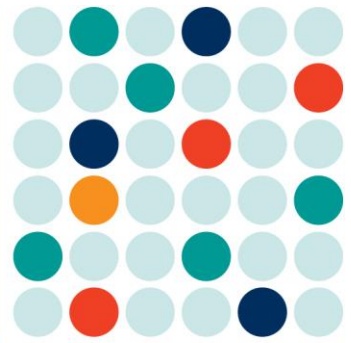


LEGAL UPDATE

March 2017

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SCOTUS SETTLES SCOPE OF COPYRIGHT PROTECTION FOR “USEFUL ARTICLES” IN *STAR ATHLETICA*

On March 22, 2017, the United States Supreme Court handed down a decision clarifying the law on an issue where there had been “widespread disagreement” among lower courts: which elements of the design of a “useful article” (such as apparel) are protectable under copyright law.

Generally, art is protected by copyright law but industrial designs, including for apparel, are not. In its March 22nd decision in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, the Supreme Court clarified the line between art and design, holding that “a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work – either on its own or fixed in some other tangible medium of expression – if it were imagined separately from the useful article into which it is incorporated.”

At issue in the case was whether a number of two-dimensional designs appearing on the surface of cheerleading uniforms were copyrightable. The Supreme Court, applying the test laid out above, found that these surface decorations were protected under copyright law because they (1) could be identified as features having pictorial, graphic, or sculptural qualities and (2) would qualify as two-dimensional works of art under the copyright law if separated from the uniforms and applied in another medium.

This decision will have a major impact in the fashion industry, as it resolves a disagreement between lower courts which, depending on the jurisdiction, blocked designers from asserting copyright protection over their innovative creations, often leaving them without a viable claim to assert against a “copyist” (i.e. someone who pirates the distinctive design elements). The Court clearly states that a claim may lie if a fashion designer can demonstrate that distinctive elements in the design may be separated conceptually from the utility of the clothing item and are therefore protectable by copyright. There is also potential that the *Star Athletica* interpretation of the Copyright Act can be applied in other contexts, such as jewelry, furniture, and other “useful articles” that often include ornamental features.

If you would like to discuss how the *Star Athletica* decision might affect your copyright prosecution options or potential liabilities, please contact your Pryor Cashman attorney.

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