

No. 20-915

In The
Supreme Court of the United States

—◆—
UNICOLORS, INC.,

Petitioner,

v.

H&M HENNES & MAURITZ, L.P.,

Respondent.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF AMICUS CURIAE
CALIFORNIA FASHION ASSOCIATION
IN SUPPORT OF RESPONDENT**

—◆—
JEFFREY LEWIS
JEFF LEWIS LAW
609 Deep Valley Drive,
Suite 200
Rolling Hills Estates, CA
90274

DEBORAH E. GRAVES
WITHERS BERGMAN LLP
1925 Century Park East,
Suite 400
Los Angeles, CA 90067

MORGAN E. PIETZ
Counsel of Record
PIETZ & SHAHRIARI, LLP
9454 Wilshire Boulevard,
Suite 310
Beverly Hills, CA 90212
(310) 424-5557
morgan@pstrials.com

*Counsel for Amicus Curiae
California Fashion Association*

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. INTERESTS OF <i>AMICUS CURIAE</i>	1
II. SUMMARY OF THE ARGUMENT	3
III. ARGUMENT	7
A. How Unicolors and Similar Plaintiffs in the Business of Fabric Litigation Game the Copyright System	7
1. The Copyright Registration Pro- cess	8
2. Infringement Under the Copyright Act	11
3. Examples of Unicolors and Other Fabric Plaintiffs Gaming the Sys- tem	17
B. Section 411(b) Should be Interpreted so That it is Easier to Invoke and Apply, Not Harder	24
IV. CONCLUSION	32

TABLE OF AUTHORITIES

	Page
CASES	
<i>DeliverMed Holdings, LLC v. Schaltenbrand</i> , 734 F.3d 616 (7th Cir. 2013).....	5
<i>Ets-Hokin v. Skyy Spirits, Inc.</i> , 323 F.3d 763 (9th Cir. 2003)	24, 25
<i>Feist Publ. v. Rural Telephone Serv. Co.</i> , 499 U.S. 340 (1991)	9
<i>Gold Value Int’l Textile v. Sanctuary Clothing</i> , 925 F.3d 1140 (9th Cir. 2019).....	14, 30
<i>L.A. Printex Indus., Inc. v. Aeropostale, Inc.</i> , 676 F.3d 841 (9th Cir. 2012).....	30
<i>Matrix v. Macy’s</i> , C.D. Cal. No. 12-cv-1450	18
<i>Matrix v. Milkprint</i> , C.D. Cal. No. 12-cv-8597	18, 19
<i>Skidmore v. Led Zeppelin</i> , 952 F.3d 1051 (2020)	12
<i>Star Fabrics, Inc. v. Zulily, LLC</i> , C.D. Cal. No. 17- cv-8358.....	22, 23
RULES	
Sup. Ct. R. 37.6	1
STATUTES	
17 U.S.C. § 106	8
17 U.S.C. § 408(d).....	30
17 U.S.C. § 410(c)	11, 12, 13
17 U.S.C. § 411	6, 31

TABLE OF AUTHORITIES – Continued

	Page
17 U.S.C. § 411(a).....	8
17 U.S.C. § 411(b).....	<i>passim</i>
17 U.S.C. § 411(b)(2)	28, 29
17 U.S.C. § 411(b)(3)	<i>passim</i>
17 U.S.C. § 412	6, 15, 31

OTHER AUTHORITIES

Goold, Patrick Russell, Is Copyright Infringement a Strict Liability Tort?, 30 Berkeley Technology Law Journal 305 (2015)	16
Sag, Matthew, <i>Copyright Trolling, An Empirical Study</i> , 100 Iowa L. Rev. 1105 (2015).....	7
U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 602.4(D) (3d ed. 2021)	9, 13

I. INTERESTS OF *AMICUS CURIAE*¹

The California Fashion Association (“Cal. Fashion”) is a non-profit organization established in 1995, providing information for business expansion and growth to the apparel and textile industry of California.

Cal. Fashion’s mission is to provide a forum for industry networking, outline global sourcing options and export opportunities, provide information about labor law compliance, share industry-related legal developments, analyze the application of apparel-related technology, promote advanced education for the industry, and define the industry’s economic impact.

Cal. Fashion was specifically organized to address issues of concern to the California fashion and apparel industry. Its 140+ members include fashion and apparel manufacturers, suppliers, financial service providers, professional service providers, technology providers, other fashion-related businesses, industry publications, educational institutions, related associations, and international points of contact.

Cal. Fashion strives to be the local voice of the fashion business, which is the largest manufacturing sector in Southern California. Over 10,000 firms are

¹ Counsel for all parties have filed blanked consents to the filing of *amicus* briefs. In accordance with Rule 37.6, *amicus* confirms that no party or counsel for any party authored this brief in whole or in part, and that no person other than *amicus*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.