

# Judge Chhabria Gives Thumbs-Down on Suit Against Apple Over Racially Diverse Emoji

Apple copied only the idea of diverse emoji, not iDiversicons' expression of that idea, the judge rules in a win for Latham & Watkins.

By Scott Graham

## What You Need to Know

- Because there are limited ways to draw emoji, the work was entitled to thin copyright protection.
- Apple did not make identical copies, so its version did not infringe.

One of the more compelling copyright stories of 2020 has foundered on the realities of thin protection.




Katrina Parrott of Texas “envisioned bringing racial diversity into the realm of digital communication after her daughter raised

version of the product, featuring emoji in African American, Asian, Latin/Hispanic, Indian and Caucasian skin tones, Parrott alleged in *Cub Club Investment v. Apple*.

Apple’s team at Latham & Watkins argued from the start that Parrott was trying to copyright the unprotectable idea of applying five different skin tones to emoji. On Wednesday, U.S. District Judge Vince Chhabria of the Northern District of California agreed.

“Even assuming the allegations in the complaint are true, the idea is all that Apple copied,” Chhabria wrote in a four-page order.

Because there are only so many ways to draw emoji and a limited set of natural human skin tones, Parrott’s creation

<b>iDiversicons® Emoji</b> Registered: 07/31/2013 (*09/26/2013)	<b>Apple iOS 13.3</b> Released: 12/10/2019
Copyright No. VAu 001-152-200 	
Copyright No. VAu 001-180-102* 	

the question, “Wouldn’t it be nice to have emoji that look like the person sending them?”

But after Parrott launched iDiversicons on Apple’s App Store and tried to negotiate a broader partnership with Apple Inc., the iPhone maker released the “same or at least substantially similar”

is entitled to only “thin” copyright protection, Chhabria ruled. That meant she had to prove that Apple’s version is not just substantially similar, but a virtually identical copy.

Images in the complaint demonstrated subtle differences. Whereas Apple’s thumbs-up emoji is car-



**Judge Vince Chhabria, Northern District of California.** Photo: Jason Doiy/ALM.

toonish and bubbled, Cub Club’s is flatter. Many of Cub Club’s emoji are shadowed, while Apple’s are not.

“These differences are sufficient to take Apple’s emoji outside the realm of Cub Club’s protected expression,” Chhabria wrote.

Chhabria granted Cub Club leave to amend its complaint while expressing doubt that it could succeed.

Apple’s team is led by Latham partners Andrew Gass and Gabriel Gross and associates Elana Nightingale Dawson and Carolyn Homer. Scott Douglass & McConico also provided counsel during the case’s initial stages in Texas.

Cub Club is represented by Patterson + Sheridan.