

Supreme Court Holds That Good Faith Mistakes of Law and Fact Are Protected by Copyright Registration Safe Harbor

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On February 24, 2022, the U.S. Supreme Court held in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* that the safe harbor provision concerning inaccurate information in copyright registrations, as set forth at 17 U.S.C. § 411(b), does not distinguish between mistakes of law and mistakes of fact, and thus that the inclusion of inaccurate information in a registration does not invalidate the registration when the inaccuracy is the result of a good faith misunderstanding of the law. The Court vacated the U.S. Court of Appeals for the Ninth Circuit's decision that the safe harbor afforded by 17 U.S.C. § 411(b)(1)(A) does not apply to a failure to understand the law. The 6-3 decision has significant implications for copyright owners and litigants alike.

Background

Pursuant to Section 411(a) of the Copyright Act, registration with the Copyright Office is a prerequisite for a copyright owner to sue for infringement. Pursuant to Section 411(b), possession of a certificate of registration is generally sufficient to satisfy this requirement, unless the registration certificate contains inaccurate information that was included "with the knowledge that it was inaccurate," and "the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration."

In the present case, Unicolors, Inc. sued Hennes & Mauritz, L.P. (H&M) for infringing a design that it registered in 2011 along with 30 other works in a single registration. Following a jury verdict in Unicolors' favor, H&M filed a renewed motion for judgment as a matter of law, arguing that the copyright registration was invalid because it did not comply with a Copyright Office regulation permitting single registrations to cover multiple works only if the works were "included in the same unit of publication."

In 2018, the U.S. District Court for the Central District of California denied H&M's motion based on Section 411(b), noting that Unicolors did not actually know that it had failed to satisfy the "single unit of publication" legal requirement, and thus there was no grounds to invalidate the registration. The Ninth Circuit, however, reversed in 2020 and concluded that the Section 411(b) safe harbor did not apply because Unicolors knew of the fact that some of the 31 designs covered by the registration were initially made available for sale exclusively to certain customers, while others were immediately available to the general public.

The Supreme Court granted Unicolors' petition for *certiorari*, which had sought review of whether Section 411(b) requires that the registrant intended to defraud the Register of Copyrights by knowingly including inaccurate information.

Supreme Court Ruling

In its 6-3 decision, the Supreme Court vacated the Ninth Circuit's decision on a ground that was not the one proposed, but that the majority concluded was a "subsidiary question fairly included in" Unicolors' petition for *certiorari*. The majority held that Section 411(b) does not distinguish between good faith mistakes of law and good faith mistakes of fact, so either can excuse an inaccuracy in a copyright registration.

Writing for the majority, Justice Stephen G. Breyer (i) understood the Ninth Circuit to have concluded that Section 411(b) "excused only good-faith mistakes of fact" but not good faith mistakes of law, and (ii) found no basis in the statutory language to draw any such distinction. "Knowledge," the majority concluded, historically has "meant and still means 'the fact or condition of being aware of something,'" and because registration