

The Supreme Court - April 23, 2020

Today, the Supreme Court of the United States issued the following three opinions:

County of Maui v. Hawaii Wildlife Fund, No. 18-260: The Clean Water Act prohibits the “addition” of any pollutant from a “point source” to “navigable waters” without an appropriate permit from the Environmental Protection Agency (“EPA”). This case presented the question of whether the Clean Water Act requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, specifically here, groundwater. The case arose when respondent environmental groups brought a citizens’ suit under the Clean Water Act against petitioner, County of Maui. They claimed Maui’s wastewater reclamation facility – which pumps treated sewage water through wells, then through groundwater, to the ocean – was discharging a pollutant into the Pacific Ocean without the required permit. The District Court found for the environmental groups and the Ninth Circuit affirmed. Today, the Court vacated and remanded, adopting a different standard than that of the Ninth Circuit, and holding that the permitting requirement is applicable to a discharge (from a point source) of pollutants that reach navigable waters after traveling through groundwater if that discharge is the functional equivalent of a direct discharge from the point source into navigable waters. Justice Breyer delivered the Court’s opinion. Justices Thomas, Gorsuch, and Alito dissented.

The Court's decision is available [here](#).

Romag Fasteners, Inc. v. Fossil, Inc., No. 18-1233: Petitioner Romag brought a trademark infringement suit against Fossil. The two companies had previously entered into an agreement for Fossil to use Romag’s magnetic snap fasteners in Fossil’s leather handbags, but Romag brought suit after discovering the factories Fossil hired to make its products were using counterfeit Romag fasteners. The jury found Fossil had acted “in callous disregard” of Romag’s rights, but did not find Fossil had acted willfully. On this basis, the District Court rejected Romag’s claim for an award of profits, citing Second Circuit precedent requiring a finding of willfulness. The Federal Circuit left that ruling

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intact. The Court today vacated and remanded, relying on the statutory language of the Lanham Act, 15 U.S.C. §1117(a), to hold that a plaintiff in a trademark infringement suit is not required to show that a defendant willfully infringed the plaintiff's trademark as a precondition to an award of profits. Justice Gorsuch delivered the Court's opinion. Justice Sotomayor concurred in the judgment.

The Court's decision is available [here](#).

Barton v. Barr, No. 18-725: U.S. law provides that a lawful permanent resident (a green-card holder) who commits a serious crime may be removed from the United States. If removal proceedings are initiated, immigration judges have discretion to cancel removal, but only if certain conditions are met. 8 U.S.C. §§1229b(a), (d)(1)(B). One of those requirements is that the person not have been convicted of an aggravated felony as defined in the immigration laws. At issue here is another condition – that during the lawful permanent resident's initial seven years of continuous residence in the United States, he must not have committed certain other offenses listed in 8 U.S.C. §1182(a)(2). Here, petitioner Andre Barton is a longtime permanent resident who had been previously convicted of a firearms offense, drug offenses, and aggravated assault offenses. The Government charged Barton with deportability based on his firearms offense and drug crimes, the immigration judge found Barton removable, and Barton applied for cancellation of removal. The immigration judge concluded Barton was ineligible for cancellation of removal because his earlier-committed aggravated assault offense was an offense listed in §1182(a)(2) that he committed during his initial seven years of residence. The Board of Immigration Appeals and Eleventh Circuit affirmed, rejecting Barton's argument that the offense that precludes cancellation of removal (here, the aggravated assault charge), must also be one of the offenses of removal (the ground on which the immigration judge found Barton removable). Today, the Court affirmed, holding that in determining eligibility for cancellation of removal of a lawful permanent resident who commits a serious crime, an offense listed in 8 U. S. C. §1182(a)(2) committed during the initial seven years of residence need not be one of the offenses of removal. Justice Kavanaugh delivered the Court's opinion. Justice Sotomayor dissented, in an opinion joined by Justices Ginsburg, Breyer, and Kagan.

The Court's decision is available [here](#).