

Brief of the Week: Retailers keep watchful eye on first-sale case

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A dispute in the U.S. Supreme Court between a company that makes pricey watches abroad and a company that imports and resells them with cheaper sales tags has brought together unusual allies — including the retail giant Target, an association of law libraries, drug stores and Google.

In the Supreme Court, Costco is challenging a ruling by the U.S. Court of Appeals for the 9th Circuit. The appellate panel held that copies made abroad by the holder of a U.S. copyright for sale abroad are not "lawfully made under this title" and therefore are not subject to the first-sale defense.

Two Washington firms with veteran Supreme Court litigators will face off in as yet unscheduled arguments. Representing Costco, Roy Englert of Robbins, Russell, Englert, Orseck & Untereiner successfully petitioned the justices for review despite opposition by the U.S. solicitor general. Omega's counsel is Michael Kellogg of Kellogg, Huber, Hansen, Todd, Evans & Figel. Both men are former assistants to the solicitor general.

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