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**SECURITIES - NEW YORK**

## Swatch Group Management Services Ltd. v. Bloomberg L.P.

**United States Court of Appeals, Second Circuit - January 27, 2014 - F.3d - 2014 WL 274407**

Watch manufacturer that hosted international conference call with group of securities analysts brought action against news service, alleging that news service infringed copyright in audio recording of earnings call by recording it without authorization, and making transcript of call available to its paid subscribers. States District Court for the Southern District of New York granted summary judgment to defendant. Parties appealed.

The Court of Appeals held that:

- Lack of additional commentary or analysis did not preclude finding that "purpose and character" of use of original work favored fair use;
- Nature of copyrighted work favored finding of fair use;
- Manifestly factual character of manufacturer's earnings call favored finding of fair use;
- Statutory fair use factor regarding "amount and substantiality of the portion used in relation to the copyrighted work as a whole" did not favor manufacturer;
- Statutory fair use factor that considered "effect of the use upon the potential market for or value of the copyrighted work" favored finding of fair use;
- Use of earnings call was in accordance with fair use defense;
- Service was not entitled to cross-appeal issue of whether manufacturer's recording was validly copyrightable; and
- Prior notice of cross-appeal reasonably could not be read to contemplate review of district court's subsequent order dismissing copyright invalidity counterclaims of news service as moot.


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