Jason Bloom Discusses Recent SCOTUS Ruling on Copyright Law

By Jason P. Bloom | March 3, 2022

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Haynes Boone Partner **Jason Bloom**, head of the firm's Copyright Practice, talked with *Bloomberg Law, Law360* and *IP Law Daily* about the U.S. Supreme Court's recent decision in *Unicolors Inc. v. H&M Hennes & Mauritz LP*, addressing textile copyright law.

Below are excerpts of the articles:

***Law360*: "Justices Bolster Copyrights With Decision Curbing Challenges"**

The U.S. Supreme Court delivered welcome news to copyright holders on Thursday by finding that [unknowing] legal errors do not trigger a provision that can void a registration, making clear that [immaterial] mistakes in a filing will pose a risks to copyright [registrations] only in rare circumstances.

The high court's 6-3 decision interpreted a provision of the Copyright Act that states copyright registrations can be invalidated if the owner included inaccurate information "with knowledge that it was inaccurate." The justices concluded that mistakes can be excused when an applicant doesn't know the inner workings of copyright law. …

For infringement defendants seeking to invalidate applications filed by laypeople, the decision has "created a burden that in most cases will be impossible to meet, of showing actual knowledge of legal or factual errors," said Jason Bloom of Haynes Boone.

Yet, he noted that the court dealt only with a specific provision of the Copyright Act that allows registrations to be invalidated based on inaccurate information and that [courts may still invalidate copyrights when the evidence shows lack of ownership or copyrightability.]

For example, if an employer files an infringement suit claiming that it has the right to a work because it was a work made for hire, and discovery during the case later shows that it was not, courts can still dismiss the infringement case on that ground, Bloom said.

The Supreme Court's ruling "does not mean that a court cannot, based on the facts and the law later in the case, still invalidate a copyright, if it turns out that there's a problem with ownership or copyrightability," Bloom added.

***Bloomberg Law*: "Textile Design Copyrights Remain Tricky After High Court Ruling"**

The narrow question the U.S. Supreme Court recently answered for the fashion and retail world avoided the epicenter of the contentious, complicated landscape of textile copyright law itself.

The designs often are made up of redundant-by-definition patterns consisting of finite elements and shapes. Determining whether an infringed work is original, "substantially similar," or likely to have been seen by the alleged infringer presents twists different from other media. …

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There's "less established groundwork" for judges evaluating fabric designs than in a typical fair use or originality analysis, copyright attorney Jason P. Bloom of Haynes Boone said. That means the outcome of an analysis depends heavily on the judge's interpretation.

"I think what makes it uniquely difficult is just the amount of stuff that's out there, and the difficulty of coming up with things that are going to both be marketable and that haven't been done in some way before," Bloom said. "There's only so much you can do with lace designs." …

Once infringement is alleged, a database could also help attorneys find similar designs to show claimed originality wasn't actually that creative and deserves thin protection, meaning the infringer's work would have to be nearly identical. Instead attorneys have to rely on clients and their knowledge of the industry to help track down similar looks, Bloom said.

***IP Law Daily*: "Lack of Either Factual or Legal Knowledge Can Excuse Error in Copyright Registration"**

Three dissenters would have dismissed the case as improvidently granted because the petitioner appeared to address different issues in its brief from its petition for review.

An inaccuracy in a copyright registration application that results from a mistake—whether of fact or of law; that is, lack of factual or legal knowledge of the inaccuracy on the part of the applicant—will not render the registration invalid, a divided Supreme Court has held in an opinion authored by Justice Breyer. Because Section 411 of the Copyright Act makes registration of a copyright a prerequisite to bringing an infringement suit, works that are the subject of registrations invalidated due to inaccuracies in filings could not be enforced in court. This decision essentially makes it easier for rightsholders to go forward with IP enforcement actions. Justice Thomas, joined by Justices Alito and Gorsuch, dissented, stating that he would have dismissed the writ of certiorari as improvidently granted (*Unicolors, Inc., Petitioner v. H&M Hennes & Mauritz, L.P.*, February 24, 2022, Breyer, S.). …

Practitioner commentary. According to Jason Bloom, partner and head of the copyright practice group at Haynes Boone, "The decision should make enforcement of certain copyright claims easier by reducing challenges to copyright registrations based on technical errors. The actual knowledge standard the Court adopted for both legal and factual errors creates a substantial burden for those seeking to challenge a registration under Section 411(b)."

Bloom added, "The Court's ruling will make it very difficult to get an action dismissed early on based on a technical error in a registration. However, courts will still be able to determine that copyrights are invalid based on material deficiencies, including issues impacting ownership and copyrightability. That is because a copyright registration certificate only serves as prima facie evidence of copyrightability and ownership sufficient to state a claim. The court still retains the ability to invalidate a copyright on the merits if the record shows the facts stated in a registration certificate to be untrue. This is especially important given the limited legal review the Copyright Office gives most applications."

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