

# 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 9<sup>th</sup> 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.

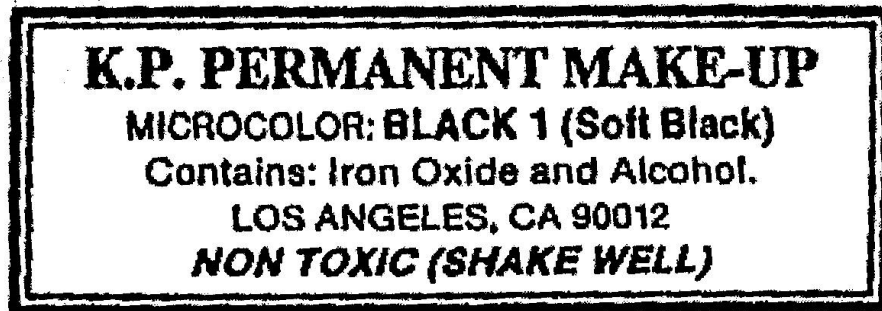
### *M* MICRO-COLORS® Pigment



## 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)

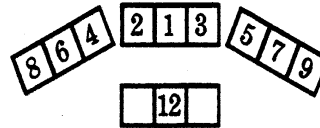
IS IT FAIR FOR KP TO USE THE BELOW  
RIGHT SIDE BOTTLE?

*M* MICRO-COLORS® Pigment



THE SUPREME COURT OF THE UNITED STATES

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1. Chief Justice Rehnquist
2. Justice Stevens
3. Justice O'Connor
4. Justice Scalia
5. Justice Kennedy
6. Justice Souter
7. Justice Thomas
8. Justice Ginsburg
9. Justice Breyer
10. Clerk of the Court
11. Marshal of the Court
12. Counsel

Silence is Requested

MARS 0023DTP-10-00

October Term 2004

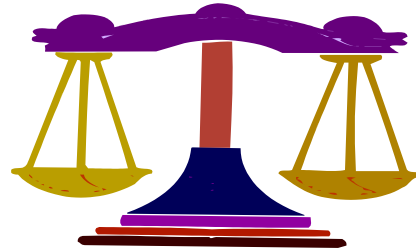
Issued to: Charles C. H. Wu

Counsel in No. 03-409 Date 10/15/04

1. Display this card to the attendant seated at the entrance to the Bar Section.
2. Remain seated at the reserved table behind Counsel's table *throughout* the argument of the case immediately preceding your case.
3. When your turn comes to argue, proceed immediately to the rostrum without waiting to be called. **Do not begin argument until you have been recognized by the Chief Justice**, then open with "Mr. Chief Justice, and may it please the Court —." Do not introduce yourself or co-counsel to the Court. Address a member of the Court as "Chief Justice" or "Justice"—*not* "judge."
4. Keep account of your remaining time during argument. *Do not* make inquiry of the Chief Justice.
5. If you desire lunch, you will be escorted from the Clerk's desk at 12:00 o'clock. (Only card-holding counsel are authorized this courtesy.)
6. This card entitles you to use the Supreme Court Library on this date.

CLER0017-7-04





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