

Client Alert

U.S. Supreme Court Extends “First Sale” Doctrine to Products Made Overseas

March 20, 2013 – In a blow to companies seeking to use the copyright laws as a bulwark against the unauthorized importation of their goods produced overseas, the U.S. Supreme Court yesterday held that the “first sale” doctrine applies to goods made internationally as well as domestically. The decision, in the case of *Kirtsaeng v. John Wiley & Sons Inc.*, ruled against a book publisher that had pursued an individual who purchased the publisher’s text books overseas and re-sold them within the US.

Morrison Cohen partner Joshua D. Saviano, quoted in a Law360 article discussing the decision, said: “The Supreme Court closed a loophole many U.S.-based consumer product companies were hoping would combat the gray goods marketplace. By interpreting the phrase ‘lawfully made under this title’ in a non-geographically limiting way, the court held that the first-sale doctrine does apply to goods that are manufactured outside of the U.S., essentially confirming the current practice of allowing for the purchase of goods overseas at cheaper prices and then undercutting the U.S. retail market. While a huge win for U.S. consumers, who can benefit from the discounted pricing, one unintended consequence may be to reduce the incentive to move production offshore.”

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