

Trademark case: The Ohio State University v. Redbubble Inc., USA

Kluwer Trademark Blog

March 4, 2021

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Please refer to this post as: Thomas Long, 'Trademark case: The Ohio State University v. Redbubble Inc., USA', Kluwer Trademark Blog, March 4 2021, <http://trademarkblog.kluweriplaw.com/2021/03/04/trademark-case-the-ohio-state-university-v-redbubble-inc-usa/>

Retailer allegedly created knockoff goods and acted as more than a hands-off intermediary.

Australia-based online retailer Redbubble, Inc., could be directly liable for third-party sellers' infringement of trademarks owned by the Ohio State University, the U.S. Court of Appeals in Cincinnati has held. Unlike online retailers or auction houses that typically had been found not to be liable for trademark-infringing goods sold through their platforms, Redbubble's marketplace allegedly involved creating products and garments that would not have existed but for Redbubble's business. The appellate court held that a district court applied an overly narrow reading of the Lanham Act in granting summary judgment to the retailer. The case was remanded for further development of the factual record as to Redbubble's control over the manufacturing and delivery of the infringing goods. Redbubble also could be liable for violations of Ohio's right-to-publicity statute by selling products bearing the image of the university's former football coach, Urban Meyer. At minimum, the appellate court said, Redbubble could have "used" the coach's persona for commercial purposes by advertising the products bearing his image (*The Ohio State University v. Redbubble, Inc.*, February 24, 2021, Nalbandian, J.).

Case date: 24 February 2021

Case number: No. 19-3388

Court: United States Court of Appeals, Sixth Circuit

A full summary of this case has been published on Kluwer IP Law.