

# ADLER POLLOCK & SHEEHAN P.C.

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### COPYRIGHT LAW

The United States Court of Appeals for the Tenth Circuit recently issued a decision in *Blehm v. Jacobs*, No. 11-1479, that provides a well-reasoned overview of current copyright law. In *Blehm*, the plaintiff artist sued the defendant Life is Good Company for copyright infringement, alleging that the defendants' stick figure drawings infringed on the plaintiff's copyright for his own stick figure drawings. The similarity between the designs is readily apparent, yet the Tenth Circuit determined, as a matter of law, that the two were not sufficiently similar to constitute copyright infringement:



(Plaintiff)



(Defendants)

To prove copyright infringement, a plaintiff must show that the defendant's work is substantially similar to the plaintiff's protected work. At first glance, the defendants' stick figure drawings appear very similar to the plaintiff's protected stick figure drawings. For instance, both the plaintiff's and the defendants' drawings portray stick figures with disproportionately large, white, half-moon smiles. Moreover, both the plaintiff and the defendants portray their stick figures in similar poses, engaging in similar activities. In the above drawings, for example, both stick figures are posing with one arm down and one arm raised in a peace sign, and both stick figures have feet turned outward, facing in opposite directions.

Nevertheless, despite the striking similarities between the plaintiff's and the defendants' stick figure drawings, the court held that the defendants' stick figure drawings do not infringe on the plaintiff's copyrighted stick figure drawings. The court began with the bedrock principle that copyright law only protects an author's original expression; copyright law does not protect the ideas embodied in an author's expression. Thus, the plaintiff has no copyright over the idea of a stick figure catching a Frisbee or making a peace sign, nor does the plaintiff have a copyright over the poses associated with playing Frisbee or making a peace sign. Likewise, the plaintiff does not have a copyright over the anatomical features of a person, such as hands, feet, or a smile.

Nevertheless, the plaintiff does have a copyright over the particular stylistic choices made in drawing his stick figures, for instance, the stick figure's black face containing only a white, disproportionately large half-moon smile. However, the court's careful review of the protectable elements of the different drawings found that the defendants' stick figures had not copied the plaintiff's style. Although the plaintiff's and the defendants' stick figures contain disproportionately large, white half-moon smiles, the defendants' smile has a sharper angle than the plaintiff's smile. Likewise, the defendants' smile is portrayed as a black outline on a white head with sunglasses. Contrarily, the plaintiff's smile is located on a black face containing no other facial features (*i.e.*, the plaintiff's face does not have any eyes). In addition, the defendants' stick figure has a disproportionately large head in comparison with its body, while the plaintiff's stick figure has a head that is relatively proportional to its body. The defendants' stick figure has four stubby fingers, whereas the plaintiff's stick figure has three longer fingers. Although both the plaintiff's and defendants' stick figures show feet facing outward, that pose is unprotected under copyright law and the protectable elements, such as the size and shape of the feet, are different in the two sets of drawings.

Overall, the *Blehm* case demonstrates the principle of copyright law that mere ideas contained in a copyrighted work are not protected. Rather, only an author's particular expression of such ideas is protectable and protected and where the similarities between two works lie solely in unprotected features, summary judgment is appropriate in favor of the accused infringer.

For further information regarding the *Blehm* decision or copyright law, please contact Jeffrey Techentin at (401) 274-7200 or [jtechentin@apslaw.com](mailto:jtechentin@apslaw.com).