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Copyright case: Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, USA

Thomas Long (Wolters Kluwer Legal & Regulatory US) · Friday, August 13th, 2021

Second Circuit reverses district court's fair use declaration granted to Andy Warhol Foundation; artist's works were not "transformative" and could harm the photographer's market for licensing her image.

Screenprints depicting the late pop star Prince, made by the late artist Andy Warhol in 1984, did not make transformative use of photographer Lynn Goldsmith's portrait of the musician, the U.S. Court of Appeals in New York City has held, reversing a district court's decision that the Andy Warhol Foundation for the Visual Arts, Inc., was entitled to a declaration that Warhol's "Prince Series" did not infringe Goldsmith's photo. The Warhol prints—one of which was reproduced in a Vanity Fair magazine article in 2016—were not entitled to a fair use defense, and they were substantially similar to Goldsmith's photo, as a matter of law. The appellate court made particular note of the fact that Warhol's prints did not alter or remove protectable elements of Goldsmith's photo, and that her work was "instantly recognizable" in the Warhol prints. In finding fair use, the district court improperly focused on its subjective interpretation of the works' underlying artistic message rather than an objective assessment of their purpose and character. The result of this incorrect approach led to the district court making faulty conclusions as to the rest of the fair use factors, the appellate court said. Along with reversing the fair use judgment, the appellate court vacated the district court's order dismissing Goldsmith's counterclaim for copyright infringement (*Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, March 26, 2021, Sullivan, R.).

Case date: 26 March 2021

Case number: No. 19-2420-cv.

Court: United States Court of Appeals, Second Circuit

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