
Kluwer Copyright Blog

Copyright case: Mourabit v. Klein, USA

Robert B. Barnett (Wolters Kluwer Legal & Regulatory US) · Tuesday, July 14th, 2020

As yet, no federal appeals court has addressed whether a human body part may qualify as a tangible medium of expression for copyright purposes, but this one came close.

In a suit in which a makeup artist's state law claims against a photographer and a makeup manufacturer were dismissed as preempted by the Copyright Act, the decision was affirmed on appeal because (1) makeup artistry falls "comfortably within" the preemption categories listed in §102(a) and (2) the makeup work was "fixed in a tangible medium" because it was captured in a photograph, the U.S. Court of Appeals in New York has ruled in a summary order. Although the lower court held that makeup applied to a human face was a sufficient "tangible medium," the appellate court opted instead to rule that the tangible medium was the photograph taken of the human face with the makeup applied. As a result, the lower court correctly ruled that the Copyright Act preempted the unjust enrichment and unfair competition/misappropriation claims (*Mourabit v. Klein*, June 8, 2020, per curiam).

Case date: 08 June 2020

Case number: No. 19-2142-cv

Court: United States Court of Appeals, Second Circuit

A full summary of this case has been published on [Kluwer IP Law](#).

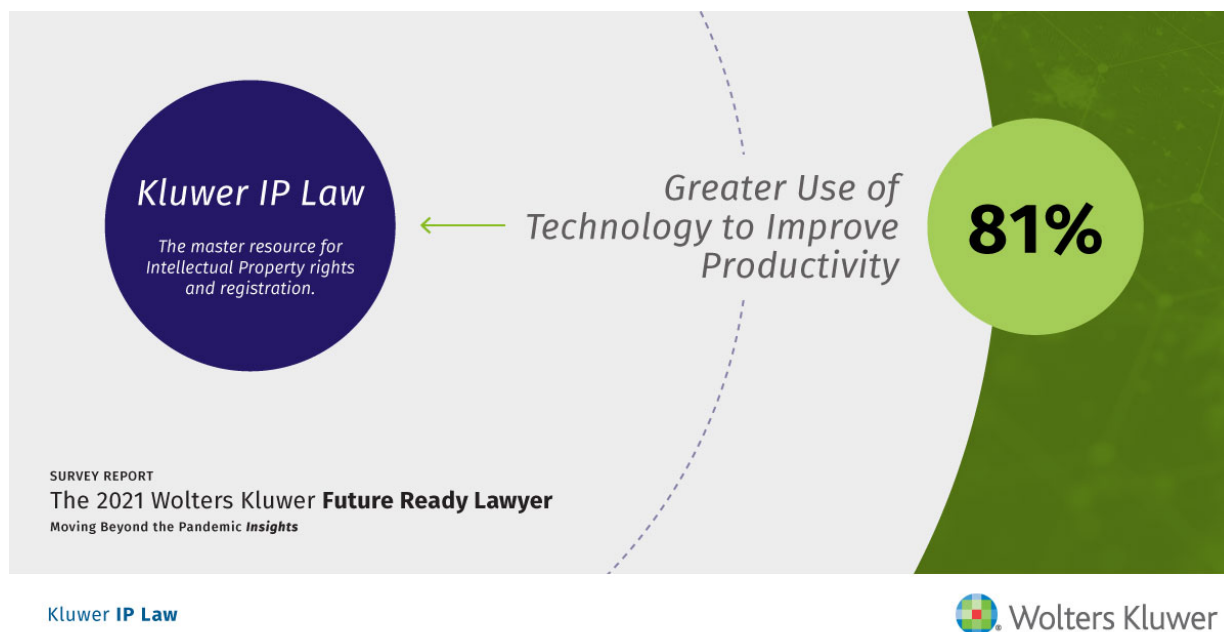
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