

APPENDIX

APPENDIX

TABLE OF CONTENTS

Opinion in the United States Court of Appeals for the Ninth Circuit (November 10, 2022)	1a
Order Denying Petition for Rehearing and Rehearing En Banc in the United States Court of Appeals for the Ninth Circuit (January 18, 2023)	76a
Opinion in the United States Supreme Court (February 24, 2022)	78a
Opinion in the United States Court of Appeals for the Ninth Circuit (March 30, 2020)	101a
Order Denying Defendant’s Motion for Judgment as a Matter of Law and Granting Defendant’s Motion for a New Trial in the United States District Court for the Central District of California (August 1, 2018)	116a

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-56253
18-56548
D.C. No. 2:16-cv-02322-AB-SK

[Filed November 10, 2022]

UNICOLORS, INC., a California Corporation,)
Plaintiff-Appellee,)
)
v.)
)
H&M HENNES & MAURITZ, L.P.,)
a New York limited partnership,)
Defendant-Appellant.)

OPINION

On Remand from the United States Supreme Court
Before: Carlos T. Bea and Bridget S. Bade, Circuit
Judges, and Jon P. McCalla,* District Judge.

Opinion by Judge Bea

* The Honorable Jon P. McCalla, United States District Judge for the Western District of Tennessee, sitting by designation.

SUMMARY**

Copyright

On remand from the Supreme Court in this copyright-infringement action brought by Unicolors, Inc., against H&M Hennes & Mauritz, L.P., the panel affirmed the district court's judgment in general, save that it vacated and remanded with instructions to grant a new trial, limited only to damages, if Unicolors rejects the remittitur amount of \$116,975.23.

Unicolors, which creates designs for use on textiles and garments, alleged that a design it created in 2011 (the EH101 design) is remarkably similar to a design printed on garments that H&M began selling in 2015 (the Xue Xu design). The Supreme Court held that lack of either factual or legal knowledge on the part of a copyright holder can excuse an inaccuracy in a copyright registration under the Copyright Act's safe-harbor provision, 17 U.S.C. § 411(b)(1). Accordingly, the panel reviewed anew the threshold issue whether Unicolors holds a valid copyright in registration No. VA-1-770-400 (the '400 Registration), and concluded that under the correct standard, the '400 Registration is valid because the factual inaccuracies in the application are excused by the cited safe-harbor provision.

The panel held that a party seeking to invalidate a copyright registration under § 411(b) must demonstrate

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

that (1) the registrant submitted a resignation application containing inaccuracies, (2) the registrant knew that the application failed to comply with the requisite legal requirements, and (3) the inaccuracies in question were material to the registration decision by the Register of Copyrights. The panel concluded that Unicolors's '400 Registration contained an inaccuracy, but that the district court's finding that Unicolors did not have the requisite knowledge of its application's inaccuracy per § 411(b)(1)(A) is not clearly erroneous. This lack of knowledge means that the '400 Registration falls within the ambit of the safe-harbor provision's protection, notwithstanding its failure to comply with the "single unit" requirement, and that Unicolors's copyright is valid. Unicolors can therefore maintain its infringement action against H&M over the EH101 design, which is covered by that registration.

Concerning H&M's pretrial challenges, the panel held (1) H&M forfeited any claim of error on appeal based on a claim that Unicolors's President Nader Pazirandeh's statements constituted impermissible, undesignated expert opinion; (2) the district court did not abuse its discretion when it excluded H&M's proffered expert testimony of Robin Lake on the issue of substantial similarity of the EH101 and Xue Xu designs; and (3) the district court did not abuse its discretion in excluding H&M's proffered expert testimony of Justin Lewis on the issue of damages.

The panel then addressed H&M's at-trial challenges.

First, H&M argued that the district court erred in refusing to instruct the jury that the Xue Xu design

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.