

ABSTRACT

Search cost reducing function of photographs for advertising and the limits of copyrightability

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The Korean Copyright Act classifies photographs as a copyrightable subject matter. However, photographs are produced with the aid of a machine and capture facts, which raises the issue of originality of photographs. This article purports to evaluate the Supreme Court decisions on the creativity of photographs for advertising. This article concludes that the Supreme Court admitted the creativity of photographs for advertising purposes without applying its creativity standard to the specific facts in the cases, which expanded the copyrightability of photographs without any thorough analysis. This article pointed out that the copyrightability problem of photographs for advertising arises because the Copyright Act does not intend to protect the 'search cost reduction function of photographs.' Finally this article proposed tort, fair advertising law and unfair competition law as the proper legal tools to secure opportunity for photographers to recover their investment in producing photographs.

Keywords : Photographs, Copyrightability, Advertising, False advertising, False representation, Search cost, Information transfer, Unfair competition, Tort, Goodwill