Jason Bloom, Abbey Gauger Discuss SCOTUS Oral Arguments in Copyright Case

By Jason P. Bloom | November 15, 2021

Haynes Boone Partner Jason Bloom and Associate Abbey Gauger were quoted in several publications, including *Thomson Reuters Westlaw Today, IP Magazine* and *IP Law Daily* discussing oral arguments in the pending U.S. Supreme Court copyright dispute: *Unicolors Inc. v. H&M Hennes & Mauritz LP*.

Below are excerpts of the articles:

The Nov. 8 arguments centered on Section 411(b) of the Copyright Act, 17 U.S.C.A. § 411(b), which permits registration "regardless of whether the certificate contains any inaccurate information" unless certain exceptions apply.

… The dispute stems from a decision by the 9th U.S. Circuit Court of Appeals to overturn a jury's award in Unicolors' favor because of an alleged error on a registration document. Unicolors claims the error was an honest mistake. With no fraud involved, the registration should be valid, it says.

***Thomson Reuters Westlaw Today*: 'SCOTUS Seen as 'Sympathetic' to Artists, Not H&M, in Copyright Argument'**

… Jason Bloom, partner and head of the copyright practice group at Haynes Boone, said the Supreme Court's decision will not result in many copyrights being invalidated due to minor inaccuracies.

"Regardless of the proper test for assessing knowledge, courts will still be permitted to invalidate copyrights when even innocent mistakes result in a material inaccuracy that resulted in a registration that should not have been issued," Bloom said.

To read the full article, click here.

***IP Magazine*: 'SCOTUS Hears Oral Arguments in Unicolors v. H&M'**

Fashion retailer H&M Hennes & Mauritz (H&M) appeared to lose some ground in its defence of a five-year copyright dispute with textile manufacturer Unicolors, in the Supreme Court of the US (SCOTUS) yesterday (8 November).

… the present SCOTUS case now hinges on two primary points. First, Unicolors argues that any mistakes on its copyright registration were unintended and are merely technical legal inaccuracies – in other words it was filed in good faith and should remain valid.

… Commenting on how the court may handle the conflicting questions, Haynes Boone's Abbey Gauger said, "There is a chance that the Court will dodge the knowledge question and decide whether an intent to defraud is required to invalidate a copyright registration, or perhaps even dismiss the case from the docket as improvidently granted all together.

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"In any event, the Court's decision has the ability to substantially alter how copyright cases are defended. H&M did not challenge Unicolors' copyright registration until after the close of trial. If technical errors or mistakes of law are a basis to invalidate a registration, there are likely to be many referrals to the Copyright Office, seeking to invalidate registrations, both before and after litigation."

***World IP Review:* 'SCOTUS Mulls H&M Copyright Dispute with Unicolors'**

… a ruling for Unicolors, would further solidify the presumptive validity of copyright registrations and vindicate the Copyright Act's policy goal of rewarding artists and creators for their artistic contributions… .

Jason Bloom, partner and head of the copyright practice group at Haynes Boone, took a different view, arguing that any potential ruling should not result in significant numbers of copyrights being invalidated due to minor inaccuracies.

"As a backstop, the Copyright Act provides that only knowing misrepresentations that would have caused the Copyright Office to refuse registration are relevant," he explained. "Misspelling a previous title or getting an author's birth year wrong, even if done knowingly, would not likely cause the Copyright Office to refuse registration."

***IP Law Daily:* 'High Court Hears Arguments on When Errors Should Invalidate a Copyright Registration'**

… Responding to a question from *IP Law Daily* about the dispute over the question presented to the court, Haynes Boone Associate Abbey Gauger said, "There is a chance that the Supreme Court will dismiss the petition as improvidently granted, or at least skip the knowledge question raised by Unicolors, Inc.'s appeal brief."

"The Supreme Court granted cert on whether '17 U.S.C. § 411 requires referral to the Copyright Office where there is no indicia of fraud or material error as to the work at issue in the subject copyright registration,'" she explained. "However, Unicolors' appeal brief raised whether an inaccuracy in a registration application resulting from 'the applicant's good-faith misunderstanding of a principle of copyright law' is a sufficient basis to deny the application under Section 411(b). H&M argues that one could have knowledge of an application inaccuracy without the intent to defraud, so long as the inaccuracy is immaterial. The parties also disagree as to whether the Ninth Circuit made any ruling on knowledge, and the Court indicated that it was unclear whether, if they accept Unicolors' argument, the appropriate remedy would be to remand to determine knowledge or simply reverse the Ninth Circuit's decision. The Court dug into this issue with Unicolors during argument but did not give much indication as to how it would rule."

Speaking to the case's potential impact, Gauger said, "The Court's decision absolutely has the ability to change the landscape of copyright defense litigation, at all stages of the proceeding. H&M did not challenge Unicolors' copyright registration until after the close of trial. If technical errors or mistakes of law are a basis to invalidate a registration, there are likely to be many referrals to the Copyright Office, seeking to invalidate registrations, both before and after litigation."
Although the Justices spent time discussing factual matters—including whether the textile designs at issue were actually "published" for purposes of the Copyright Act—Gauger said she believe it won't be a dispositive issue because there was general agreement that not all of the designs were published on the same date. "Thus, this issue may be a means for the Court to narrowly tailor its

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decision to the facts presented, but is unlikely to give the Court an opportunity to avoid some of the larger legal questions posed by Section 411(b),” she said.

To read the full article, click here.

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