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Copyright and Trademark Infringement: Sega  
Enterprises Ltd. v. Accolade, No. 92-15655, 1993  
U.S. App. LEXIS 78 (9th Cir. Jan. 6, 1993)

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*Copyright and Trademark Infringement: Sega Enterprises Ltd. v. Accolade, No. 92-15655, 1993 U.S. App. LEXIS 78 (9th Cir. Jan. 6, 1993)*,  
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“ideas and inventions” which are not copyrightable. Olsen also contends that the transfer was conducted by fraudulent means as he did not know the identity of the user of the logo.

*Held:* The court held that as Olsen’s work is a photocomposition of a logo, it is the expression of ideas which is copyrightable although ideas themselves are not. The contract in this case shows Olsen’s intent to transfer all interest in his work, including the copyright interest. The court also held that this was not done fraudulently as Olsen contracted with full knowledge that the identity of the client would not be disclosed. *Affirmed.*

J.H.

## COPYRIGHT AND TRADEMARK INFRINGEMENT

SEGA ENTERPRISES LTD. v. ACCOLADE, No. 92-15655, 1993 U.S. App. LEXIS 78 (9th Cir. Jan. 6, 1993).

*Accolade appealed the district court’s grant of a preliminary injunction in favor of Sega, a manufacturer of computer video game programs, for copyright and trademark infringement. Accolade used a two-step process to render its video games compatible with the Genesis console, a video system developed and marketed by Sega. First, Accolade reverse-engineered Sega’s video game programs by transforming the object code into source code, and second, created its own games for the Genesis. The most recent version of the Genesis console, Genesis III, incorporates the trademark security system (TMSS) initialization code which enables video game programs to operate on Genesis III, and also prompts a screen display of the Sega trademark. Accolade again reverse-engineered, and in one of its newly released games did not place the TMSS initialization code at the correct location in the program.*

*Held:* Disassembly of a copyrighted object code is, as a matter of law, a fair use of the copyrighted work if such disassembly provides the only means of access to those elements of the code that are not protected by copyright, and the copier has a legitimate reason for seeking such access. Sega’s use of the TMSS that triggered the display of its registered trademark did not constitute trademark infringement where the trademark owner made a deliberate decision to include the code in the console device so as to limit general access, but doing so resulted in false labeling. Accolade desired only to make its video game compatible with the Genesis III console, and there is no known feasible alternate method of gaining access. *Affirmed in part; Reversed in part; and Remanded.*

H.C.