

No.

In the Supreme Court of the United States

ULTRAFLO CORPORATION,

Petitioner,

v.

PELICAN TANK PARTS, INCORPORATED;
THOMAS JOSEPH MUELLER;
PELICAN WORLDWIDE, INCORPORATED,

Respondents.

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

TRAVIS SCOTT CRABTREE
JIM MOSELEY
*Gray Reed &
McGraw, LLP
1300 Post Oak Blvd.,
Suite 2000
Houston, TX 77056
(713) 986-7000*

PAUL W. HUGHES
Counsel of Record
MICHAEL B. KIMBERLY
DENNIS R. MAHONEY
*Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
phughes@mayerbrown.com*

Counsel for Petitioner

QUESTION PRESENTED

Section 102(b) of the Copyright Act renders “ideas” outside the subject matter of copyright; it provides that “[i]n no case does copyright protection for an original work of authorship extend to any idea.” 17 U.S.C. § 102(b).

Section 301(a) provides that the Copyright Act “exclusively” governs all rights relating to “works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103.” 17 U.S.C. § 301(a).

The circuits are expressly divided as to whether Section 301(a) preempts state-law claims relating to ideas expressed in tangible media. Here, the Fifth Circuit held that, despite the fact that an idea is not within the subject matter of copyright, Section 301(a) nonetheless preempts petitioner’s Texas-law claim for unfair competition by means of misappropriation. The question presented is:

Whether Section 301(a) preempts state-law claims relating to ideas expressed in tangible media.

TABLE OF CONTENTS

Question Presented	i
Table of Authorities.....	iii
Opinions Below.....	1
Jurisdiction.....	1
Statutory Provisions Involved	1
Statement	2
A. Legal Background.....	3
B. Factual Background.	5
C. Proceedings Below.	5
Reasons for Granting the Petition.....	7
A. The Circuits Are Expressly Divided.	7
B. The Question Presented Is Important.	10
C. The Decision Below Is Wrong.	13
Conclusion	18
Appendix A – Fifth Circuit decision (January 11, 2017).....	1a
Appendix B – District court decision (January 22, 2015).....	14a
Appendix C – District court decision (September 7, 2012).....	25a
Appendix D – District court decision (October 18, 2011).....	35a

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>A Slice of Pie Prods., LLC v. Wayans Bros. Entm't</i> , 392 F. Supp. 2d 297 (D. Conn. 2005).....	11
<i>Act II Jewelry, LLC v. Wooten</i> , 2016 WL 3671451 (N.D. Ill. 2016).....	11
<i>Altria Grp., Inc. v. Good</i> , 555 U.S. 70 (2008).....	17
<i>Baker v. Selden</i> , 101 U.S. 99 (1879).....	16
<i>Bates v. Dow Agrosciences LLC</i> , 544 U.S. 431 (2005).....	17
<i>Beardmore v. Jacobsen</i> , 131 F. Supp. 3d 656 (S.D. Tex. 2015).....	11
<i>BellSouth Advert. & Publ'g Corp. v. Donnelley Info. Publ'g, Inc.</i> , 999 F.2d 1436 (11th Cir. 1993).....	15
<i>United States ex rel. Berge v. Board of Trustees of the Univ. of Alabama</i> , 104 F.3d 1453 (4th Cir. 1997).....	8, 14
<i>Blue Nile, Inc. v. Ice.com, Inc.</i> , 478 F. Supp. 2d 1240 (W.D. Wash. 2007).....	10, 11
<i>Bond v. United States</i> , 134 S. Ct. 2077 (2014).....	13
<i>Boyle v. Stephens Inc.</i> , 1998 WL 690816 (S.D.N.Y. 1998).....	11
<i>BP Auto., L.P. v. RML Waxahachie Dodge, L.L.C.</i> , 448 S.W.3d 562 (Tex. App. 2014).....	5, 12
<i>Coll. of Charleston Found. v. Ham</i> , 585 F. Supp. 2d 737 (D.S.C. 2008).....	11

TABLE OF AUTHORITIES—continued

	Page(s)
<i>Counts v. Meriwether</i> , 2015 WL 12656945 (C.D. Cal. 2015)	8
<i>Doody v. Penguin Grp. (USA) Inc.</i> , 673 F. Supp. 2d 1144 (D. Haw. 2009).....	11
<i>Dresser-Rand Co. v. Virtual Automation Inc.</i> , 361 F.3d 831 (5th Cir. 2004).....	12
<i>Dunlap v. G&L Holding Grp., Inc.</i> , 381 F.3d 1285 (11th Cir. 2004).....	7, 8, 13, 17
<i>Endemol Entm't B.V. v.</i> <i>Twentieth Television Inc.</i> , 1998 WL 785300 (C.D. Cal. 1998)	12
<i>Entity Prod. v. Vargo</i> , 2007 WL 3129861 (N.D. Ohio 2007).....	11
<i>Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.</i> , 499 U.S. 340 (1991).....	15
<i>First Am. Bankcard, Inc. v.</i> <i>Smart Bus. Tech., Inc.</i> , 2016 WL 5869787 (E.D. La. 2016).....	11
<i>Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.</i> , 554 U.S. 33 (2008).....	15
<i>Forest Park Pictures v. Universal Television</i> <i>Network, Inc.</i> , 683 F.3d 424 (2d Cir. 2012)	4, 9
<i>Found. for Lost Boys v. Alcon Entm't, LLC</i> , 2016 WL 4394486 (N.D. Ga. 2016).....	7, 12
<i>Gary Friedrich Enters., LLC v.</i> <i>Marvel Enters., Inc.</i> , 713 F. Supp. 2d 215 (S.D.N.Y. 2010).....	11

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.