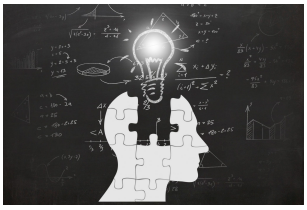

Copyright Act Protects Inaccurate Information Resulting from Lack of Knowledge in Copyright Applications

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Authors:

Ben A. West

***Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941 (February 24, 2022)**

In *Unicolors v. H&M Hennes & Mauritz, L.P*, the U.S. Supreme Court held that the "safe harbor" provision in the Copyright Act of 1976 protects copyright applications that contain inaccurate information from being invalidated when the inaccurate information arises from the applicant's lack of knowledge, no matter if that lack of knowledge is legal or factual. In doing so, the Court established that copyright holders can still enforce their rights through infringement claims, despite any inadvertent mistakes of law or fact that may have been included with the original copyright application.

Unicolors is a fabric designer that creates and copyrights artwork, and then prints that artwork on fabric to market to garment manufacturers and individual clients. In 2011, Unicolors applied for and received a single copyright registration that included 31 separate designs, nine of which were exclusive to individual clients. In 2015, H&M, which owns and operates hundreds of retail stores throughout the country, began selling garments bearing artwork protected by Unicolors' copyright. Unicolors sued H&M for copyright infringement and obtained a jury verdict in its favor. H&M then argued in a motion for judgment as a matter of law that Unicolors' single application for 31 separate works was not a "single unit of publication" as required by applicable copyright regulations, rendering it invalid due to a "knowing inaccuracy."

The district court denied H&M's motion, but the Ninth Circuit disagreed and reversed. According to the Ninth Circuit, Unicolors knowingly submitted an inaccurate application since it knew that some of the artwork in the registration was exclusive to certain customers; thus, the "single unit of publication" regulatory requirement was not met. The Ninth Circuit also rejected Unicolors' invocation of the "safe harbor" provision of the Copyright Act, 17

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U.S.C. § 411(b)(1)(A), which states that a registration containing inaccurate information is still valid unless the inaccurate information was included "with knowledge that it was inaccurate." The Ninth Circuit held that the safe harbor provision protects only good-faith mistakes of fact, not law.

The Supreme Court vacated the Ninth Circuit's judgment and remanded. Writing the majority opinion in the 6-3 ruling, Justice Stephen Breyer explained that, contrary to the Ninth Circuit, the statute does not distinguish between mistakes of law and mistakes of fact. Under the terms, "[l]ack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration."

In reaching its decision, the Court noted that an inaccuracy in a copyright registration is just as likely to arise from a matter of law as from a matter of fact—especially since many copyright applicants are artists such as "novelists, poets, painters, [and] designers" who lack legal training. The record showed that, when it submitted its application, Unicolors did not know that attempting to register 31 designs under one application did not meet the "single unit of publication" requirement. Because other provisions of the Copyright Act define "knowledge" as requiring "actual, subjective awareness of both the fact and the law," the Court held that Unicolors did not include information "with knowledge that it was inaccurate.

Key Takeaways:

- In Unicolors v. H&M Hennes & Mauritz, L.P., the Supreme Court has strengthened copyright-holders' ability to protect their rights, despite their making an inadvertent mistake by including inaccurate information in the application process.
- As long as the applicant was not "actually aware of, or willfully blind to, legally inaccurate information," the copyright is valid and the holder's rights to enforce the copyright against infringement will survive.

Explore the full wrap-up and analysis from Frost Brown Todd's Appellate practice group on the most consequential rulings during the 2021 U.S. Supreme Court term for businesses and industries.

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