

K.P. VS. LASTING IMPRESSION, AND
MCN INTERNATIONAL, INC.

NO. 03-409; 124 S.C.T. 981

Oral Argument: 10 AM, October 5, 2004





QUESTION BEFORE THE U.S. SUPREME COURT

Does the classic fair use defense require the party asserting the defense to demonstrate an absence of likelihood of confusion, as is the rule in the 9th Circuit, or is Fair Use an absolute defense, irrespective of whether or not confusion may result, as is the rule in other Circuits?

RESPONDENTS'
REGISTERED
TRADEMARK



FACTUAL BACKGROUND

PERMANENT COSMETIC INDUSTRY

Lasting and KP sell liquid pigments that are injected into a person's skin. The pigment alters the hue of the skin.

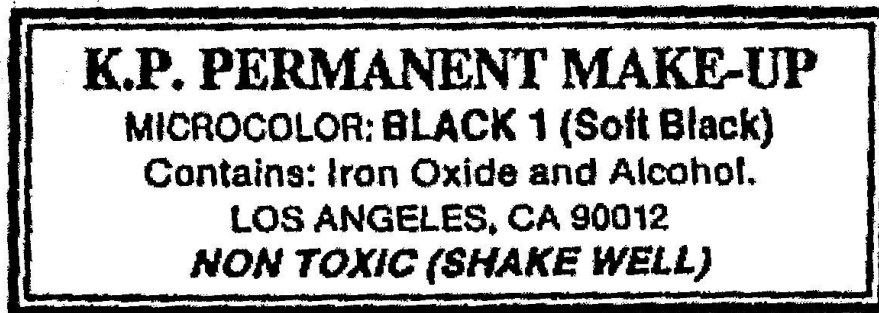
M MICRO-COLORS® Pigment



2. KP'S PIGMENT BOTTLE LABELS

(BUT NO ACTUAL BOTTLE PRODUCED BY PK SHOWING THAT LABEL AFFIXED. ALLEGED STARTED USING IN 1990)

KP'S DIRECT EVIDENCE OF USING THE PHRASE IN 1990. KP DID NOT PRODUCE AN ACTUAL BOTTLE WITH THE LABEL AFFIXED



KP'S BOTTLE INDEPENDENTLY GATHERED BY LASTING





3. KP'S TRIFOLD BROCHURE AND ITS WEB SITE (USE DATE:1999 AND THEREAFTER)

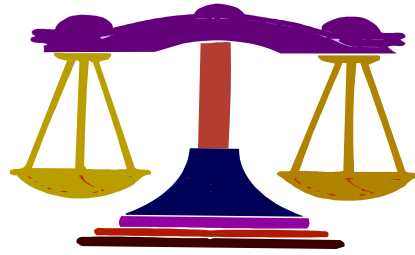


(PRESENTER'S SIMULATION)

IS IT FAIR FOR KP TO USE THE BELOW
RIGHT SIDE BOTTLE?

M MICRO-COLORS® Pigment





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