

Winston & Strawn Successfully Represents Office Depot in Copyright Infringement Dismissal at Ninth Circuit

DECEMBER 27, 2019

A Winston & Strawn team secured a win for Office Depot at the Ninth Circuit, which affirmed the dismissal of a copyright infringement lawsuit brought by Great Minds, the creator of educational materials used by school districts nationwide pursuant to a Creative Commons Public License. The appellate court agreed with Office Depot's position that school licensees could properly outsource the reproduction of Great Minds' materials to Office Depot without converting the commercial copier into an independent licensee subject to the license's "non-commercial" restriction.

Great Minds filed suit in October 2017, alleging that Office Depot's reproduction of educational materials on behalf of schools infringed its copyrights because such commercial copying exceeded the scope of the Creative Commons public license granted to schools for "educational" use of the materials. Winston secured dismissal of the suit on the pleadings and without leave to amend. Today the Ninth Circuit affirmed that dismissal, holding that "[t]he License extends to all employees of the schools and school districts and shelters Office Depot's commercial copying of Eureka Math on their behalf."

The appellate court also held that Great Minds' urged interpretation of the public license to distinguish between, for example, teachers copying the educational materials at an Office Depot store and teachers handing the materials to an Office Depot employee to copy them would lead to "absurd results."

The Winston team included Partners Jennifer Golinveaux (who argued the Ninth Circuit appeal) and Diana Hughes Leiden, Of Counsel Thomas Kearney, and Associate Alyse Ritvo. Partner Jeff Wilkerson provided valuable assistance with the appellate briefing.

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Alyse D. Ritvo