

## US Supreme Court Hems Challenges to Copyright Registrations

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### Synopsis

In a 6-3 decision, the US Supreme Court in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* held that a copyright registration is valid even though it contains inaccurate information—as long as the copyright holder lacked knowledge that it was inaccurate.

### Procedural History

H&M sought to invalidate Unicolors' US copyright registration covering a group of thirty-one different works of fabric designs on the basis that the designs did not qualify for protection in a single copyright registration, because they were not published on the same day as a "single unit of publication." (Multiple published works may be registered together under one copyright registration if the multiple works published on the same day as "a single unit of publication;" otherwise, separate applications—each incurring a separate filing fee—are required.) The district court declined to invalidate Unicolors' copyright registration because the evidence before the court did not indicate that Unicolors knew that its copyright application included inaccuracies related the designs' publication details at the time of filing.

On appeal, the Ninth Circuit determined that not all thirty-one works could have been first published as a single, bundled unit because some of the works were first made available to individual, exclusive customers, while others were first made available to the public in the Unicolors showroom. However, rather than outright holding that Unicolors had no valid copyright registration, the Ninth Circuit remanded the issue of validity to the district court with instructions that the court ask the Copyright Office whether the known inaccuracies in Unicolors' copyright application would have caused registration to be refused.

### The Court's Decision

The majority (Justice Breyer, joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Kavanaugh, and Barrett) vacated the Ninth Circuit's decision and remanded for further proceedings based on its interpretation of 17 U.S.C. § 411 of the Copyright Act. § 411(b)(1) states that a registration is valid regardless of whether the certificate contains any 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.

Although the majority agreed with the Ninth Circuit that the inaccuracies in Unicolors' copyright application stem from a misunderstanding of what qualifies as a "single unit of publication" under copyright law, the majority disagreed with the Ninth Circuit's interpretation of § 411 as excusing only mistakes of fact, not mistakes of law. The majority viewed the statutory language and legislative history of § 411 as making no distinction between a mistake of law and a mistake of fact, and therefore concluded that a "[l]ack of knowledge of *either fact or law* [emphasis added] can excuse an inaccuracy in a copyright registration."

Justice Thomas, joined by Justices Alito and Gorsuch, dissented. The dissent argued that the majority's opinion addressed a question that was different than the question for which the writ of

certiorari was granted (i.e., whether § 411(b)(1)(A)'s "knowledge" element requires "indicia of fraud."). However, the majority found that the question that it addressed was a subsidiary question included in the question presented in the writ, and therefore was within its purview to address.

### Practical takeaways

Notably, the majority's decision establishes limits to a copyright holder's ability to claim lack of knowledge to avoid the consequences of an inaccurate copyright application. According to the majority, willful blindness may weigh against finding lack of knowledge as a viable defense. Elaborating on this point, the majority notes that "[c]ircumstantial evidence, including the significance of legal error, the complexity of the relevant rule, the applicant's experience with copyright law...may also lead a court to find that an applicant was actually aware of, or willfully blind to, legally inaccurate information."

Although the practical implications of these limits will need to be sorted out (e.g., does failing to retain counsel's legal opinion on particularly technical information, like "publication" or "work for hire," included in a copyright application suggest willful blindness), copyright owners may consider taking the following steps to improve the chances of successfully defending against potential validity issues later:

- archive internal documents that clearly corroborate the details entered into a copyright application;
- audit the accuracy of the information listed in a copyright registration before bringing suit; and
- consider whether any discovered errors in a copyright registration may be corrected by obtaining a [Supplementary Registration](#), and if not, whether obtaining a new copyright registration is warranted, before bringing suit.

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