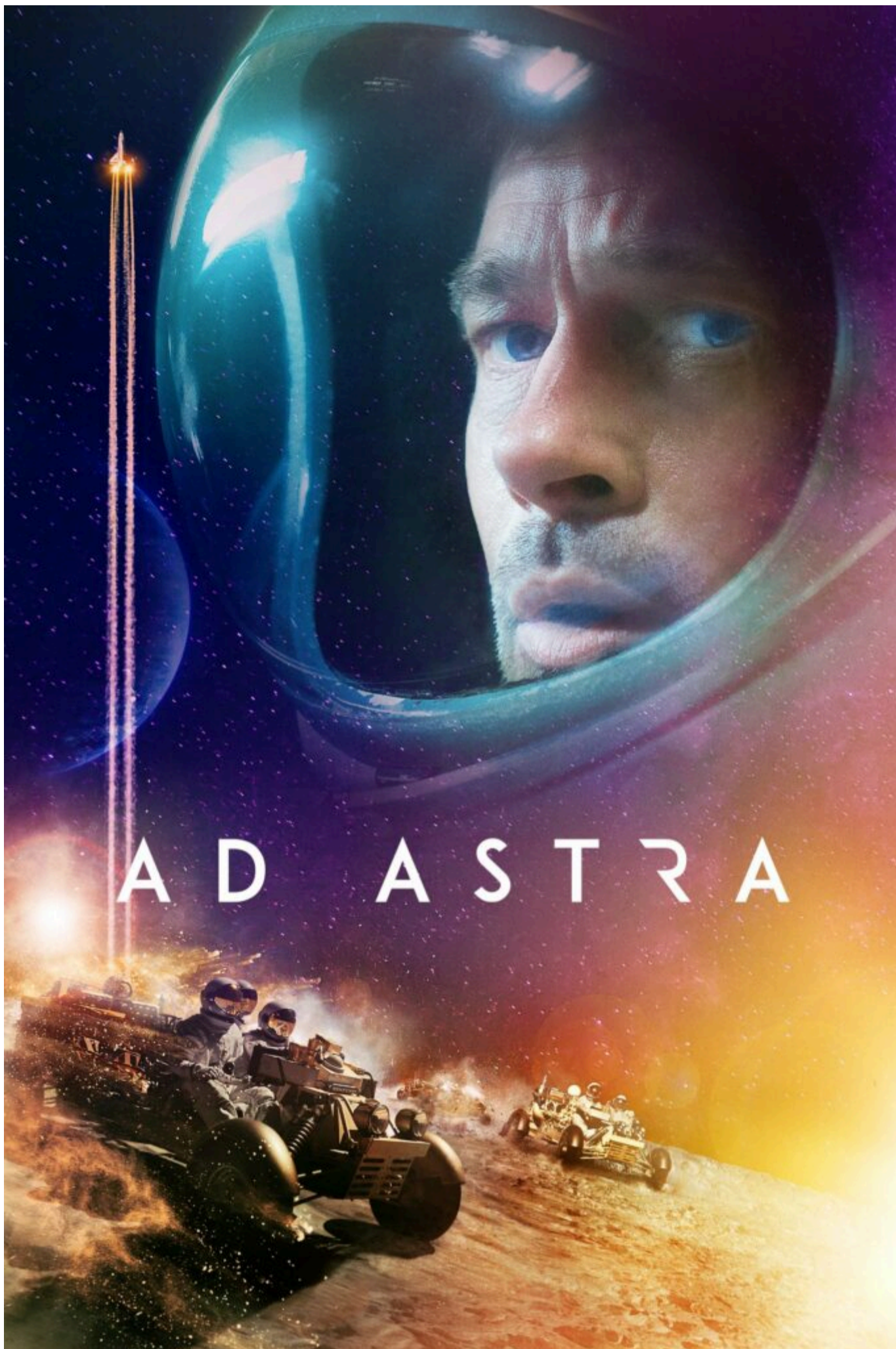
TOPICS: [Copyright](#), [Idea Theft](#), [Intellectual Property](#)

Summary judgment was recently granted in favor of the defendant producers, distributors, writers, and director of *Ad Astra*, a 2019 sci-fi film starring Brad Pitt that had been directed and co-written by defendant director James Gray and was co-written by Ethan Gross. [Jones v. 20th Century Studios, Inc.](#), No. 2:21-cv-05890 (C.D. Cal. Nov. 28, 2023).

Plaintiff Phillip Madison Jones alleged that *Ad Astra* infringed his copyright in and stole ideas from his unproduced spec screenplay entitled *Cosmic Force*. However, in granting summary judgment the Court ruled that these claims failed to raise genuine issues warranting a trial.

Background and Ruling

Plaintiff alleged that the creative team behind *Ad Astra* as well as defendant CAA, the talent agency representing defendant director/co-writer James Gray, had access to *Cosmic Force*, thereby allowing Defendants to purportedly copy his screenplay through any of three separate alleged routes of transmission: (1) via Plaintiff's submissions of his screenplay to CAA agents Brandon Lawrence and Cameron Mitchell in November 2015, (2) via Plaintiff's February 2016 submission of his script to film executives John Davis and Mike Stein of Davis Entertainment Company, which had a housekeeping deal with defendant Twentieth Century Fox Film Corporation, and (3) via Plaintiff's pitch of his work to Gloria Fan, an executive at Fox 21 Television Studios, a sister company of Twentieth Century Fox.



However, Judge Fred Slaughter ruled that the undisputed facts established that Defendants had no reasonable opportunity to view and copy *Cosmic Force* in connection with their creation of *Ad Astra*. The Court held, “it is undisputed that Defendants lacked access to Plaintiff’s script in two ways: (1) at least the first draft of *Ad Astra* and a subsequent outline were completed by Defendants Gray and Gross before Plaintiff created *Cosmic Force* in the fourth quarter of 2014; and (2) Plaintiff’s subsequent submission of *Cosmic Force* [i.e., to CAA, DEC and Fox 21] was to individuals who had no involvement in the making of *Ad Astra*, and no evidence adequately indicates it was shared with those who were involved.”

Also, although both *Ad Astra* and *Cosmic Force* involved astronaut protagonists undertaking spaceship voyages across the solar system to defeat evil space missions led by their own fathers, and on summary judgment the two sides had submitted dueling expert declarations disputing whether the works were substantially similar, the Court was untroubled by the conflicting expert testimony and ruled as a matter of law that the works lacked sufficient similarity. The Court concluded that:

“substantial similarities do not exist between the two scripts’ themes, dialogue, mood, setting, pace, characters, or sequence of events. *Cosmic Force* is replete with action scenes involving characters wielding blasters, car chases with limousines, and romantic entanglements. (See, e.g., the character Destiny, the President’s daughter, yells ‘[E]at some heat!’ while shooting a blaster and the script notes, by way of explanation, ‘BOOSH! BOOSH! BOOSH! BOOSH! His body smokes with holes but they REPAIR instantly’)... By contrast, *Ad Astra* is melancholy, dramatic, and focuses on Roy McBride’s initial mission, discovery of mission-critical information withheld from him, and his decision to break rank to find his father, [and] is intended to be a realistic depiction of the future, as underscored by accurate views of outer space and Earth, the use of existing space technologies such as space suits and space shuttles, and references to space-based research.... In sum, the record demonstrates there is insufficient evidence that ‘makes similarity of the works a triable issue of fact.’”

The Court’s Order granting summary judgment for Defendants and dismissing Plaintiff’s claims arising from *Ad Astra* – despite the filing of dueling expert declarations – is significant because it runs counter to an unfortunate recent trend of copyright decisions in the Ninth Circuit indicating that trials are often required to resolve the issue of substantial similarity in protected expression because such issues should not be determined as a matter of law by the Court.

For example, in *Alfred v. Walt Disney Co.*, 388 F. Supp. 3d 1174 (C.D. Cal. 2019) *rev’d* 821 Fed. App’x 727, 729 (9th Cir. 2020), a copyright infringement action arising from the film *Pirates Of The Caribbean: Curse Of The Black Pearl*, the Ninth Circuit reversed the trial court’s order granting defendants’ motion to dismiss on the grounds that the works were not substantially similar in protected expression. Thereafter, having been reversed, the trial court ruled at the summary judgment stage that conflicting expert declarations on to the issue of substantial similarity also precluded summary judgment for defendants. *Alfred v. Walt Disney Co.*, 2021 WL 6882322, *3-4 (C.D. Cal. Dec. 16, 2021); *see also Zindel as Trustee for the David Zindel Trust v. Fox Searchlight Pictures, Inc.*, 815 Fed. App’x 158 (9th Cir. 2019) (reversing order granting motion to dismiss copyright action against the film *The Shape Of Water* because “additional evidence, including expert testimony, would aid in the objective literary analysis needed to determine the extent and qualitative importance of the similarities ... identified in the works’ expressive elements...”); *Gregorini v. Apple Inc.*, 2022 WL 522307 (9th Cir. Feb. 22, 2022) (reversing district court order granting motion to dismiss on lack of substantial similarity grounds in copyright infringement action arising from the online streaming series *Servant*); *Yonay v. Paramount Pictures Corp.*, 2022 WL 1837391 (C.D. Cal. Nov. 9, 2022) (citing *Zindel* in denying motion to dismiss on lack of substantial similarity grounds in copyright infringement action arising from the film *Top Gun: Maverick*); *Changing World Films LLC v. Parker*, 2023 WL 8044348 (C.D. Cal. Sept. 12, 2023) (citing *Zindel*, *Alfred* and *Gregorini* in denying motion to dismiss copyright infringement action arising from the film *American Skin*).

This trend of recent cases ruling that substantial similarity cannot be determined as a matter of law inevitably is having a deleterious chilling effect on First Amendment-protected expression. In particular, it has been observed that “[i]f a factfinder erroneously concludes that your book infringes someone else’s book, the factfinder hasn’t just made a legal mistake: It has made a mistake of constitutional magnitude, and has deprived you of your First Amendment right to write your own expression.” *See Eugene Volokh & Brett McDonnell, Freedom of Speech and Independent Judgment Review in Copyright Cases*, 107 YALE L.J. 2431, 2432 (1998). Thus, copyright infringement actions based on alleged copying of protected expression need to be resolved quickly to avoid a chilling effect on expression – but such swift resolutions are impossible if trial courts are unwilling or unable to determine issues of substantial similarity as a matter of law. *Cf. Shame on You Prods. v. Banks*, 120 F. Supp. 3d 1123, 1147-48 (C.D. Cal. 2015) (granting motion to dismiss copyright infringement action arising from the film *Walk Of Shame* after noting that “[w]here ... the court conducts an extensive analysis of the alleged similarities between the works, and considers every alleged similarity identified by the plaintiff, it is not required to consider expert testimony concerning substantial similarity.”), *aff’d* 690 Fed. App’x 519 (2017) (noting the “thorough and well-reasoned order of the district court.”).

Seen in this context, the Court’s ruling in *Jones v. 20th Century Studios* that, as a matter of law, the film *Ad Astra* was not substantially similar to Plaintiff’s spec script *Cosmic Force*, may be a valuable bulkhead against the unfortunate recent trend of cases in the Ninth Circuit holding that issues of substantial similarity cannot be determined by trial courts as a matter of law and that dueling expert evidence on the issue of substantial similarity defeats summary judgment.

David Aronoff and Josh Bornstein of Fox Rothschild, LLP in Los Angeles represented the defendants. Plaintiff was represented by Victor K. Sapphire, Los Angeles; and The Tickin Law Group, Deerfield Beach, Fla.

PUBLICATIONS

COMMITTEES

EVENTS

ABOUT

JOIN

[Privacy Policy](#). [Terms of Use](#).

© 2024 Media Law Resource Center. All Rights Reserved.