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## [The Nine-Word Copyright Opinion: Costco v. Omega](#)

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The Supreme Court heard the appeal of [Costco v. Omega](#), a copyright decision from the Ninth Circuit regarding the application of the first-sale doctrine to a foreign manufacturer who did not manufacture the goods in the U.S. or sell the goods directly to Costco. The outcome? The Supreme Court's entire decision (available for viewing [here](#)) consisted of nine words: "The judgment is affirmed by an equally divided Court." No comment; no indication of how individual Justices voted; no precedential value. According to [Answers.com](#), it may be the shortest Supreme Court opinion in history.

By way of brief history of the *Costco v. Omega* case, the Ninth Circuit found that the first-sale doctrine was unavailable to Costco as a defense to Omega's copyright infringement claims (dealing with the distribution of copyrighted goods), allowing the foreign manufacturer of watches to use copyright law to stop Costco from selling its actual products (not knock-off products), originally sold to another party and resold to Costco, in the United States without Omega's direct authorization.

Under the well-established first-sale rule, once a copyright owner sells a copy of a protected work, he may not thereafter exercise the distribution right with respect to those copies and subsequent owners can essentially do with the purchased copy as the please – such as sell it or lend it out. In *Costco v. Omega*, Omega claimed, and the Ninth Circuit agreed, that the defense was not available in a situation where the goods were not manufactured or originally sold in the U.S.. In this case, watches bearing the copyrighted design (registered in the U.S.) were made in Switzerland and sold to authorized dealers in Latin America who then sold them to gray-market distributors who imported them into the U.S. Costco purchased the Omega watches from the gray-market distributors and was then able to sell them at a price lower than Omega's U.S. dealers.

In a previous decision, [Quality King Distributors, Inc. v. L'anza Research International, Inc., 523 U.S. 135 \(1998\)](#), the Supreme Court ruled that the first-sale rule can provide a defense in a situation where goods are imported into the U.S. from another country for resale. However, the Ninth Circuit distinguished that case on the basis that the goods in *Quality King* had been originally manufactured in the U.S., but were shipped out and back in prior to the "unauthorized" resale in the U.S.



The federal government filed an [amicus curiae brief](#) in *Omega v. Costco* listing several adverse policy consequences with the Ninth's Circuit's decision including the end of secondary markets, higher unemployment and encouraging companies to move manufacturing overseas.

Obviously, this case was probably not the best candidate for the shortest opinion in history.



Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402  
Main: (612) 604-6400 | Fax: (612) 604-6800 | [www.winthrop.com](http://www.winthrop.com) | *A Professional Association*