

Bring it On! Copyright Protects Cheerleader Uniform Designs (And Other Designs that Appear on Useful Items)!

Last week, the United States Supreme Court found that designs on cheerleading uniforms can be protected by copyright. The Court held that designs that appear on useful items are covered by the copyright laws, so long as the designs: (1) can be perceived as a two-or-three dimensional work of art separate from the useful article on which they appear, and (2) would qualify as a pictorial, graphic or sculptural work if it is imagined separately from the useful object into which it is incorporated. The designs also have to contain enough original expression to be eligible for protection.

The case involved a dispute over cheerleading uniforms sold by competing firms. Varsity Brands featured designs on its uniforms consisting of various lines, chevrons and colorful shapes, and registered these designs with the Copyright Office. When Star Athletica began selling uniforms with similar designs, Varsity Brands sued for copyright infringement. The Supreme Court found that Varsity Brands' designs were equivalent to two-dimensional artwork that can be protected by copyright, but sent the case back to a lower court to decide if the designs contain enough originality to result in a valid copyright.

The case is important for manufacturers of clothing, eyeglasses, furniture, and other useful items where designs are applied to the object. The manufacturers now can protect the designs (but not the underlying object without any of the design features) with copyright, so long as the designs satisfy the other elements required for a work to be eligible for copyright protection. This means that the manufacturers can prevent copying of the designs not only on similar products, but also in any other works, and can take advantage of the remedies that the copyright laws provide.

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