

11-697 KIRTSAENG V. JOHN WILEY & SONS, INC.

DECISION BELOW: 654 F.3d 210

LOWER COURT CASE NUMBER: 09-4896

QUESTION PRESENTED:

This case presents the issue that recently divided this Court, 4-4, in *Costco Wholesale Corp. v. Omega, S.A.*, 131 S. Ct. 565 (2010). Under § 602(a)(1) of the Copyright Act, it is impermissible to import a work "without the authority of the owner" of the copyright. But the first-sale doctrine, codified at § 109(a), allows the owner of a copy "lawfully made under this title" to sell or otherwise dispose of the copy without the copyright owner's permission.

The question presented is how these provisions apply to a copy that was made and legally acquired abroad and then imported into the United States. Can such a foreign-made product *never* be resold within the United States without the copyright owner's permission, as the Second Circuit held in this case? Can such a foreign-made product *sometimes* be resold within the United States without permission, but only after the owner approves an earlier sale in this country, as the Ninth Circuit held in *Costco*? Or can such a product *always* be resold without permission within the United States, so long as the copyright owner authorized the first sale abroad, as the Third Circuit has indicated?

CERT. GRANTED 4/16/2012