

Press Coverage | July 24, 2025

## Will 9th Circ. Take ‘Rare’ Step Of Nixing Kat Von D’s IP Win?

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Michael Hobbs, a partner in Troutman Pepper Locke’s Intellectual Property Practice Group, was quoted in the July 24, 2025 *Law360* article, [“Will 9th Circ. Take ‘Rare’ Step Of Nixing Kat Von D’s IP Win?”](#)

“I think it would be extraordinarily rare ... if the court simply reversed it on the grounds that the jury blew it on substantial similarity,” Mike Hobbs of Troutman Pepper Locke told *Law360*.

Hobbs’ practice focuses on trademark, copyright, false advertising and unfair competition law, and he said it “sounded like the Ninth Circuit was deeply troubled with the factual circumstances of the case and the finding of no substantial similarity.”

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That ruling “definitely put [Von D] on a back foot,” Hobbs told *Law360*.

Given the Ninth Circuit’s apparent confusion at how the jury could have reached such a verdict, Hobbs wondered if the jury simply got confused. He noted that the issue of transformative works was included as part of the jury instructions on fair use, but not on substantial similarity.

Hobbs said that Grodsky’s arguments about flower comparisons and Von D’s testimony on not being a copy machine could have muddled the issues.

“I think that the defense attorney did a fantastic job in blurring those issues,” Hobbs said.

Still, he anticipates that the Ninth Circuit will not make a direct finding on substantial similarity, but may instead find grounds to reverse based on improper jury instructions. For example, the court could find that the instructions should have made a stronger distinction between what the jury was to consider on the issue of fair use, and what it was separately supposed to consider on substantial similarity.

“I also think at the same time they would have to be troubled by the fact that the jury is the finder of fact and the determiner ultimately in substantial similarity decisions,” Hobbs continued. “So I think they’re going to have a real interesting time wrestling with how they balance deference to the jury, which was in position to hear the facts, versus what they see with their own eyes.”

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