

High Court Splits Evenly in Costco Case

By BRENT KENDALL

WASHINGTON—The U.S. Supreme Court announced Monday that it was deadlocked 4-4 on whether Costco Wholesale Corp. could be held liable for copyright infringement for reselling luxury Swiss watches it obtained through second-hand sources.

The court's even split means that a lower-court ruling against Costco stays in place, though the case sets no new Supreme Court precedent because it ended in a tie.

The deadlock provided an anticlimactic conclusion to a case that had potentially significant implications for discount stores, and for companies like eBay Inc. that facilitate secondary markets for the resale of CDs, software and other goods.

The tie was possible because Justice Elena Kagan was recused in the case, having worked on it while she served as U.S. solicitor general.

At issue was a lawsuit filed by Omega SA, a unit of the Swatch Group Ltd., alleging that Costco violated U.S. copyright law in 2004 by selling Omega Seamaster watches it obtained from third parties who had imported them into the U.S.

Costco sold the watches for \$1,299, well below Omega's suggested retail price of \$1,999. The watches were engraved with a small emblem Omega had registered with the U.S. Copyright Office.

The discounter argued that Omega couldn't impose limits on how its watches are imported and resold once the watchmaker made its first sale of the goods abroad.

Omega responded that the "first sale" rule didn't apply when a manufacturer made the goods abroad and never authorized their importation into the U.S.

The software, publishing, movie and music industries, seeking to protect the strength of their own U.S. copyrights, filed legal briefs supporting Omega in the case.

Amazon.com Inc., Target Corp., Google Inc., eBay and various retailing groups filed briefs supporting Costco. They argued the lower-court ruling could threaten companies that resell foreign-made goods, stifle secondary markets and lead to higher prices for consumers.

A federal appeals court sided with Omega in 2008, saying the watchmaker retained rights to products that it made and sold abroad that were later imported into the U.S.

The case now returns to the lower courts for further proceedings. A trial on Omega's copyright claims hasn't been held.

Representatives for Costco and Omega did not immediately respond to requests for comment.

The case is Costco Wholesale Corp. v. Omega SA, 08-1423