



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**SECOND CIRCUIT COURT OF APPEALS
RULES THAT CITY MAY REQUIRE THE LICENSING
OF STREET VENDORS WHO SELL HAND-DECORATED CLOTHING**

***LICENSING LAW PASSES CONSTITUTIONAL MUSTER;
STRENGTHENS CITY'S ABILITY TO SAFEGUARD SIDEWALKS BY LIMITING THE NUMBER OF VENDORS***

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New York, Jan. 6, 2006 – The Second Circuit Court of Appeals yesterday ruled that vendors selling hand-painted clothing, including hats decorated with graffiti, must comply with the City's licensing requirements.

In its decision issued in the case of *Mastrovincenzo v. City*, the Second Circuit Court of Appeals reversed a preliminary injunction issued by Southern District Judge Victor Marrero, which previously barred the City from enforcing its licensing requirements against two vendors of hand-decorated apparel on First Amendment grounds.

"The City has maintained throughout the course of this litigation that the vendors' definition of artwork would lead to uncontrollable expansion of unlicensed sidewalk peddlers and create unimaginable – and unsafe – sidewalk congestion problems," noted Deborah Brenner, an Assistant Corporation Counsel in the Law Department's Appeals Division and City's chief appellate lawyer in this case.

Brenner continued, "The decision of the Second Circuit Court of Appeals will go a long way toward furthering the City's efforts to effectively address significant congestion problems caused by unlicensed street vendors in some of our most densely trafficked areas."

The case arose after two plaintiffs, Christopher Mastrovincenzo and Kevin Santos, were told by New York City police officers that they could not sell their hand-decorated hats on City sidewalks without a vendors' license.

Declining to adopt the plaintiff vendors' broad definition of paintings as "any item to which pigment has been applied," the Second Circuit, in a decision written by Judge Jose A. Cabranes, ruled that, unlike traditional canvas paintings, the items of apparel involved in the case, which primarily consist of hand-decorated hats painted in a "graffiti" or "hip-hop" style, do not automatically receive First Amendment protection.

In applying what it characterized as a "straightforward" test, the Court found that plaintiffs' apparel nonetheless constitutes expressive merchandise, because its "dominant purpose" is to convey expression, but held that the sale of such goods may be subjected to more burdensome regulation than pure art forms, such as traditional paintings, prints, photographs or sculpture. Judge Cabranes went on to observe that, "We live in the real world, with law enforcement decisions being made by policemen [or policewomen] on the beat as well as others who must be able to understand the law to be applied without

recourse to principles of aesthetics.”

Having found that the plaintiffs were engaged in expressive activity, the Court went on to hold that the City’s licensing law is a permissibly content-neutral “time, place and manner” restriction. The Court approved the City’s policy because it is narrowly tailored to serve valid governmental interests, including the control of street congestion and the maintenance of the City’s tax base, which simultaneously leaves open “ample alternative channels of communications” to artists and vendors who are unable to obtain a license to sell expressive merchandise on City sidewalks. The Court observed that artists may enlist licensed vendors to hawk their wares, display their apparel on City sidewalks without offering them for sale, offer their goods in galleries or art shows, or list their wares on the Internet.

Assistant Corporation Counsel Deborah A. Brenner handled the City’s case on appeal. The legal team also included Leonard Koerner and Barry P. Schwartz of the Appeals Division, Gabriel Taussig and Sheryl R. Neufeld of the Administrative Law Division and Appeals Paralegal Kim Paulk.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600’s, the Department’s 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department’s attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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