

Abstract

A Study on Protecting the Design of Useful Articles under the Copyright Act

- Focusing on the Case of *Star Athletica, LLC v. Varsity Brands, Inc.*

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The designs of useful articles have two features, and one can be protected under the copyright law and the other cannot be done. The decision can be made by the separability, that is whether the design can be separated from the useful articles. Recently, the US Supreme Court judged whether a cheerleading uniforms which are one of the useful articles can be protected under the Copyright Act, and it held that they can be protected. However, when considering the dissent and other opinions, it has shown that there are still many problems to be solved. Now is the time to examine our direction for protecting the design of useful articles, so called the applied arts in our country.

When comparing with the US cases, our applied arts have the same problems: they can be protected better under the Design Protection Act and Trademark Act, and the textile design; the copyright protection may cause the increase of price, make the clothing industry be in a state of confusion, and lead to the injustice due to the overlapped protection; the difficulty of judging the separability harm the legal stability. In principle, the applied arts should be protected very limitedly when considering the above problems. The requirements for the protection of applied arts are separability and independence. More specifically, they should be judged by referring to the following cases: ① the test is required even if the design of useful articles is not the itself of the design of the useful articles, ② the test can be passed even if the design is reproduced in other media, ③ the test can be passed even if the features of the useful articles raise the usefulness, ④ it is unnecessary to consider whether the only design of the useful articles has

marketability in the community, ⑤ the test can be processed even if the whole useful articles are the design, ⑥ to acknowledge the separability, it is not necessary that the design that left after extracting from the useful articles, is still useful.

Keywords

Design of Useful Articles, Copyright Protection, Uniform, Separability, Applied Arts

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