ARE Copyright Alert: Supreme Court Rules That Unintentional Mistakes of Law, Like Mistakes of Fact, Are Entitled to Be Considered Under the Copyright Registration Safe Harbor Provision

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On February 24, 2002, the Supreme Court held that an unintentional mistake of law was entitled to the benefit of the Copyright Act's safe harbor provision, § 411(b)(1)(A). *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.,* No. 20-915, 595 U.S. _____ (Feb. 24, 2022).Justice Breyer delivered the opinion of the Court in a 6-3 decision, joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Kavanaugh, and Barrett. In dissent, Justice Thomas was joined by Justice Alito and Justice Gorsuch in part.

This Decision clarifies that not only mistakes of fact made during the application process, but also mistakes of law, are entitled to evaluation under the Copyright Act's safe harbor provision.

Background

Unicolors, the owner of various fabric design copyrights, filed a copyright infringement suit against the clothing retailer H&M Hennes & Mauritz (H&M). The jury initially found for Unicolors, but H&M contended that Unicolors knowingly gave inaccurate information in its copyright registration application, which rendered the resulting registration invalid.

The inaccurate information alleged by H&M was that Unicolors filed a single application covered 31 separate works, when Copyright Office regulations provides that only works which were included in the same unit of publication can be covered by a single application. Because Unicolors sold some of its designs exclusively to certain customers and allowed other designs to be made available to the public, H&M argued that it could not, as a matter of law, be from the same unit of publication. Therefore, the inaccuracy was knowingly made, and the copyright registration should have been referred to the Register of Copyrights under § 411(b) of Title 17 to determine whether the inaccuracy would have rendered the registration invalid.

The safe harbor provision, Section 411 (b), states that:

(b) …

(1) A certificate of registration satisfies the requirements…, ***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.

17 U.S.C. § 411(b)(1)(A) & (B) (emphasis added).

The District Court disagreed with H&M and stated that because Unicolors error was not made knowingly, the registration was valid. *Unicolors, Inc. v H & M Hennes*, 2017 U.S. Dist. LEXIS 226934 (C.D. Cal. June 8, 2017). However, on appeal, the Ninth Circuit reversed the decision and agreed with H&M that the registration should have been referred to the Register. *Unicolors, Inc. v. H&M Hennes & Mauritz, LP*, 959 F. 3d 1194 at 1200 (9th Cir. 2020). The circuit court reasoned that regardless of whether Unicolors mistake was made knowingly or unknowingly, it was a mistake of law, which did not fall within the definition of the statute, and thus should not be considered under § 411. *Id.*

Unicolors sought certiorari on the interpretation of § 411(b)(1)(A), which granted on the question of whether the Ninth Circuit's interpretation of § 411(b)(1)(A) was accurate.

ANALYSIS

The Majority Opinion (Authored by Justice Breyer)

In *Unicolors,* the majority of the Supreme Court held in an opinion authored by Justice Breyer that the plain reading of the statute does not limit the law to just mistakes of facts. Nothing within the statute states that the inaccuracies must have to do with facts and not law. *Unicolors*, slip op. at 5. Further, the Supreme Court held that the word knowledge "meant and still means the fact or condition of being aware of something." *Intel Corp Investment Policy Comm. v. Sulyma*, 140 S. Ct. 768 (2020). Unicolors claimed that it was unaware of the legal requirement and so it could not have known that its copyright application was inaccurate.

Additionally, the registration process requires both knowledge of facts and law. A mistake can be made of either the law or facts, and the statute does not distinguish the difference between the two. The majority opinion goes on to state that if "Congress had intended to impose a scienter standard other than actual knowledge, it would have said so explicitly." *Unicolors*, slip op. at 6. There is no indication that such a distinction was desired by Congress. Rather, § 411 (b) was enacted to facilitate to registration process and so would not align with the statute's purpose if it were to only allow for mistakes of facts. *Id.*, at 7.

H&M raised three arguments against Unicolors' interpretation of the statute, which were quickly disposed of by the majority opinion.

First, H&M argued that Unicolors' interpretation would make it easy for copyright applicants to claim lack of knowledge to avoid refusal of registration. The Court disagreed and stated that the circumstantial evidence along with evidence of willful blindless can support a finding of actual knowledge. *Id.*, at 8.

Second, H&M also argued that the legal maxim "ignorance of the law is no excuse" should apply in this case. The Court again disagreed stating that the maxim was normally applied in circumstances where the defendant already has the requisite mental state for a crime. *Id.*, at 8, *see also Rehaif v. United States*, 139 U.S. 2191 (2019). It was not applicable in a "civil case concerning the scope of a safe harbor that arises from ignorance of collateral legal requirements." *Unicolors*, slip op. at 8.

Third, H&M raised the issue that the question addressed in argument before the Court was not presented in either the Ninth Circuit's Decision or Unicolors' Petition. However, the Court stated that the Ninth Circuit addressed the issue implicitly when it determined that the knowledge of facts was sufficient under § 411. *Id.* Also, the petition included a question of whether a registration may be invalidated even though there was no "indicia of fraud." *Id.* The Court's analysis of whether fraud was present was relied on the knowledge of misrepresentation of a material fact. Therefore, the Court determined the question of knowledge was a "subsidiary question fairly included" and was properly raised. *Id.*

In sum, the majority held that "Section 411(b) does not distinguish between mistakes of law and mistakes of fact; lack of either factual or legal knowledge can excuse an inaccuracy in a copyright registration under § 411(b)(1)(A)'s safe harbor." *Id.*, at 1-2.

The Dissent (Authored by Justice Thomas)

Justice Thomas, joined by Justice Alito and Justice Gorsuch in part, dissented based on the third argument raised by H&M, stating that the questions presented by Unicolors were not initially raised by the petitioner and were new arguments. Because there was no circuit split on the question addressed by the majority and the arguments were all novel, the dissent argued, the Petition should have been dismissed as having been improvidentially granted. Further, the Court misapplied Rule 14.1(a) to consider whether the argument was fairly included. Because there was no such prior question raised, the question addressed by the majority could not have been fairly included.

Conclusion

In *Unicolors*, the Court held that Section 411 (b)(1)(A)'s safe harbor is not limited to mistakes of fact. This Decision may broaden the scope of safe harbor protection for Copyright owners, although the focus of disputes on safe harbor availability may now shift towards the scope of copyright owners' legal knowledge, which may raise thorny evidentiary issues.

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