

Justices Bolster Copyrights With Decision Curbing Challenges

By Ryan Davis

Law360 (February 24, 2022, 10:43 PM EST) -- The U.S. Supreme Court delivered welcome news to copyright holders on Thursday by finding that innocent legal errors do not trigger a provision that can void a registration, making clear that mistakes in a filing will pose a risk to copyrights 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.

Because Congress intended to make it easier for artists and other nonlawyers to register copyrights, "it would make no sense if [the law] left copyright registrations exposed to invalidation based on applicants' good-faith misunderstandings of the details of copyright law," the court held, reviving fabric designer Unicolors' case against fast-fashion chain H&M.

The court did state that the safe harbor doesn't apply if there is evidence demonstrating that a copyright owner actually knew it submitted legally inaccurate information to the U.S. Copyright Office or was willfully blind to that fact, but attorneys said that will be difficult to prove.

"Unicolors pretty clearly seems to be a boon for copyright owners and plaintiffs in infringement cases, because it emphasizes a high standard that defendants need to meet to invalidate copyright registrations that contain inaccurate information," said Jordan Feirman of Skadden Arps Slate Meagher & Flom LLP.

Proving that someone knew of a legal error and chose to disregard it, essentially committing fraud on the Copyright Office, "is going to be pretty difficult in many circumstances for defendants to meet ... because you need all the right pieces of the puzzle," Feirman said.

Unlike patent and trademark applications, which are typically filed by experienced attorneys, copyright applications are often completed by authors and artists without legal training, yet the filings can involve complex issues of copyright law.

The way the Supreme Court has interpreted the safe harbor provision "gives copyright owners a little bit of comfort that what they have obtained has some value and can be enforced," said Julie Albert of Baker Botts LLP.

Albert said the outcome appears reasonable in light of a 2019 ruling in which the Supreme Court held that copyright owners cannot file an infringement lawsuit until the Copyright Office has registered the work.

Under that decision, "you need to have a copyright registration to get into court, making it arguably a little bit harder to get in," she said. Thursday's ruling "maybe makes it a little easier to stay in court with that registration" by "putting a thumb on the scale of maintaining the validity of a registration."

With the outcome in the case, "copyright holders and applicants can breathe a sigh of relief," said Preetha Chakrabarti of Crowell & Moring LLP.

"This decision is encouraging for artists and designers who rely on copyright registrations to protect their rights, but do not always have the means to hire counsel to ensure that their applications are legally and factually perfect," she said.

However, given the Supreme Court's statement that willful blindness to and actual knowledge of inaccuracies can still lead to the invalidation of a registration, "it is still recommended that copyright owners seek the advice of experienced copyright counsel to insure the best chance of success against validity challenges," Chakrabarti said.

Because the opinion states that applicants' "experience with copyright law" can serve as evidence that they were aware of legal errors in a filing, the court appears to have set a different standard for applications filed by attorneys, said Michael Graif of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

"The real takeaway from this decision may be that courts will be less forgiving to lawyers who make mistakes in copyright applications than they will be to nonlawyers," he said.

For example, copyright application forms ask if the work at issue was made for hire, meaning it was created by an employee while on the job, which gives the employer the right to the work.

"It's one thing for an applicant to incorrectly check the work made for hire box, and it's quite another thing for an experienced copyright lawyer to have done that," Graif said. "The latter would tend to dictate more strongly in favor of invalidation under this holding."

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 and Boone LLP.

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 other errors in a filing can still cause problems for copyright holders.

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.

The decision should also send a message to any copyright holder about the importance of ensuring that registrations do not contain any errors that could cause problems if they come to light, said Feirman of Skadden.

"I think there's a potential danger if copyright plaintiffs and copyright owners think this is a get out of jail free card," he said. "They should be advised that if they're aware of inaccuracies in their registrations, it's probably a good idea to go ahead and get them fixed."

It remains to be seen how far courts will go in practice in terms of excusing mistakes and ignorance of the law, said Fara Sunderji of Dorsey & Whitney LLP, but the overall outcome is beneficial to copyright holders.

"Today's ruling helps individual artists, authors, musicians and creators," she said. "They will not be penalized for honest mistakes of fact or law when they complete copyright applications."

The case is Unicolors Inc. v. H&M Hennes & Mauritz LP, case number 20-915, in the U.S. Supreme Court.

--Editing by Jill Coffey and Nicole Bleier.