

Plaintiff's Motion for Summary Judgment (Doc. # 259) filed on September 15, 2009. The parties have agreed that this court is a way station on the route to appellate court(s). There are a plethora of issues for courts to disentangle.

We start with the purported trademark interest of the plaintiff which it seeks to protect. That interest is an alleged unregistered trademark based on a theory of trade dress which is predominantly a color. The existence of and entitlement to protection of this alleged trademark are the pivotal and initially critical issues in the case. It is the court's intention to first decide portions of motions related to claim(s) and (defense(s) pertinent to these issues and certify those rulings pursuant to Fed. Rule of Civ. Proc. 54(b). It would make little sense for the court to try

acknowledges that Moore's work is of superior quality. Moore's first successful such painting was in 1979. It was not licensed by the plaintiff, but has benefitted both sides and led to other successful sales of other paintings beneficial to both sides. The relationship between the parties remained pleasant and amicable throughout the early years.

The first licensing agreements between the parties came in 1991,<sup>3</sup> and this licensing

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<sup>1</sup>It is highly unlikely that this case can ever be settled without these pivotal issues being finally decided.

<sup>2</sup>The court has been inundated (some self-imposed) with numbers of briefs, evidentiary submissions, exhibits, etc. It will not attempt to recount every detail. If there is an appeal, the parties can expand on what the court states as pertinent. The file should indicate why this court cannot possibly fully discuss all the detail related to this case.

<sup>3</sup>The plaintiff began licensing in 1981, but did not start licensing defendants until 1991.

Indicia' means the names, symbols, designs, and colors of the Member Universities ... .”

Various license agreements include as part of exhibits the following: “The University of Alabama is the owner of all rights, title and interest in and to the following Indicia which includes trademarks service marks, trade names, designs, logos, seals and symbols.” Beneath this language on some, if not all, exhibits there are *shown* pictured images of various logos, seals, symbols, etc. Above these images is also a listing of “Verbiages” and “Colors: Crimson PMS 201 Gray PMS 429.” This court is of the opinion that the reasonable inference is that the

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<sup>4</sup>See Exhibit B to an agreement dated October 17, 1991, Exhibit A to an agreement dated January 27, 1993, Exhibit A to an agreement dated November 1993, Exhibit A to a license dated June 15, 1994, Exhibit A to a license dated Dec-Jan. 1994-1995, etc.

“No license is granted hereunder for the use of Indicia for any purpose other than *upon or in connection with the Prints* named and specified in Appendix C.” (Emphasis added.)<sup>6</sup>

.....

“NLA agrees to assist in the protection of the several and joint rights of the University and CM in and to the Indicia. NLA acknowledges that any rights, including copyright or other proprietary rights that it might have in artwork or designs *created by it*, pursuant to this Agreement, extend only to those elements of the artwork or designs

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<sup>5</sup>If the parties intended that agreements already applied to the quality paintings and prints, a question might be reasonably asked as to why the dispute arose in 1999 or 2000.

<sup>6</sup>Distinguishing “Prints” and “Indicia.”

Licensed Articles means *the products* listed in Appendix C and bearing licensed Indicia.” (Emphasis added.)

.....

“Licensee shall not provide any *method of application* of licensed Indicia to any party unless CLC authorizes licensee to provide said application under the terms of an authorized manufacturer’s agreement.”<sup>10</sup> (Emphasis added.)

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<sup>7</sup>It is difficult to imagine how the created “elements of the artwork or designs” could not be a part of the “artwork or designs.” It is apparent that the pictured and “*shown*” symbols in the various agreement exhibits are the intended “Indicia.” This is notwithstanding the various references to the “colors” of these “Indicia.”

<sup>8</sup>Does this realistically apply to uniforms?

<sup>9</sup>Again, a distinction between the “Prints” and the “Indicia.”

<sup>10</sup>“Application” of a painting of uniforms?

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