

## Our Latest Industry Insights

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March 24, 2017

### **Supreme Court Cuts Through the Noise to Clarify Copyrightability of Designs in Useful Articles**

**By:** Justin Thiele

On October 20, 2016, we published an article discussing the Supreme Court's decision to grant review of the Sixth Circuit's August 2011 ruling in *Varsity Brands, Inc. v. Star Athletica, LLC*. The Supreme Court heard oral arguments on October 31, 2016, and, on March 22, 2017, issued its highly anticipated decision. As discussed below, the Supreme Court has clarified the test to determine whether a design feature on a useful article is subject to protection under the Copyright Act of 1976.

**TAGS:** cheerleading uniforms, copyright & idea theft, copyright act, intellectual property, supreme court, varsity brands inc v. star atletica

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October 20, 2016

### **Supreme Court To Consider Copyrightability of Cheerleading Uniform Designs**

**By:** Brittany Elias

On May 2, 2016, the U.S. Supreme Court granted review of the Sixth Circuit's August 2015 ruling in *Varsity Brands Inc. v. Star Athletica LLC*[i] The Supreme Court will determine the proper test to assess whether Varsity's two-dimensional cheerleading uniform designs are entitled to copyright protection. Notably, this is the first time the Supreme Court will address copyright protection in the context of useful articles and apparel. Thus, its decision bears the potential for a far-reaching impact on the apparel and fashion industries.

**TAGS:** cheerleading uniforms, copyright & idea theft, copyright act, intellectual property, supreme court, varsity brands inc v. star atletica

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June 22, 2016

## **High Court Clarifies: Objective Unreasonableness Factor Favored in Attorneys' Fees Analysis Under the Copyright Act**

**By:** Brittany Elias

Section 505 of the Copyright Act provides for recovery of attorneys' fees by prevailing litigants. It states that a court, "in its discretion may allow the recovery of full costs." However, no guidance has been provided on this language in more than 20 years. The last word from the High Court occurred in 1994,[1] where the Court held that fees should be equally available to prevailing plaintiffs and defendants, but stated that "no precise rule or formula" existed for when they should be awarded. Four non-exclusive factors were articulated for courts to consider when determining whether attorneys' fees should be awarded, including: (1) the frivolousness of the case, (2) the motivation of the loser, (3) the objective unreasonableness of the case, and (4) considerations of compensation and deterrence.[2] Yet, the Court complicated matters, noting that the factors must be applied in a manner that is "faithful to the purposes of the Copyright Act." [3] From this decision sparked a circuit split – while some courts weighed the factors evenly, others focused mainly on serving the "purposes of the Copyright Act." To confuse matters more, the Second Circuit placed a strong emphasis on the "objective unreasonableness" factor, at the expense of the other factors.

**TAGS:** Copyright & Idea Theft, Copyright Act, Copyrights, Intellectual Property, Intellectual Property, objective unreasonableness factor, Second Circuit, Supreme Court, U.S. Supreme Court