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## U.S. Supreme Court Holds that Mistakes of Both Law and Fact Can Excuse Inaccurate Copyright Registrations

By Steven R. Englund, Jacob L. Tracer and Edward Crouse

The U.S. Supreme Court has issued its opinion in the closely watched case of *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, holding 6-3 that a copyright registrant's lack of knowledge of errors of either law or fact can excuse inaccurate statements in a registration application and the resulting registration.<sup>1</sup> At issue was 17 U.S.C. § 411(b)(1), which states that copyright registrations are valid regardless of whether they "contain any inaccurate information" unless the inaccurate information was included "with knowledge that it was inaccurate."

### THE COURT'S DECISION

Writing for the majority, Justice Breyer concluded that the statute's reference to "knowledge"

did not distinguish between knowledge of law and knowledge of fact, and thus applied to both.<sup>2</sup>

The Court ruled in favor of Unicolors, which had made a mistake of law in erroneously filing a single copyright registration application for 31 fabric designs that were published in multiple waves despite Copyright Office regulations requiring it to file multiple applications in that circumstance.<sup>3</sup>

The Court vacated the decision of the U.S. Court of Appeals for the Ninth Circuit, which had held that Unicolors' mistake of law invalidated its registration because Section 411(b)(1) protected only good-faith mistakes of fact, not of law.

The Court based its conclusion primarily on a textual analysis of Section 411(b)(1) and the Copyright Act's broader statutory framework.

First, the Court noted that nothing in the language of Section 411(b)(1) itself distinguishes between mistakes of law and fact.

Second, the Court concluded that other provisions of the Copyright Act suggest that the reference to "knowledge" in Section 411(b)(1) relates to knowledge of the law as well as the facts.

Considering the requirements for registration applications, the Court found that applicants are asked to have "both legal and factual knowledge" when registering copyrights, making it unlikely that

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Congress intended to forgive unknowing errors of one type but not the other.<sup>4</sup> And considering scienter requirements in other areas of copyright law, the Court found that Congress knew how to clearly distinguish between knowledge of facts and law when it wanted to.<sup>5</sup>

The Court was unmoved by arguments that excusing inaccuracies arising from errors of law is foreclosed by the legal maxim that “ignorance of the law is no excuse.”<sup>6</sup>

## LEGISLATIVE HISTORY

The Court’s decision is consistent with the legislative history of Section 411(b)(1).

Prior to enactment of that provision in 2008, defendants in some infringement actions had argued “that a mistake in the registration documents, such as checking the wrong box on the registration form, render[ed] a registration invalid.”<sup>7</sup> Section 411(b)(1) was intended to foreclose such arguments and “prevent intellectual property thieves from exploiting . . . potential loophole[s].”<sup>8</sup>

Citing this legislative history, the Court concluded that Congress enacted Section 411(b) “to make it easier, not more difficult, for nonlawyers to obtain valid copyright registrations” by “eliminating loopholes that might prevent enforcement of otherwise validly registered copyrights.”<sup>9</sup>

## PROTECTION FOR COPYRIGHT OWNERS

By limiting the potential grounds to challenge the validity of a copyright registration, the Court’s opinion provides valuable protection to all copyright owners.

A valid copyright registration provides important statutory advantages and protections, such as the ability to bring a civil suit for infringement of a U.S. work,<sup>10</sup> the potential to obtain statutory damages and attorney’s fees,<sup>11</sup> a presumption of validity of the copyright,<sup>12</sup> and the ability to establish a record with U.S. Customs and Border Protection to protect against the importation of infringing copies.<sup>13</sup>

Had the Court reached a contrary ruling in *Unicolors*, those advantages could be lost in the event that a copyright registrant made an unknowing inaccurate statement reflecting an error of law in registering a work.

The Court’s analysis will particularly bolster the ability of copyright owners who registered their works without legal representation to argue that Section 411(b) should not invalidate their registrations.

However, the Court’s analysis of Section 411(b) leaves open the possibility that copyright owners who register their copyrights with the assistance of legal counsel may continue to face challenges to registrations reflecting inaccurate conclusions of law. As noted above, Section 411(b)(1) permits the invalidation of a registration if, among other things, an inaccurate statement of law is made “with knowledge that it was inaccurate.”

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The Court cautioned that “courts need not automatically accept a copyright holder’s claim that it was unaware of the relevant legal requirements” and that knowledge in this context can be proven by “willful blindness.”<sup>14</sup> Such inquiries can be fact-intensive and may turn on a variety of factors, including “the complexity of the relevant rule” and “the applicant’s experience with copyright law.”<sup>15</sup>

Thus, a party challenging the validity of a registration on this ground may focus on work performed by legal counsel in the registration process to argue that the applicant was effectively aware of or willfully blind to any legal errors in the registration.

That is what happened in *Lieb v. Korangy Publishing, Inc.*,<sup>16</sup> where the court referred to the Copyright Office a question concerning an inaccurate registration application filed by a lawyer. Distinguishing *Unicolors*, the court there found that the applicant was willfully blind to the need to identify a work as a derivative work given the clear instructions provided by Copyright Office publications for handling registrations of derivative works.

## CONCLUSION

A knowledge inquiry might occur next in the *Unicolors* case itself. The Court remanded the case for further proceedings, which could potentially include an examination of whether *Unicolors* had

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actual knowledge of or was willfully blind to the legal error in its registration.

Going forward, attorneys assisting copyright owners in registering their works should be aware that such inquiries are theoretically possible, and all applicants should endeavor to complete registration applications accurately.

## Notes

1. *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. \_\_\_, slip op. (2022).
2. In dissent, Justices Thomas, Alito, and Gorsuch disagreed with the majority on procedural grounds, considering the writ of certiorari to be “improvidently granted” because Unicolors “has chosen to rely on a different argument in its merits briefing” before the Court. *Id.* (Thomas, J., dissenting) at 1.
3. 37 C.F.R. § 202.3(b)(4).
4. Op. at 5-6.
5. *Id.* at 6.
6. *Id.* at 6-7.
7. H.R. Rep. No. 110-617, at 24 (2008) (citing *In re Napster, Inc. Copyright Litigation*, 191 F. Supp. 2d 1087, 1099 (N.D. Cal. 2002), which involved an argument that the works in suit should have been registered as owned by assignment rather than as works made for hire).
8. *Id.*
9. Op. at 6-7.
10. 17 U.S.C. § 411(a).
11. 17 U.S.C. § 412.
12. 17 U.S.C. § 410.
13. 19 C.F.R. Part 133.
14. Op. at 8.
15. *Id.*
16. No. CV 15-0040 (AYS), 2022 WL 1124850 (E.D.N.Y. Apr. 14, 2022).

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