

The Supremes Are Addressing Intellectual Property

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Late April brought a series of intellectual property matters before the Supreme Court of the United States. The country's highest court ruled on willfulness in trademark infringement actions and copyright protections afforded to public officials.

Trademarks – Willfulness Not Required to Obtain Profits Trademark Infringement

In *Romag Fasteners, Inc. v. Fossil Group, Inc.*, the Supreme Court held, in a unanimous opinion written by Justice Gorsuch which resolved a split between the circuits, that plaintiffs in trademark infringement cases under the Lanham Act may recover defendants' profits without having to demonstrate willful wrongdoing by those defendants.

Intent still matters. Because a profits award is subject to "principles of equity," the Court expressly pointed out that "a trademark defendant's mental state [will remain] a highly important consideration in determining whether an award of profits is appropriate." Acknowledging that intent matters, however, is materially different than requiring it be shown.

While we expect intent to remain a significant issue in Lanham Act cases, this decision should make it easier for plaintiffs to pursue and recover monetary damages for trademark infringement, and probably false advertising, though that was not expressly addressed, under the Lanham Act. This may result in increased filings, as plaintiffs flex their additional muscle, as well as quicker settlements, as defendants consider the increased risk.

Copyrights – Officials Writing Laws Not Protected By Copyright

On April 27, in *Georgia v. Public.Resource.Org, Inc.*, the Supreme Court, relying on the "government edicts" doctrine which holds that certain works authored by public officials cannot be protected by copyright, held that an annotated version of Georgia's official state law code is not and could not be protected by copyright law. To the contrary, it is free for all to use.

In a 5-4 vote, the Court rejected an infringement lawsuit that Georgia filed against an activist group called Public Resource.Org Inc., which had copied and distributed the code without license or payment. The Court found: "Officials empowered to speak with the force of law cannot be the authors of – and therefore cannot copyright – the works they create in the course of their official duties."

If you have questions or would like further information on trademark and copyright issues, please contact Randy Friedberg (friedberg@whiteandwilliams.com; 212.714.3079).

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