

# Quinn Emanuel Partner Wins Nation's Largest Copyright Infringement Verdict in 5 Years

By Zoë Ettinger

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A federal jury in Manhattan last Thursday returned the largest copyright infringement verdict in the U.S. in the past five years: a hefty \$102.2 million verdict against art publisher Michael McKenzie. He was found to have orchestrated a years-long scheme to infringe copyrights and trademarks of artist Robert Indiana's iconic LOVE image, a veritable symbol of the pop art movement seen emblazoned on city streets and postage stamps since its creation more than 60 years ago. McKenzie was also found to have exploited Indiana, who died in 2018, in the final years of his life.

The verdict ended nearly eight years of litigation brought by the Morgan Art Foundation, which holds the intellectual property rights to Indiana's work. Jurors awarded \$2 million for copyright infringement, \$6.2 million for trademark infringement, \$89 million for tortious interference and \$5 million in punitive damages.



Credit: 4kclips/Adobe Stockk

**Love Park at John F. Kennedy Plaza in Philadelphia.**

"This was not an ordinary trademark case," Quinn Emanuel Urquhart & Sullivan partner Luke Nikas, who represented the Morgan Art Foundation, told Law.com. "The jury saw a deliberate campaign to exploit an elderly, vulnerable artist and steal rights worth one hundred million dollars," he said. "This verdict restores trust to the Robert Indiana market."

Indiana, who rose to international fame in the 1960s with LOVE, saw his career falter in the ensuing decades as unauthorized reproductions

of the work flooded the market, severely eroding its value. Indiana then moved to Vinalhaven, Maine, a small island where he continued his work in relative obscurity for 15 years.

According to Nikas, in the late 80s, Simon Salama-Caro and the Morgan Art Foundation approached Indiana and revived his LOVE sculptures by funding construction, organizing exhibitions and policing unauthorized usage of the image. In exchange for the Morgan Art Foundation's work and a cut of the ensuing profits, Indiana transferred his copyrights, trademarks and fabrication rights to the foundation. In court, McKenzie and his lawyer, Nicole Brenecki, disputed the validity of the Morgan Art Foundation's rights to Indiana's work.

According to Nikas, the Morgan Art Foundation's partnership with Indiana led to a booming resurgence in the artist's career by 2011. That's when McKenzie, who previously worked with Indiana on a book of his poetry in the mid-1990s and was later sent cease-and-desist letters for unauthorized reproductions of LOVE, came back into his life. McKenzie allegedly colluded with a local caretaker to cut off the aging Indiana from the Morgan Art Foundation and flooded the market with more unauthorized LOVE works.

Nikas told jurors that McKenzie's plan was clear from emails in which he discussed

garnering "seven, eight or nine-figure income" from LOVE. According to Nikas, McKenzie's claims, and defamatory letters he sent to major auction houses, caused sales of Indiana's work to plummet by 86% between 2011 and 2018.

In response, the Morgan Art Foundation filed a suit against McKenzie. One day later, Indiana died. What ensued were years of litigation involving Indiana's estate, McKenzie, and the Morgan Art Foundation, in which the Morgan Art Foundation ultimately came out victorious.

McKenzie's trial counsel, Nicole Brenecki, told Law.com that she was retained after discovery had closed and the court had already issued significant rulings, including sanctions and liability determinations.

"My role was to represent Mr. McKenzie at trial within that existing framework and to ensure that the proceedings were fully tested before the jury," Brenecki said. "The jury rendered its verdict based on the record and the posture of the case as it stood when trial began."

Brenecki added that McKenzie "received a full and fair trial," but said he disagrees with the outcome and is evaluating posttrial options.

Nikas now faces the daunting task of enforcing the nation's largest verdict awarded in a copyright infringement case in the past five years. "We will pursue enforcement as aggressively as we pursued the litigation," Nikas said.