



## ARE Copyright Law Alert: Court Finds Lace Design Copyrightable in Firm Defeat of Summary Judgment Motion

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Amster, Rothstein & Ebenstein, LLP attorneys successfully defended against a summary judgment motion brought by defendants to a copyright infringement action regarding plaintiff's copyrighted lace design.

In a decision issued on July 16, 2015, a judge in the Southern District of New York rejected defendant's arguments that the registered design was unenforceable and unprotectable. The Court first found that the design remained enforceable, despite any failure to disclose to the Copyright Office certain non-protectable elements of the design, because (i) the plaintiff did not willfully fail to disclose any information, nor (ii) would any of the alleged omissions have caused the Copyright Office to reject the application.

The Court also rejected defendants' argument that the copyrighted lace design was unprotectable as a "useful article" (i.e., an undergarment waistband). Although elements of the design were made to conform to structural requirements, there remained elements that were "conceptually separable" from the function of the article as a waistband such that the design was protectable. Furthermore, the designer's knowledge that the design was to be used as a waistband was not dispositive as a "separability analysis looks at the characteristics of the design itself and does not focus exclusively on the mind of the designer.

Finally, the Court found that "any reasonable jury would find substantial similarity" between the defendants' accused designs and plaintiff's copyrighted design. Even under the "more discerning" test used for a work with both protectable and unprotectable elements, a design is infringed where copying is complete and exact.

The case is *Klauber Brothers, Inc. v. Target Corp. et al.*, No. 14-cv-2125 in the Southern District of New York. Plaintiff Klauber Brothers, Inc. is represented by [Philip H. Gottfried](#), [Marc J. Jason](#), and [Richard S. Mandaro](#) of Amster, Rothstein & Ebenstein LLP.

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