Impact expected for High Court copyright case

By Kimberly Atkins
Staff writer

WASHINGTON — During oral arguments in a copyright case that could have major repercussions, the justices of the U.S. Supreme Court focused on the potential consequences of allowing copyright holders of foreign-made goods to control the products even after they are in the hands of consumers.

And the effect could be as stormy as Hurricane Sandy, which raged outside the courthouse during the arguments.

At issue in Kirtsaeng v. John Wiley & Sons Inc. is whether purchasers of foreign-made copies of books, CDs, electronic programs or other copyrighted works can be held liable for copyright infringement under the 1976 Copyright Act.

The case involves Supap Kirtsaeng, a student from Thailand who came to the United States to attend college and graduate school. To help pay for school, Kirtsaeng asked friends and family members to ship him textbooks from Thailand so he could sell them for a profit on eBay. Some of those textbooks were printed in Asia by John Wiley and Sons.

The company sued Kirtsaeng in federal court, arguing that the sale of the textbooks without its permission constituted copyright infringement under §102(a)(1) of the Copyright Act. Kirtsaeng defended the suit by arguing that §109(a) of the Act also known as the “first sale doctrine” gives purchasers of copies of works “lawfully made under this title” the right to sell the work.

Fosamax litigation ready for next step

By Correy E. Stephenson
Staff writer

Six years after the first Fosamax lawsuit was filed, litigation over the osteoporosis drug is about to start a new chapter.

The suits against Merck, the drug’s manufacturer, fall into two categories: plaintiffs allege that the plaintiffs’ trial record will improve.

“It makes a big difference to have a local plaintiff and a local doctor rather than everybody flying up to New York,” he said. “That’s a handicap for the
Undocumented workers program issue for employers

By Sylvia Haish
Staff writer

A new program that allows certain undocumented immigrants to receive temporary work authorization isn't on most employers' radar screens even though they can get into trouble if their employees file under the program.

The program, known as DACA - Deferred Action for Childhood Arrivals - took effect on June 15.

But most of the guidelines from the Department of Homeland Security have focused on the applicants themselves, not on their employers.

Tamar Jacoby, president of ImmigrationWorks USA, an employer network in Washington that advocates immigration reform, said that the program is a great opportunity for employers, but it also comes with some risks. Employers must balance legitimate fears about the program's impact on their workforce with the benefits it offers.

Small employers that do not have a sophisticated I-9 process may be particularly vulnerable to some of the risks.

The latest numbers from the U.S. Citizenship and Immigration Services (USCIS) show that nearly 180,000 undocumented immigrants have applied for DACA. According to the Migration Policy Institute, the largest number of applicants was in California, followed by New York and Texas.

DACA: Employers worry about being targeted.

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A molecule of Alendronate, also known as Alendronic Acid and Fosamax.

The suits were consolidated into an MDL in California's Southern District Court for the Southern District of New York.

The plaintiffs allege that they suffered injuries including inflammation or sores on their jawbone, others had teeth fall out.

To help determine a value for the cases in the hopes of a potential settlement, U.S. District Court Judge John Keenan scheduled bellwether trials.

The first resulted in a mistrial after deliberations grew so heated that one juror complained she had been threatened by another juror who threw a chair at her.

The next two cases resulted in defense verdicts, as did a state trial.

The sole plaintiff's victory occurred.


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Copyright: Ruling could bar sale of foreign-made products.
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Trial Strategy
How trial lawyers can use the iPad in new ways

Trial lawyers keep finding new ways, some expected and others surprising, to put the iPad to work in all aspects of litigation.

Marketing
Improving your firm's social media presence

Given the current explosion of social media use, it's more important than ever for lawyers and their firms to be part of the conversation.

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Circuit Breaker
Duty-to-warn case splits state appellate courts

Mass tort litigators are abuzz over a recent state court ruling that some say expands manufacturers' duty to warn about hazards that are not caused by their products.

In The News
Does 'Daubert' apply to class certification?

If the justices of the U.S. Supreme Court wanted to decide whether the 'Daubert' standard for admitting expert testimony at trial also applies to class action certification, they picked a factually and procedurally messy case as a vehicle for doing so.

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Undocumented workers program issue for employers

DACA - Continued from page 1

Those who have filed so far represent only 10 percent of eligible applicants.

The type of employers that can expect to see workers file for DACA is diverse and may include skilled, college-educated professionals as well as low-skilled workers.

"It's really all over the board," said Greg Siskind, an immigration attorney at Siskind Susser in Memphis, Tenn.

Some states, including California and Texas, have passed laws allowing undocumented immigrants to qualify for in-state tuition at state colleges and universities.

That means a lot of people are going to college," Siskind said. "It's a message I'm trying to get across - that a lot of people are applying for DACA and not 10 percent of eligible applicants.

The ABCs of DACA

A DACA applicant must meet certain requirements.

If an individual admits his or she has no right to work in the future, an employer must terminate the employee.

If an individual admits his or she has no right to work in the future, an employer may terminate the employee.

Don't be too noisy

One of the major risks for employers is knowing too much.

For example, an employee may ask an employer for documentation to prove employment history and disclose that he or she is filing for DACA.

At that point, an employer is required to terminate the employee.

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Court considers retroactivity of deportation decision

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standards, such as those established by the American Bar Association, to govern attorneys’ duties.

“What was unique in Padilla is that the Court had to address something that had never been before, whether the criminal defense lawyer had to give advice about a consequence that the sentencing court had no control over,” Dreeben said.

The justices peppered Dreeben with questions on this point.

“As I recall, one of the principal sources the Court cited in Padilla was common sense,” Justice Anthony M. Kennedy said.

“Does common sense change?”

“Common sense may evolve,” Dreeben said. “We might all share an intuition that good lawyers should advise their clients about the panoply of consequences that they will experience by pleading guilty, [but] the reality is that until Padilla, the Court had never veered from [that] track to impose a specific duty to warn of immigration consequences.

The rule was so new, Dreeben argued, that it spurred a proposed change in criminal procedure.

“Immediately after Padilla came down ... the Criminal Rules Committee began considering an amendment to Rule 11, which is now pending before the Judicial Conference, that would require judges to advise defendants about the possibility of deportation consequences,” Dreeben said.

A decision is expected later this term.

Questions or comments can be directed to the writer at: kimberly.atkins@lawyersusaonline.com

Mesothelioma duty-to-warn case causes split

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ment parts, but which were not manufactured or distributed by the defendants.

‘Unrealistic’ and ‘unfortunate’ consequences

Gorenberg said the recent Washington case expands the duty to warn in a way that is unrealistic.

“The fact is that the plaintiff, who unfortunately died in this case, wasn’t someone who used the respirators,” Gorenberg said.

“The hazards are really not related to the product. Indeed, what this opinion can do, and this is wildly unrealistic as well as unfortunate, is impose upon manufacturers a duty to anticipate, become an expert on, and warn about every risk from every other product that may be used in conjunction with its own – especially when its own product is made to last a long time.”

The solution – placing warnings on products that cover every possible situation that may lead to exposure associated with the product – is burdensome, Gorenberg said.

“Excessive or difficult-to-understand warnings become useless,” he said.

But Bauta said courts in the past have rejected the so-called "bare metal defense" that was used in the Naval ship case. That defense argues that manufacturers of items like pipes that are commonly used in conjunction with asbestos-containing materials, such as insulators, cannot be liable for asbestos exposure from the other product. The more recent cases holding in favor of defendants are really what caused the split, not Macias, he said.

“Historically people have been suing on behalf of the sailors [who worked on] valves and pumps and were exposed to asbestos,” Bauta said. “Recent rulings have gone the other way.”

Nevertheless the disparate outcomes of the recent cases make litigating similar matters, which tend to involve classes that span many jurisdictions, more challenging.

“That’s the nature of mass tort litigation,” Bauta said. “What happens in Washington State affects us here in Florida; what happens in Florida affects those in New York; what happens there affects someone in California. The cases get shopped around, arguments are made and they come out different ways.”

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