



To: Penny Ellison, Executive Director, Hand2Paw Foundation

From: sb swae, Researcher

Subject: First sale doctrine: re-sale of copyrighter material

Date: May 4, 2018

Reference is to a hypothetical situation in which a 501(3)c non-for-profit corporation seeks information as to whether or not it may procure MLB, NFL, or other major sporting organization-branded material and make, manufacture, distribute, or sell derivative works or goods using the licensed, copyrighted, or trademarked material as raw stock for its *de novo* goods. This memorandum seeks to provide information, for educational purposes only, regarding the legal issues pertaining to such activities.

A detailed survey has not been completed at this time. The information presented in this memorandum constitutes the product of research using publicly-available knowledge that has been obtained so far from knowledgeable and responsible sources makes this summary reply possible.

The following conclusions can be reported:

- Partially due to the US Supreme Court's decision in 2013 reaffirming the first sale doctrine, it is generally possible for an individual or business entity to purchase copyrighted or trademarked material and resell it to other individuals or business entities.
- It is not legal for an individual or business entity to manufacture or otherwise make and subsequently sell goods using copyrighted or trademarked material without the permission of the holder of the rights.
- Material that is sold pursuant to a license may be subject further restrictions on sale.

As for specific questions surrounding this matter, the following brief answers develop from the studies made during the past few days. These conclusions are subject to expansion and more detailed examination should it be decided that the survey should be continued.

What is Copyright? What is the First Sale Doctrine? Do I Need a License to Sell Copyrighted Material at Retail? NO, but must purchase from an authorized retailer. You do not need a license of any kind from the NFL to sell NFL products at retail. This holds whether you are a bricks and mortar retailer, or an e-tailer, or both. All you need is to find NFL licensees (or distributors see below) willing to sell their products to you. This answer may prompt two other questions: Where can I find an authorized retailer for goods with sporting teams' copyrighted material? Directory of 1500+ authorized licensees is available at <http://www.licensedsports.net/login.php>. Do I Need a License to manufacture and sell products with copyrighted or trademarked material to retailers,

wholesalers, distributors, etc? YES What is worldwide exhaustion? Copyrighted or trademarked goods legally purchased abroad and imported into the United States lose their protection upon entry into the US. Does worldwide exhaustion apply to the European Union? NO. It is legal to resell copyrighted trademarked material *within* the EU (regional exhasution), but not *into* the EU What is copyfraud?