

Practice Update

The Low Bar for Copyright Protection Shown by Flooring

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In *Home Legend, LLC v. Mannington Mills, Inc.*, No. 14-13440 (11th Cir. Apr. 29, 2015), the Eleventh Circuit reversed a grant of summary judgment and held that a two dimensional laminate flooring design was eligible for copyright protection because it reflected sufficient creativity, was severable from the flooring to which it was applied, and was directed at a design and not an idea or process. Mannington and Home Legend both sell laminate wood flooring. Laminate flooring consists of three functional layers. Laminate flooring manufacturers add a decorative layer called “décor paper,” which features a piece of two dimensional artwork.

In 2008, three Mannington employees created a décor paper design called “Glazed Maple,” which is a large digital photograph depicting fifteen stained and time-worn maple planks. The design was created by taking between 50 and 75 raw white maple planks and adding surface imperfections to make the planks look like floorboards that had been walked across for many years. Mannington then applied layers of stains to the planks and accented some of the naturally occurring marks and deemphasized others. Next, Mannington selected roughly 30 of the planks to photograph with a high resolution digital scanner and retouched the images. Finally, Mannington printed the resulting images, selected 15

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of them, and made a composite of those 15 plank images into a single digital image – the Glazed Maple design.

The United States Register of Copyrights registered Mannington’s copyright in its Glazed Maple design in November 2010. The copyright covers the two-dimensional Glazed Maple design.

In September 2012, Mannington learned that Home Legend was selling laminate flooring products with designs that it alleges were “virtually identical in every respect” to the Glazed Maple design. Mannington requested that Home Legend stop selling the allegedly infringing products. In October 2012, Home Legend filed a lawsuit seeking a declaratory judgment that Mannington’s copyright was invalid. Mannington counterclaimed for copyright infringement and moved for a preliminary injunction, which was denied.

At the close of discovery, Home Legend moved for summary judgment that Mannington’s Glazed Maple copyright did not cover copyright-eligible subject matter. The Northern District of Georgia granted summary judgment to Home Legend on three alternative grounds: (1) that the Glazed Maple design lacked the requisite originality to be an original work of authorship as required by 17 U.S.C. § 102(a); (2) the Glazed Maple design was not separable from the functional element of the flooring, such that the Glazed Maple design was a functional component of the flooring itself and not eligible for copyright; and (3) that Mannington’s copyright was directed to an “idea or process,” namely the process of recreating the appearance of rustic and aged maple planks.

On appeal, the Eleventh Circuit reversed and remanded. The Court found that Mannington imagined what a deeply stained maple floor might look like after years of wear and then used stain, paint, hand tools, and digital photo retouching to express their concept first on wood and then as digital images. Although the idea of a distressed

maple floor would not be subject to copyright protection, Mannington's testimony showed that the idea's expression in the Glazed Maple design was the result of creativity, not a slavish copy of nature. "The decisions Mannington made in the location and character of the marks it added to the boards render its contributions creative enough to hurdle the low bar of copyrightable originality."

The Court also held that even if copyright did not protect the altered individual plank images, the Glazed Maple design was sufficiently original to be copyrightable because it was a compilation expressing original selection and creative coordination of elements. Under 17 U.S.C. § 103, a compilation even of uncopyrightable elements is eligible for copyright protection as long as the compiler independently selects or arranges the elements and displays some minimum level of creativity in doing so. Instead of randomly choosing planks or indiscriminately using all of the 50 to 75 planks, Mannington's designers used creativity to choose 30 planks that best captured their conception of an aged and rustic maple floor. After those planks were scanned and retouched, the designers further exercised artistic judgment in selecting the 15 of those 30 images that they believed looked best together.

Next, the Eleventh Circuit reversed the district court's determination that the Glazed Maple design was not copyrightable because it was inseparable from the flooring to which Mannington applied the design. The evidence that Home Legend sold flooring decorated with a virtually identical copy of the Glazed Maple design was evidence that the design had value; otherwise Home Legend would not have copied it. Moreover, the flooring and the design were physically severable: the evidence showed that Mannington sells otherwise identical flooring that uses décor paper other than the Glazed Maple design. The Glazed Maple design was also conceptually severable from use as a decoration on Mannington's flooring. The design could easily be

applied to wallpaper or as the veneer of a picture frame.

Finally, the Circuit Court reversed the district court's finding that the Glazed Maple design was more directed towards a process or idea, which is not eligible for copyright protection. Mannington did not attempt to copyright the process through which it produced the design but only sought protection for the specific two-dimensional digital artwork design.

In sum, the Court held that Mannington owned a valid copyright, even if the copyright protection afforded was not very strong. The Glazed Maple copyright would only extend to identical and near-identical copies of the design for example, copies made by photographing the design from Mannington's flooring and making trivial color alterations. The *Mannington* opinion demonstrates that creativity in fashioning a design, even using an idea or process to do so, is proper subject for a copyright.

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