

Services

Intellectual Property
Trademarks

Industry

Manufacturing

Professional

ALAN S. NEMES
ST. LOUIS:
314.345.6461
ALAN.NEMES@
HUSCHBLACKWELL.COM

Supreme Court Rules Some Designs on Cheerleader Uniforms Can Be Copyrighted

The U.S. Supreme Court ruled on March 22, 2017, that decorative elements of cheerleading uniforms could be protected by copyright law if they “can be perceived as a two- or three-dimensional work of art separate from the useful article” and would qualify as protectable expression if they were imagined separately from the uniform. The case had been closely watched by apparel producers, since clothing is typically considered an object having an intrinsic utilitarian function and therefore outside the scope of copyright.

The apparel and fashion industry has long pushed for greater protections against knockoffs of apparel designs. In this case, *Star Athletica LLC v. Varsity Brands Inc.*, Varsity claimed that Star Athletica had copied stripes, chevrons and other graphic uniform elements that Varsity had registered with the U.S. Copyright Office. The District Court ruled in favor of Star Athletica, finding that the challenged designs were integrally intertwined with the function of the uniform, meaning they were not separable enough to win protection. The Sixth Circuit reversed that ruling and concluded that the graphic features of Varsity’s cheerleading uniform designs could be identified separately from, and were capable of existing independent of, the utilitarian aspects of the uniforms. The Supreme Court agreed. Varsity can now proceed in its quest to stop unauthorized reproduction of the specific “surface designs on a uniform or in any other medium of expression.”

Although the ruling provides one concrete example of how to apply the longstanding rule that copyright may subsist in “any pictorial, graphic, or sculptural authorship that can be identified separately from the utilitarian aspects of an object,” the Court offered little guidance on how to apply the test to real-world, useful articles that include both functional and decorative

material. Justice Thomas took pains to point to the limited scope of copyright available in apparel: “[T]o be clear, the only feature of the cheerleading uniform eligible for a copyright in this case is the two-dimensional work of art.” He further explained, “Respondents have no right to prohibit any person from manufacturing a cheerleading uniform of identical shape, cut and dimensions to the ones on which the decorations in this case appear.”

This decision narrowly finds that specific decorative elements on Varsity’s cheerleading uniforms can potentially be protected under copyright law. However, the case will now head back to District Court to determine if Varsity’s designs meet the criteria for originality sufficient to win copyright protection to begin with, and whether the defendant’s designs are substantially similar so as to infringe any such copyrights in any event.

What This Means to You

The Supreme Court provided one clear example of how even a somewhat limited design on apparel can be considered conceptually separable and therefore potentially subject to copyright protection. Although the scope of and application of this copyright protection is difficult to describe with precision, the Supreme Court’s recent decision illustrates the potential pitfalls of copying another’s apparel.

Contact Us

For more information on how this case may impact your business, please contact Samuel Digirolamo at samuel.digirolamo@huschblackwell.com, Alan Nemes at alan.nemes@huschblackwell.com or another member of Husch Blackwell’s Intellectual Property team.