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Supreme Court Holds That A Mistake Of Law Can Excuse An Inaccurate Copyright Registration

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Click for PDF Decided February 24, 2022 **Unicolors, Inc. v. H&M Hennes & Mauritz, LP., No. 20-915 Today, the Supreme Court held 6-3 that a copyright holder can file a copyright infringement suit even if its copyright registration application included inaccurate information that was the result of an innocent mistake of fact or law.** **Background:** A copyright holder cannot bring an infringement suit unless it holds a valid copyright registration certificate. A certificate is valid even if it contains inaccurate information, unless the inaccuracy "was included on the application for copyright registration with knowledge that it was inaccurate" and, "if known, would have caused the Register of Copyrights to refuse registration." 17 U.S.C. § 411(b). After Unicolors sued H&M for copyright infringement, H&M argued that Unicolors' copyright registration certificate was invalid because Unicolors had knowingly included inaccurate information in its application by applying to register multiple works in a single application even though it had made those works separately available to clients and the public. The district court ruled that a certificate is invalid under § 411(b) only if the applicant intended to defraud the Copyright Office, and Unicolors' mistake of law did not evidence an intent to defraud. The Ninth Circuit reversed, holding that § 411(b) does not contain an intent-to-defraud requirement, and that Unicolors' application contained factual information Unicolors knew was inaccurate. It was irrelevant, in the Ninth Circuit's view, whether the inaccuracy was the result of Unicolors' inadvertent misunderstanding of a principle of copyright law. **Issue:** Whether 17 U.S.C. § 411(b)'s "knowledge" requirement excuses inadvertent mistakes of fact or law. **Court's Holding:** Yes. The "knowledge" element in § 411(b) requires a showing that the copyright registration applicant actually knew that the inaccurate information in its application was inaccurate, and excuses inaccuracies that were the result of an innocent mistake of fact or law.

> *"Lack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration."*

Justice Breyer, writing for the Court **What It Means:**

- The Court's decision means that copyright holders can defend inaccuracies in registration certificates on the ground that they were the product of an innocent mistake of either fact or law. The Court's ruling could provide additional protection for copyright registrants such as novelists, poets, and painters who may be unfamiliar with the complexities of the Copyright Act or who in good faith reach incorrect conclusions about what the law requires.
- Although copyright holders can file new registration applications to fix innocent inaccuracies, copyright claims have a three-year statute of limitations, and statutory damages and attorneys' fees are available only for infringements that occur after a valid registration is in place. Today's ruling potentially expands the scope of cases involving inaccurate copyright registrations.
- The Court emphasized that willful blindness to an inaccuracy may constitute actual knowledge under § 411(b), and that circumstantial evidence—such as the

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> significance of the error, the complexity of the relevant rule, and the applicant's experience with copyright law—could influence whether the applicant was actually aware of, or willfully blind to, the inaccuracy.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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