

## United States Supreme Court Confirms Works of Art Incorporated Into Useful Articles Are Protected Under Copyright Law

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Copyright law has long provided protection for original works of art. There has been some uncertainty as to whether this protection is extended to artistic features that are incorporated into useful articles, which are not protected under copyright law.

The recent case of *Star Athletica, LLC v. Varsity Brands, Inc.* highlights how difficult it can be to determine whether or not a useful article contains artistic features and whether or not these artistic features can be protected as separate works of art under copyright law. In this case, both parties designed and sold cheerleading uniforms incorporating a wide variety of different designs. Varsity Brands acquired over 200 copyright registrations for two-dimensional designs applied to its various uniforms and sued Star Athletica alleging infringement of these designs.

The Court stated that if, when separating the artistic feature from the useful article, the artistic feature: (1) can be identified as a two- or three-dimensional work of art separate from the useful article; and (2) qualifies as a protectable pictorial, graphical, or sculptural work either alone or if fixed in a tangible means of expression, then the artistic feature is protectable under copyright law. It is important to note that copyright protection will apply to the artistic feature if it meets this test regardless of whether it was first created as a useful article or as a work of art.

This decision confirms that works of art will be afforded copyright protection when incorporated into various useful articles. However, it is important to remember that for such protection to arise, the work of art still needs to be “original” which is the foundational requirement for copyright protection. The issue of whether or not the designs applied to the cheerleading uniforms were original was not before the Court in this case.

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