

# Small Business Notes

Minnesota Department of Employment and  
Economic Development (DEED)

## U.S. Supreme Court to Hear Case on Separation of Functionality and Decoration for Copyright Purposes

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- **U.S. Supreme Court to Hear Case on Separation of Functionality and Decoration for Copyright Purposes**

The Court will hear an apparel industry case that has the potential to affect other industries and products.

The case (*Star Athletica LLC v Varsity Brands, Inc. et al.*) involves two apparel manufacturers of cheerleading uniforms. Varsity Brands has long been the incumbent in the market for these uniforms with Star Athletica being a recent entrant. In 2010 Varsity sued Star for copyright infringement of five copyrighted designs of Varsity uniforms. Star argued in its defense that Varsity's copyrights were not valid since the designs were not separable from the functionality of the garment. The U.S. District Court for the Western District of Tennessee held for Star on the grounds that the design elements in question (a combination of colors, strips, zigzag panels and chevrons) were inseparable from the garments since they make the uniforms recognizable as cheerleading uniforms.

On Varsity's appeal, the Sixth Circuit U.S. Court of Appeals reversed, holding that the purpose of the cheerleading uniform was "...to cover the body, wick away moisture, and withstand the rigors of athletic movements" and that the "stripes, chevrons, and color blocks served no utilitarian function but rather only a decorative function." In so ruling the Sixth Circuit's opinion added a tenth test for to the current nine in use in various Circuits.

Star petitioned for Supreme Court review to determine what is the appropriate test of when a feature of a useful article is protectable by copyright.

Significantly, three 3D printing industry businesses filed *amicus* briefs in support of Star's petition in light of the uncertainty surrounding the standard for copyright noting that, "In some cases 3D printing even enables the production of shapes and forms that would be impossible to create using less revolutionary methods". The 3D printing industry has had a democratizing effect on manufacturing allowing individuals to customize designs for their own use and greatly lowering startup costs for new entrants in markets for the design and sale of a wide variety of objects. These advancements are threatened by the current fractured state of copyright law on objects combining functional and artistic elements."

The Supreme Court will hear arguments in its October 2016 term.

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