

Blanch v. Koons

FACTS: Commissioned by defendants: Deutsche Bank and Solomon R. Guggenheim Foundation, Jeff Koons: visual artist created a collage painting (images taken from his own work or advertisements) titled “Niagara” that depicted: four pairs of women’s feet and lower legs dangling over different sweet foods, with a grassy field and Niagara Falls in the background. At a New York exhibition, plaintiff: Andrea Blanch: fashion/portrait photographer noted one of the pairs of feet/legs came from a photograph she took titled “Silk Sandals by Gucci” that appeared in the August 2000 *Allure* magazine. It depicted a woman’s lower legs and feet, adorned with Gucci sandals, resting on a man’s lap in an airplane cabin. Blanch sued Koons, Deutsche Bank and Solomon R. Guggenheim Foundation for copyright infringement based on the Copyright Act of 1976.

PROCEDURE: The New York district court found in favor for the defendants as their use of “Silk Sandals by Gucci” constituted as “Fair Use.” The plaintiff appealed.

ISSUE: Does the use of a copyrighted image by an artist for a collage painting deserve to be protected under “Fair Use” copyright law (under these circumstances)?

CONCLUSION: Yes. The artist can be protected under “Fair Use” copyright law as long as these four non-exclusive factors are considered: 1) Purpose & Character of Use, 2) Nature of the Copyrighted Work, 3) Amount & Substantiality of Portion Used and 4) Market Effects.

RATIONALE: 1) Koons’ work is *transformative* of Blanch’s work because its purpose was different, commenting on the image’s social and aesthetic meaning instead of noting erotic sexuality as in the original. Multiple elements changed including: removal of the background, changes in colors, the medium used, the size of the objects and objects’ details. 2) Blanch’s work was already published (compared to unpublished) and creative (compared to factual). If work was unpublished, it would favor Blanch because it could demonstrate potential revenue lost. 3) The quantity and value of work used was determined reasonable because Blanch’s expression was in the background and model’s feet placement. Koons removed both elements. 4) “Niagara” was found to not take over the market value of the original work or its derivatives (licensing etc.) because Blanch never licensed or published it post *Allure* or for use in visual/graphic art. Koons’ use did not change the value of the work, did not interfere with future plans for the work or harm Blanch’s career in the marketplace.