

Abstract

A study on the Criteria of Copyrightability of Works of Applied Art related to Animal Character Designs
- Focusing on A Critical Analysis of Korean Supreme Court Decision 2012Da76829 Decided December 11, 2014 -

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In relation to the dead copy of 'Fox Head' design(hereinafter 'Fox Head design case'), Korean Supreme Court affirmed the High Court's decision (Supreme Court Decision No. 2012 Da 76829, decided December 11, 2014). The main grounds of the Supreme Court's decision are as follows: Fox Head's Designs are distinguishable from other works created by another originator and meet the requirements for the copyrightable works; and even if the design element is one of components of the mark, if the design element meets the requirement for the work to be protected under the Copyright Law, it would be protected as a copyrightable work.

I think that this Supreme Court decision can mean that:

First, in light of Article 53 of the Korean Trademark Act, this Supreme Court decision has significance in that the Court explicitly declared that a registered mark that infringes upon the earlier effective copyright should be banned from use. In other words, this Supreme Court decisions found clearly that trademarks and the works are not on exclusive and alternative relations each other. I think that the above trial is proper in the light of the purpose of legislation of Article 53 of the Korean Trademark Act.

Second, this Supreme Court decisions apply only legal principles on originality of general artistic works to determining the criteria of copyrightability of works of applied art related to animal character designs. But I don't agree at this trial because the point of this decision is inappropriate with regard

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to the criteria of copyrightability of works of applied art. In this case Fox Head's Designs created in 1976 and 1990 respectively. I think that in view of the definition and classification of applied art, a legal nature of this Fox Head's Designs is an applied art, not fine art. Then, if we compare the 1957 Copyright Act and 1986 Copyright Act and 2000 Copyright Act with regard to the criteria of copyrightability of works of applied art, we must apply the 1957 Copyright Act and 1986 Copyright Act respectively in this case. In principle, an applied art has not been qualified for protection under the 1957 Copyright Act. And the mainstream attitude of the court's ruling have a standard criteria for judgment with regard to the criteria of copyrightability of works of applied art under the 1986 Copyright Act, that is "independent artistic characteristics or value" test. Meanwhile, we have a different standard of judgment with regard to the criteria of copyrightability of works of applied art under the 2000 Copyright Act, that is "separability" test. So, especially considering the creation time of this Fox Head's Designs, there is no room to apply the 2000 Copyright Act in this case.

In short, this article aims to establish the appropriate groundwork for analyzing the criteria of copyrightability of works of applied art, especially animal character designs. In the light of the respective purpose of the law and the revision of effect of legislation under the 1957 Copyright Act and 1986 Copyright Act and 2000 Copyright Act, surrounding works of applied art, we need to be a consistent approach to solve the problem with regard to the criteria of copyrightability of works of applied art.

Keywords

'Fox Head' Design, animal character designs, applied art, pure art, the Criteria of Copyrightability, the test of 'independent artistic characteristics or value' test, the test of 'separability'