

Blanch v. Koons,
467 F.3d 244 (2d Cir. 2006)

Year	2006
Court	United States Court of Appeal for the Second Circuit
Key Facts	Plaintiff, photographer Andrea Blanch, owned the copyright in <i>Silk Sandals by Gucci</i> (<i>Silk Sandals</i>) a photograph taken for the August 2000 issue of <i>Allure</i> magazine. <i>Silk Sandals</i> is a close-up of a woman's lower legs and feet resting on a man's lap. Defendants Solomon R. Guggenheim Foundation and Deutsche Bank commissioned a series of works from defendant Jeff Koons. One of the works, <i>Niagara</i> , included a rotated image of the legs and feet from <i>Silk Sandals</i> , omitting the background of the original photo. Blanch filed an infringement action. The district court granted defendants summary judgment, in part based on its finding that Koons' use of <i>Silk Sandals</i> was fair use.
Issue	Whether an artist's appropriation of a copyrighted photograph for use in a collage painting was protected fair use.
Holding	The Second Circuit held that defendant's appropriation of plaintiff's photograph constituted fair use and affirmed the district court's grant of summary judgment. The court deemed the collage transformative because defendant used the photograph as "raw material" in the furtherance of distinct creative or communicative objectives. The court ruled that the creation and exhibition of the painting could not fairly be described as commercial exploitation, that "commerciality" of the use is not dispositive in any event, and that there was insufficient evidence of bad faith on defendant's part. Additionally, the court found that the amount and substantiality of the copying was reasonable in relation to its purpose and that the painting had no deleterious effect on the potential market for or value of the photograph.
Tags	Second Circuit; Painting/Drawing/Graphic; Photograph
Outcome	Fair use found

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