

Abstract

**The Study on the Separability Standards of the Design of
a Useful Article under the U.S. Copyright Act**

- Focusing on the U.S. Supreme Court's *Star Athletica v. Varsity Brands* -

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The 1976 Copyright Act provides that a pictorial, graphic, sculptural work “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. Accordingly if the artistic features are either physically or conceptually separable from the utilitarian function of the work, then they are copyrightable. However, a lack of clear guidance from the Supreme Court and Congress in determining whether the artistic and utilitarian aspects of useful articles are conceptually separable, has resulted in a multitude of conflicting and effectively unreliable approaches by courts and scholars in an attempt to establish a standard. Under this circumstances, the U.S. Supreme Court set out a standard that aims to harmonize a multitude of tests across the country and more significantly for the first time in history, addressed copyright protection in the context of apparel in the case *Star Athletica, LLC v. Varsity Brands, Inc.*. This article addresses a two-part “separability” test set forth by the Supreme Court to determine whether artistic elements in a functional article can be copyright protected. Part II discusses the history of copyright law in the context of useful articles, the development of the separability standard, and the relevant separability tests used by courts and scholars. Part III analyzes factual and procedural background of the case *Star Athletica, LLC v. Varsity Brands, Inc.* and the Supreme Court’s holding. Part IV analyzes the Supreme Court’s holding and its implications for Korean Copyright Act.

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Keywords

Applied Art, Useful Article, Separability, Physical Separability, Conceptual Separability, Cheerleading Uniform, U.S. Copyright Act, U.S. Supreme Court

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