Supreme Court Review

L.A. Copyright Society
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I. Freedom of Speech

Friedrichs v. California Teachers Association, 136 S.Ct. 1083 (2016). Affirmed by an evenly divided Court. (1) Whether *Abood v. Detroit Board of Education* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

Heffernan v. City of Patterson, 136 S.Ct. 1412 (2016). The First Amendment bars the government from demoting a public employee based on a supervisor's perception that the employee supports a political candidate.

Lee v. Tam, 808 F.3d 1321 (Fed. Cir. 2015), *cert. granted*, 136 S.Ct. ___ (Sept. 29, 2016). Whether the disparagement provision of the Lanham Act, 15 U.S.C. 1052(a), which provides that no trademark shall be refused registration on account of its nature unless, *inter alia*, it "[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute" is facially invalid under the Free Speech Clause of the First Amendment.

Expressions Hair Design v. Schniederman, 808 F.3d 118 (2d Cir. 2015), *cert. granted*, 136 S.Ct. ___ (2016). Whether state no-surcharge laws unconstitutionally restrict speech conveying price information (as the Eleventh Circuit has held), or regulate economic conduct (as the Second and Fifth Circuits have held).

Packingham v. North Carolina, 368 F.3d 380 (N.C. 2015), *cert. granted*, 137 S.Ct. ___ (2016). Whether, under the court's First Amendment precedents, a law that makes it a felony for any person on the state's registry of former sex offenders to "access" a wide array of websites – including Facebook, YouTube, and nytimes.com – that enable communication, expression, and the exchange of information among their users, if the site is "know[n]" to allow minors to have accounts, is permissible, both on its face and as applied to petitioner, who was convicted based on a Facebook post in which he celebrated dismissal of a traffic ticket, declaring "God is Good!"

II. Intellectual property

A. Copyright

Kirtsaeng v. John Wiley & Sons, Inc., 136 S.Ct. 1979 (2016). When deciding whether to award attorney's fees under § 505, a district court should give substantial weight to the **1982* objective reasonableness of the losing party's position, while still taking into account all other circumstances relevant to granting fees. "The question presented here is whether a court, in exercising that authority, should give substantial weight to the objective reasonableness of the losing party's position. The answer, as both decisions below held, is yes—the court should. But the court must also give due consideration to all other circumstances relevant to granting fees; and it retains discretion, in light of those factors, to make an award even when the losing party advanced a reasonable claim or defense. Because we are not certain that the lower courts here understood the full scope of that discretion, we return the case for further consideration of the prevailing party's fee application."

Star Athletica, LLC v. Varsity Brands, Inc., 799 F.3d 468 (6th Cir. 2015), *cert. granted*, 136 S.Ct. 1823 (2016). What is the appropriate test to determine when a feature of a useful article is protectable under section 101 of the Copyright Act.

B. Patents

Samsung v. Apple, 137 S.Ct. ___ (Dec. 6, 2016). In the case of a multicomponent product, the relevant article of manufacture for arriving at a damages award under Section 289 of the Patent Act need not be the end product sold to the consumer but may be only a component of that product.

SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC, 807 F.3d 1311 (Fed. Cir. 2015), *cert. granted*, 136 S.Ct. 1824 (2016). Whether and to what extent the defense of laches may bar a claim for patent infringement brought within the Patent Act's six-year statutory limitations period, 35 U.S.C. § 286.

Impression Products, Inc. v. Lexmark International, Inc., 816 F.3d 721 (Fed. Cir. 2016), *cert. granted*, 137 S.Ct. ___ (2016). (1) Whether a "conditional sale" that transfers title to the patented item while specifying post-sale restrictions on the article's use or resale avoids application of the patent-exhaustion doctrine and therefore permits the enforcement of such post-sale restrictions through the patent law's infringement remedy; and (2) whether, in light of this court's holding in *Kirtsaeng v. John Wiley & Sons, Inc.* that the common-law doctrine barring restraints on alienation that is the basis of exhaustion doctrine "makes no geographical distinctions," a sale of a patented article – authorized by the U.S. patentee – that takes place outside the United States exhausts the U.S. patent rights in that article.

Life Technologies Corporation v. Promega Corporation, 773 F.3d 1338 (Fed. Cir. 2015), *cert. granted*, 136 S.Ct. 2505 (2016). Whether the Federal Circuit erred in holding that supplying a single, commodity component of a multi-component invention from the United States is an

infringing act under 35 U.S.C. § 271(f)(1), exposing the manufacturer to liability for all worldwide sales.