



Inaccuracies in Copyright Registration May Not Be Fatal

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On February 24, the Supreme Court decided *Unicolors, Inc. v. H&M Hennes & Mauritz, L. P.* and ruled a copyright holder's mistake on their application may not invalidate the resulting copyright.^[1] Writing for the 6-3 majority, Justice Breyer concluded "[l]ack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration."^[2]

Copyright applications for registration are presumed to be fully accurate. However, the Copyright Act created a safe harbor for applicants which protects the validity of a certificate of registration containing inaccurate information *unless*: "(A) the inaccurate information was included on the application for copyright registration *with knowledge that it was inaccurate*; and (B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration."^[3]

In this case, Unicolor brought an action against H&M Hennes & Mauritz, L.P. (H&M) for copyright infringement. Only a copyright holder with a valid registration can bring this claim. Unicolor had received the copyright in question after it filed a single application securing thirty-one fabric designs which had been released in two different stages. Releasing the designs in this way violated the application requirement, as the Copyright Office Regulation only allows a single application to be used for multiple works if "those works were 'included in the same unit of publication.'"^[4] Thus, Unicolor had made a mistake in interpreting the meaning of the law. H&M argued that this mistake undermined the validity of Unicolor's copyright, and that if the registration certificate was invalid, Unicolor did not have a right to bring a copyright infringement case against H&M.

The main question addressed by the Court was the interpretation of the phrase within the safe harbor, "knowledge that it was inaccurate." Understanding "knowledge" to mean awareness, the Court specifically addressed whether the safe harbor protected applicants who made mistakes of law as well as those who made

mistakes of fact. A mistake of law occurs when a person misinterprets the law and is unaware that they are not in compliance, while a mistake of fact is a person's misunderstanding of the actual facts themselves. The Court of Appeals for the Ninth Circuit had ruled that the safe harbor only protects applicants whose mistakes result from misinterpreting facts and does not protect applicants who misinterpret the law.

However, the Supreme Court held the safe harbor was intended to apply to *both* mistakes of fact and mistakes of law. In making its determination, it looked to other provisions of the Copyright Act, legislative history, and prior caselaw. Cases decided before this statute was enacted ruled mistakes of fact and law did not invalidate a copyright. Additionally, the Court emphasized that applicants frequently have backgrounds as “novelists, poets, painters, designers, and others without legal training” and thus are not familiar with interpreting copyright law.^[5] The Court noted that the legislative history indicates that the safe harbor provision was enacted to make it easier for nonlawyers to obtain valid copyright registrations. It did so by “eliminating loopholes that might prevent enforcement of otherwise validly registered copyrights.”^[6]

While this decision may provide a level of protection for copyright owners who incorrectly filed their applications, owners cannot simply claim ignorance and expect court protection. The Court noted that it will consider circumstantial evidence such as “the significance of the legal error, the complexity of the relevant rule, the applicant’s experience with copyright law, and other such matters” to determine whether the applicant was aware of or “willfully blind” to the mistake.^[7] Thus, when filing a copyright application, it is important to ensure it is complete and accurate.

Please note that this is a general overview of the law and no content within this excerpt constitutes legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of copyright law, please contact Karen Levin at 516.296.9110 or Ariel Ronneburger at 516.296.9182.

Thank you to Samantha Schneider for her assistance with this client alert.

Footnotes

^[1] No. 20-915, 2022 WL 547681 (U.S. Feb. 24, 2022).

^[2] *Id.* at 3.

^[3] *Id.* at 2–3 (emphasis added) (quoting 17 U.S.C. § 411(b)(1)).

^[4] *Id.* at 3 (quoting 37 CFR § 202.3(b)(4) (2020)).

^[5] *Id.* at 4.

^[6] *Id.* at 5 (quoting H. R. Rep. No. 110–617, p. 20 (2008)).

^[7] *Id.* at 5.

Practices

- Intellectual Property

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