

15-866 STAR ATHLETICA, L.L.C. V. VARSITY BRANDS, INC.

DECISION BELOW: 799 F.3d 468

LOWER COURT CASE NUMBER: 14-5237

QUESTION PRESENTED:

1. Under the Copyright Act, a "useful article" such as a chair, a dress, or a uniform cannot be copyrighted. 17 U.S.C. § 101. The article's component features or elements cannot be copyrighted either, unless capable of being "identified separately from, and . . . existing independently of, the utilitarian aspects of the article." *Id.* Circuit courts, the Copyright Office, and academics have proposed at least nine different tests to analyze this separability. The Sixth Circuit rejected them all and created a tenth. The first question is:

What is the appropriate test to determine when a feature of a useful article is protectable under § 101 of the Copyright Act?

2. The Copyright Act specifies that in any judicial proceeding, the certificate of a registration made before or within five years after first publication is prima facie evidence of the copyright's validity. 17 U.S.C. § 410(c). The effect is to re-order the burden of proof to require the infringement-action defendant to prove the copyright is invalid. Until now, no circuit has given additional judicial deference to a registration. But the Sixth Circuit determined that a copyright registration is entitled to *Skidmore* deference. See *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). The second question is:

Whether, in determining a copyright registration's validity, a court should give any judicial deference in addition to the statutory deference articulated in 17 U.S.C. § 410(c).

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 5/2/2016