

239 Fed.Appx. 333, 2007 WL 1813860 (C.A.9 (Cal.)), 2007 Copr.L.Dec. P 29.405

(Not Selected for publication in the Federal Reporter)

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This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.
BRIGHTON COLLECTIBLES, INC., a California
corporation. Plaintiff-Appellee,
v.
RENAISSANCE GROUP INTERNATIONAL, a
New Jersey company; Ralph's Grocery Company,
an Ohio corporation, Defendants-Appellants.

No. 06-56008.

Argued and Submitted Feb. 9, 2007.

Filed June 20, 2007.

Background: Purse manufacturer sued business competitor, seeking preliminary injunction based on copyright, trademark, and trade dress infringement. The United States District Court for the Southern District of California, Marilyn L. Huff, J., entered injunction. Competitor appealed.

Holdings: The Court of Appeals held that (1) manufacturer's use of "Carolina heart" on purses was entitled to copyright protection even though the copyright for this decorative element was originally registered for a watch; (2) injunction was warranted based on trademark and trade dress infringement; and (3) automatic stay in competitor's bankruptcy case did not preclude district court from issuing rulings in the infringement litigation.

Affirmed.

West Headnotes

[1] Copyrights and Intellectual Property 99 ↪ 6

99 Copyrights and Intellectual Property

99I Copyrights

99I(A) Nature and Subject Matter

99k3 Subjects of Copyright

99k6 k. Pictorial, Graphic, and Sculptural Works. Most Cited Cases

Manufacturer's use of "Carolina heart" on purses was entitled to copyright protection, even though the copyright for this decorative element was originally registered for a watch. 17 U.S.C.A. § 302(a).

[2] Trademarks 382T ↪ 1714(1)

382T Trademarks

382TIX Actions and Proceedings

382TIX(F) Injunctions

382Tk1712 Permanent Injunctions

382Tk1714 Grounds and Subjects of Relief

382Tk1714(1) k. In General. Most Cited Cases

Evidence that business competitor's dangling heart actually confused some consumers who were familiar with purse manufacturer's "Carolina heart" mark warranted injunction preventing competitor from distributing its product.

[3] Trademarks 382T ↪ 1714(6)

382T Trademarks

382TIX Actions and Proceedings

382TIX(F) Injunctions

382Tk1712 Permanent Injunctions

382Tk1714 Grounds and Subjects of Relief

382Tk1714(6) k. Trade Dress. Most Cited Cases

Purse manufacturer was entitled to injunction prohibiting business competitor from producing bag on trade dress infringement grounds, where the

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size, shape, and color of competitor's bag was confusingly similar to manufacturer's purse.

[4] Bankruptcy 51 ↪ 2395

51 Bankruptcy

51IV Effect of Bankruptcy Relief; Injunction and Stay

51IV(B) Automatic Stay

51k2394 Proceedings, Acts, or Persons Affected

51k2395 k. Judicial Proceedings in General. Most Cited Cases

Automatic stay in business competitor's bankruptcy case did not preclude district court from issuing rulings in copyright, trademark, and trade dress infringement action, since the case had already been briefed and fully argued when bankruptcy petition was filed and the disposition did not affect the property of the debtor. 11 U.S.C.A. § 362(a).

*334 Sylvia P. Lardiere, Esq., Browne Woods & George, LLP, Beverly Hills, CA, Steven W. Winton, Winton And Larson, San Diego, CA, for Plaintiff-Appellee.

Pamela E. Dunn, Dunn Koes LLP, Pasadena, CA, Michelle M. McCliman, Esq., Wang Hartmann & Gibbs PC, Newport Beach, CA, for Defendants-Appellants.

Appeal from the United States District Court for the Southern District of California, Marilyn L. Huff, District Judge, Presiding. D.C. No. CV-06-01115-MLH.

Before: KOZINSKI and TROTT, Circuit Judges, and MOLLOY ^{FN*}, District Judge.

FN* The Honorable Donald W. Molloy, Chief United States District Judge for the District of Montana, sitting by designation.

FN** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**1 [1] 1. There is no merit to Renaissance's claim that decorative elements used on watches are unprotected when used on purses. *See Worth v. Selchow & Righter Co.*, 827 F.2d 569, 570 n. 1 (9th Cir.1987) (portions of a copyrighted work are protected). Even if there were, Brighton has used its Carolina heart on purses and is thus entitled to protection. Although the copyright was registered for a watch, the use of the heart on purses is still entitled to copyright protection. *See* 17 U.S.C. § 302(a) (copyright is secured at creation of work, not at registration).

The district court pointed to several major similarities between Renaissance's heart and the copyrighted Carolina heart, and Renaissance has identified no differences. It thus was within the court's authority to enjoin Renaissance from distributing products using that heart. *See ETS-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 765 (9th Cir.2003) (even if copyright is "thin," virtually identical copying is prohibited).

[2] 2. Because there was evidence that Renaissance's dangling heart actually confused some consumers who were familiar with Brighton's mark, the district court *335 did not err in finding it likely that Brighton would prove the two marks to be confusingly similar. While customers may have been unlikely to be confused when purchasing the bags, the district court did not err in finding there was a likelihood of post-sale confusion. *See Levi Strauss & Co. v. Blue Bell, Inc.*, 632 F.2d 817, 822 (9th Cir.1980) (likelihood of confusion need not be established at point of sale).

The district court's injunction does not prevent Renaissance from using all decorative hearts. Renaissance is free to sell a bag with a dangling heart that is not likely to be confused with Brighton's. If Renaissance has any doubts about whether use of a particular design would violate the

MEMORANDUM ^{FN**}

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injunction, it may submit it to the district court for preclearance.

The district court thus did not abuse its discretion in enjoining Renaissance's distribution of Item No. 81131. See *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir.1979).

[3] 3. The district court properly concluded that it was likely that the "size, shape and color" of Item No. 81131 was confusingly similar to a purse manufactured by Brighton. *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 808 n. 13 (9th Cir.2003) (legal standard for trade dress claims is whether the "total image" is similar) (internal quotation omitted). It thus did not abuse its discretion in enjoining production of that bag on trade-dress infringement grounds. See *Sports Form, Inc. v. United Press Int'l Inc.*, 686 F.2d 750, 752 (9th Cir.1982).

[4] 4. Renaissance petitioned for bankruptcy after this appeal was briefed and argued. The automatic stay, 11 U.S.C. § 362(a), enjoins parties from proceeding against the debtor. The courts may issue rulings in ongoing litigation involving the debtor in limited circumstances where such rulings are "consistent with the purpose of [section 362(a)]." *O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1110 (9th Cir.2006) (alteration in original, quotation marks removed). This case had already been briefed and fully argued, and the disposition does not upset the status quo or affect the property of the debtor. We issue this memorandum to aid the bankruptcy court in determining the proper disposition of debtor's assets.

****2 AFFIRMED.**

C.A.9 (Cal.),2007.
Brighton Collectibles, Inc. v. Renaissance Group Intern.
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