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High Court May Lean Away From 2nd Circ. in 'Lucky' TM Case

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On Monday, the U.S. Supreme Court heard oral arguments in a longstanding trademark infringement dispute between Lucky Brand Dungarees Inc. and Marcel Fashion Group Inc., two competing apparel companies.

Lucky seeks reversal of the U.S. Court of Appeals for the Second Circuit's application of res judicata to bar Lucky from raising a defense it failed to raise in a prior action between the two companies. Lucky argues that, because the claims in the current and prior action are not the same for preclusion purposes, the defense at issue cannot be the same and thus
cannot be precluded.

At oral arguments, the court appeared skeptical of the Second Circuit's creation of a new four-part test for “defense preclusion.” The justices did not question whether, as a threshold matter, res judicata can be applied to block claims and defenses alike,[1] but they seemed cognizant of the unique nature of this case, and seemed to favor the application of existing legal precedent over the creation of a new one.

The justices therefore focused much of their questioning on the specific and convoluted facts in this litigation and whether, under current doctrine, the defense at issue should be precluded.

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