

ISSUE BRIEF: AALL ISSUE BRIEF: STAR ATHLETICA, L.L.C. V. VARSITY BRANDS, INC.

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INTRODUCTION

This issue brief summarizes *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, a Supreme Court decision issued on March 22, 2017. In a 6-2 decision, the Court held that an artistic feature incorporated into the design of a useful article is eligible for copyright protection if it satisfies a two-step separability test. This issue brief discusses implications of the decision for libraries.

BACKGROUND AND SUMMARY OF THE DECISION

Varsity Brands filed a copyright infringement lawsuit against Star Athletica in 2010, alleging that Star Athletica copied Varsity's copyrighted two-dimensional designs that are reproduced and applied to Varsity cheerleading uniforms.¹ The district court entered summary judgment in favor of Star Athletica in 2014,² but the Sixth Circuit vacated and remanded the decision, holding that the district court erred in concluding that Varsity's designs were not copyrightable and that the Copyright Act protects artistic features of a design even if those features cannot be physically removed from a useful article.³

The Copyright Act defines a "useful article" as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information."⁴ A useful article may include both copyrightable and uncopyrightable features. Pictorial, graphic, and sculptural works—defined as including "two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans"⁵—are eligible to receive copyright protection.⁶ The Copyright Act clarifies that "[s]uch works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned."⁷ Therefore, a useful article's design "shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article."⁸

The Supreme Court granted certiorari in May 2016 to resolve a circuit split about the proper test for implementing a separability analysis and to clarify the separate-identification and independent-existence requirements in § 101.

¹ Complaint, *Varsity Brands, Inc. v. Star Athletica, L.L.C.*, No. 2:10-cv-02508 (W.D. Tenn. July 9, 2010).

² *Varsity Brands, Inc. v. Star Athletica, L.L.C.*, No. 2:10-cv-02508, 2014 WL 819422 (W.D. Tenn. Mar. 1, 2014).

³ *Varsity Brands, Inc. v. Star Athletica, L.L.C.*, 799 F.3d 468 (6th Cir. 2015).

⁴ 17 USC. § 101 (2012).

⁵ *Id.*

⁶ *Id.* § 102.

⁷ *Id.* § 101.

⁸ *Id.*



The Supreme Court, in affirming the Sixth Circuit’s judgment, held “that a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.”⁹

In applying this test to the cheerleading uniforms at issue, the Supreme Court found that the decorations on the surface of Varsity Brands’ cheerleading uniforms, including the arrangement of stripes, chevrons, colors, and shapes, were separate from the uniforms and thus eligible for copyright protection.¹⁰

The Supreme Court abandoned the distinction between physical separability and conceptual separability, rejecting the notion that the underlying useful article must remain after an artistic feature has been imaginatively separated from the article.¹¹

IMPLICATIONS FOR LIBRARIES

In addition to affecting the fashion industry, the Supreme Court’s decision also has implications for libraries. Many public and academic libraries offer 3D printing services, which allow patrons to create physical, 3D products. 3D printers are capable of printing a wide range of products, including jewelry, keys, and prosthetics. Litigators have also started to use 3D printed objects, such as models of buildings or body parts, as demonstrative evidence during trials. This decision affects how copyright law applies to 3D printed designs because 3D printed designs include both artistic features and utilitarian functions.

Professional library organizations, including the American Library Association and the Association of Research Libraries, filed an amicus brief in support of Star Athletica, urging that copyright in a useful article’s appearance should remain highly limited because patent law is a more appropriate avenue for protecting useful articles.¹² The amicus brief warned that “[s]haring of useful 3D designs, and the productive consumer output that results from that sharing and innovation, could be thwarted by an overbroad rule of copyright” because 3D printing depends on copying and derivation.¹³

The decision may slow down the speed of innovation in the 3D printing industry and affect whether libraries offer 3D printing services. Libraries that already have or are considering installing 3D printers must be cognizant of how copyright law applies to 3D printed objects and be aware of possible liability issues that may arise.

Written by the AALL Copyright Committee

⁹ Star Athletica, L.L.C. v. Varsity Brands, Inc., 137 S. Ct. 1002, 1007 (2017).

¹⁰ *Id.* at 1012.

¹¹ *Id.* at 1014.

¹² Brief of Public Knowledge et al. in Support of Petitioner, Star Athletica, L.L.C. v. Varsity Brands, Inc., No. 15-866 (July 21, 2016).

¹³ *Id.* at 16.