

*A note to IPSC readers:*

*Thank you so much for any thoughts you may have on this piece! There are some points on which I am particularly interested in receiving feedback:*

- 1) The Pantone Business Model seems simple, but it is also very complex. I'd like to write this paper as a case study of Pantone but...a) is this 2 (or 3) papers in 1 because of all the legal issues (copyright, trademark, antitrust, etc)? b) is the Pantone Business Model approximate to any other business models that would make it feasible to frame the piece as a wider paper on legal issues applicable to a particular industry (like color-forecasting)?*
- 2) There seems to me to be much overlap between the copyright, trademark, unfair competition, and possibly anti-trust issues too – is there a better way to categorize how Pantone is using each legal framework and/or are there aspects of Pantone's legal strategy and courts' reasoning that point to this being more of a copyright or trademark or antitrust issue?*
- 3) I'm interested in this project because it potentially reveals that Pantone's Business Model may be built on "air" (so to speak!) and dubious IP rights but...is this project of interest as a "monopoly-busting" message for other companies that may "sell" matching systems or proximate services and products? Are there any other case studies or examples I should consider where a product or service also seems imaginary, empty or in the public domain?*

*With thanks!*  
*Felicia*

**Pantone:**  
***A Color “Monopoly” with Dubious IP Rights?***

Felicia Caponigri

In April 2025 Business Insider ran a report on the price of “Pantone’s colors.”<sup>1</sup> Pantone’s colors, as Business Insider reported, cost “hundreds and thousands” of dollars.<sup>2</sup> Artists and designers, the news continued, were proverbially up in arms, especially since these artists and designers viewed Pantone’s colors as necessary to their design process, a tool in their creative arsenal for which they have “no choice but to pay.”<sup>3</sup>

Why do Pantone’s colors cost so much? Is a Pantone color even a product for which Pantone can charge artists, designers, and other consumers (like printers and other “print professionals”<sup>4</sup>) a price, let alone a price that seems exorbitant? If a Pantone color isn’t a product at all, are there services Pantone provides that make it seem as though Pantone has a corner (or monopoly) on a market for color? Answering these questions, and exploring what Pantone’s business model means for the antitrust and IP interface, is the focus of this paper.

### **Pantone’s Color Myth in a Matching System**

Pantone doesn’t sell colors – nor the ink to create colors.<sup>5</sup> Instead, Pantone’s main product is a service: providing a matching system made up of color recipes. This matching system has, in turn, spawned a licensing empire.

The Pantone Matching System is contained in books known as “standardized color guides for designers and printers.”<sup>6</sup> These books, produced since 1963<sup>7</sup> and often called Pantone Guides, contain color swatches, numbers that identify these color swatches, and recipes below each color swatch and number with percentages of base colors to create each color swatch.<sup>8</sup> As designers create, brainstorm, and speak with clients and partners, they will tear color swatches out of the Pantone Guides to match ideas of color to the appearance of color in the tangible

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<sup>1</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U>

<sup>2</sup> Id. at :28.

<sup>3</sup> Id. at 6:48.

<sup>4</sup> Pantone Live, a “cloud-based architecture that enables digital specification and communication of Pantone standards to all stakeholders in the global supply chain” in Adobe Illustrator is marketed as “best for pre-media and packaging print professionals using Adobe Illustrator for [consumer packaged goods] work where PantoneLIVE has been adopted.” See Pantone Connect X Adobe FAQ, PANTONE, <https://www.pantone.com/eu/en/articles/faq/pantone-connect-adobe-faq>

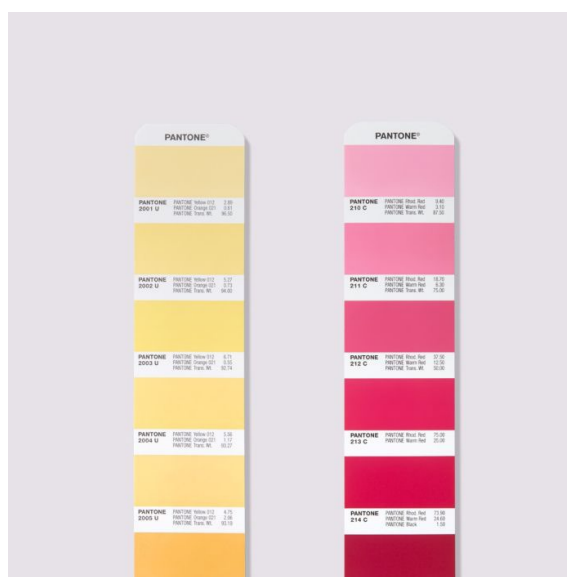
<sup>5</sup> Id. at :30.

<sup>6</sup> Id. at :35 - :36.

<sup>7</sup> About Pantone Standards, About Pantone, PANTONE, [https://www.pantone.com/about-pantone?srsId=AfmBOopFAV4p-\\_jd0XPBj0eooEscIa08B424F0n42aDzLrmdGWcezdM](https://www.pantone.com/about-pantone?srsId=AfmBOopFAV4p-_jd0XPBj0eooEscIa08B424F0n42aDzLrmdGWcezdM) (“In 1963, Pantone revolutionized the printing industry with the colorful PANTONE MATCHING SYSTEM®, an innovative tool allowing for the faithful selection, articulation and reproduction of consistent, accurate color anywhere in the world. The tool organizes color standards through a proprietary numbering system and chip format, which have since become iconic to the Pantone brand.”)

<sup>8</sup> Pantone, Shop, <https://www.pantone.com/products/>. It also offers technology that will allow you to match which a shade on a product you may see in any retail location to a Pantone shade. See <https://www.pantone.com/products/devices/capture-with-bluetooth> (“Use CAPSURE to quickly and accurately match color from any surface, material, or fabric back to a Pantone Color, then share it wirelessly. This complete color-matching solution for fashion, interiors, graphics, and product designers lets you translate on-the-go inspiration into the closest color match from the Pantone Color System of your choice, then sync and share colors with apps and devices using Bluetooth.”)

world.<sup>9</sup> The Pantone Matching System, as Pantone describes it, “provid[es] a universal language of color that enables color-critical decisions through every stage of the workflow for brands and manufacturers.”<sup>10</sup> Overtime, Pantone has tailored this matching system to different industries and different materials. The Pantone Fashion Home + Interiors (FHI) System, for example, offers fashion designers “more whites, blacks, and neutrals in their palette”<sup>11</sup> and takes the application of color onto textile, the material fashion designers most use, into account as part of the color recipe. Swatches may be cotton, for example, instead of the coated paper of a color guide that belongs to the Pantone Matching System.<sup>12</sup> In contrast to the Pantone Fashion Home + Interiors (FHI) System, the Pantone Matching System is best for graphic designers because it fulfills “print and packaging designer[s] need [for] colors that will pop on shelf”<sup>13</sup> and takes the packaging material that graphic designers may more often work with into account.<sup>14</sup>



*Image of Pantone Formula Guide Set*  
*Image from [TrendStore.Eu](https://www.trendstore.eu)*

The matching system is also present in technology like a standalone digital platform that provides access for designers to digital color swatches and the recipes to create Pantone colors, along with the numbers that connect color and recipe.<sup>15</sup> This digital platform is called Pantone

<sup>9</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 17:29 et seq.

<sup>10</sup> What Are Pantone Color Systems?, PANTONE, <https://www.pantone.com/color-systems/pantone-color-systems-explained?srsltid=AfmBOoqiWSxm-vXYQq44hNLlpx5hzS7xYMcZf9GKzGiCgFI MRp4KM5Yc>

<sup>11</sup> Id.

<sup>12</sup> Fashion, home + interiors cotton swatch library dualities expansion pack, Pantone Shop, PANTONE, <https://www.pantone.com/products/fashion-home-interiors/fashion-home-interiors-cotton-swatch-library-dualities-expansion-pack>.

<sup>13</sup> Id.

<sup>14</sup> Id. (“The appearance of color can change based on the material on which it is produced. In fact, some colors are not achievable at all on a certain material. Having two systems helps to ensure that the colors included are achievable and reproducible based on the materials used.” Also describing the Pantone Matching System as best for graphics for “Print, Packaging, Digital, Screen Printing” and the Pantone Fashion, Home + Interiors (FHI) System as best for textiles including “Apparel, Fabrics, Soft Goods” and other color coatings on “Cosmetics, Paints, Leather, Accessories.”)

<sup>15</sup> Pantone Connect, PANTONE, <https://www.pantone.com/pantone-connect>

Connect.<sup>16</sup> The “swatch or digital master data”<sup>17</sup> contained in Pantone Connect provides a consistent visual of color (and information on how to reproduce the color) across different software. Essentially, Pantone Connect codes colors for designers working digitally. With a Pantone Connect subscription, and plug in for other software, designers can import Pantone color swatches and draw, sketch, or otherwise create in Pantone colors on their computer.<sup>18</sup> Pantone Live, another digital platform, is a “cloud-based architecture that enables digital specification and communication of Pantone standards to all stakeholders in the global supply chain”<sup>19</sup> and is “best for pre-media and packaging print professionals using Adobe Illustrator for [consumer packaged goods] work where PantoneLIVE has been adopted.”<sup>20</sup>

Alongside the Pantone Matching System, the Pantone Fashion Home + Interiors (FHI) System, and Pantone Live and Pantone Connect, Pantone also offers another intangible service which garners them much publicity: color forecasting.<sup>21</sup> Since 2000, the Pantone Color Institute has selected a color of the year.<sup>22</sup> The choice is supposed to “highlight[t] the relationship between color and culture” and identify the color that “captures the global zeitgeist.”<sup>23</sup> As Elley Cheng, Pantone’s President, has put it – the color of the year is a “tradition that helps us look at color through the world around us.”<sup>24</sup> Pantone’s Color of the Year helps “us navigate the moods, the trends, and the shared experiences that we are all navigating together.”<sup>25</sup> The Color of the Year 2025, launched in December 2024, is “Mocha Mousse” which, in Pantone’s perspective, “captur[es] a global mood of connection, comfort, and [a search for] harmony.”<sup>26</sup> This harmony was also between the tangible and intangible, or digital, worlds: Mocha Mousse could easily translate from tangible goods to the digital environment.<sup>27</sup> From a more sensorial point of view, Mocha Mousse “nurtures us with its suggestion of the delectable qualities of chocolate and coffee, answering our desire for comfort.”<sup>28</sup> Pantone’s choice was the product of Pantone color analysts’ research into “world events, societal shifts, and cultural dynamics to uncover the emotions and needs that are shaping our world.”<sup>29</sup> In Pantone speak, Mocha Mousse “is a visual response to the challenges, hopes, and aspirations that we all share.”<sup>30</sup> With this choice,

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<sup>16</sup> Id.

<sup>17</sup> Id. (“Share palette information with people up and down your workflow to ensure that everyone is working from the same color page. There’s no need to describe your color in words. The proof is in the swatch or digital master data.”)

<sup>18</sup> For a demonstration, see @GraphicDesignHowTo, Pantone Connect Tutorial and Review in Adobe Illustrator, YOUTUBE, March 17, 2022, <https://www.youtube.com/watch?v=EPGMOt-0Blo>. See also Pantone Connect, PANTONE, <https://www.pantone.com/pantone-connect> (describing how Pantone Connect connects to “the Adobe Extension Marketplace for use in Adobe Creative Suite, App Store (iOS) and Google Play (Android).”)

<sup>19</sup> Pantone Live Family, X-RITE PANTONE, <https://www.xrite.com/categories/digital-color-standards/pantonelive-family>

<sup>20</sup> Pantone Connect X Adobe FAQ, PANTONE, <https://www.pantone.com/eu/en/articles/faq/pantone-connect-adobe-faq>

<sup>21</sup> About Pantone Color Institute, PANTONE, [https://www.pantone.com/color-consulting/about-pantone-color-institute?srsltid=AfmBOopUN1Y\\_mZlRe-vZvqgbfJsegecmDA58jX8SzUYRnDP\\_v6jEUcWoP](https://www.pantone.com/color-consulting/about-pantone-color-institute?srsltid=AfmBOopUN1Y_mZlRe-vZvqgbfJsegecmDA58jX8SzUYRnDP_v6jEUcWoP) (“Recognized globally as a leading source of color expertise, Pantone Color Institute provides color insights and solutions; collaborating with our clients to strategically address color challenges and develop a color and design approach consistent with their brand vision. Pantone Color Institute can guide you through the development of a color strategy...”)

<sup>22</sup> Pantone Color of the Year 2025, PANTONE, <https://www.pantone.com/color-of-the-year/2025?srsltid=AfmBOoohGCRFyM52pXJVM5SUu2SywRxHX46w5oSmoQN46zQqPpZvpQQo>

<sup>23</sup> Id. (“The Pantone Color of the Year program engages the design community and color enthusiasts in a conversation around color, highlighting the relationship between color and culture. Pantone selects a color each year that captures the global zeitgeist—the Color of the Year express a global mood and an attitude, reflecting collective desire in the form of a single, distinct hue.”)

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id. (Promotional Video on this page at 5:00 – 6:00)

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

the Pantone Color Institute not only selects a color that reflects the world but also seeks to choose a color that will guide the color choices of interior designers, fashion designers, and more creatives who bring the products consumers buy to market. In this sense, Pantone's Matching System has evolved into a color forecasting service at the center of cultural feedback loops. Cultural events can indicate a color, which Pantone then chooses and creates a recipe for. Brands then choose the color and may nuance it further into their own particular shade, like Valentino Red, Tiffany Blue, or Barbie Pink. Pantone may then further standardize that color thanks to its commercial and cultural impact by incorporating the brand's shade into their Pantone Matching System, assigning it a number and a recipe and, perhaps, even a name. This new Pantone Color is, in turn, potentially reproduced by more brands.

Despite some lifestyle accessories that memorialize the color of the year<sup>31</sup>, matching is the name of Pantone's commercial, for-profit game. The company essentially creates and offers for sale books, technology, and other devices, like ink scales<sup>32</sup>, that allow customers to *match* a color across tangible and intangible products. The Pantone Matching System is Pantone's main service, not colors *per se*.

## What are Pantone's IP rights?

### a) Copyright: Translating the Pantone Matching System into a Guide

The Pantone Matching System, Pantone's main product, is essentially steps, instructions, a recipe to consistently make individual colors. Over time, Pantone has succeeded in building a reputation for itself as *the* company that has *the recipes* to create solid, spot colors.<sup>33</sup> Instead of placing dots in cyan, magenta, yellow, and black close together to create the appearance of different colors and shades from far away (known as CMYK halftone)<sup>34</sup>, Pantone's recipes produce solid colors from far away *and* close up. Your printer at home may use CMYK, allowing you to see the individual colors when your printer's ink cartridge runs out of ink. A professional printer using Pantone, on the other hand, will lay pre-mixed, solid colors onto the paper.<sup>35</sup> The Pantone Color Matching recipes are made of parts of other colors which are, unlike the CMYK halftone process, not only cyan, magenta, yellow, and black.<sup>36</sup> Pantone's

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<sup>31</sup> Limited Edition Mug Pantone Color of the Year 2025, PANTONE, <https://www.pantone.com/products/lifestyle/limited-edition-mug-pantone-color-of-the-year-2025>.

<sup>32</sup> Pantone Formula Scale 3, PANTONE, <https://www.pantone.com/products/devices/pantone-formula-scale-3> ("Pantone's FS3 series is the ideal tool for printers and spot color users to mix almost any Pantone Color perfectly with the touch of a few buttons. Programmed with up-to-date Pantone Color ranges, the PFS3 Series is incredibly easy to use. High accuracy, based on weight, makes component mixes a snap. Simply key in the Pantone Number and ink quantity, then follow the step-by-step instructions.")

<sup>33</sup> Spot color vs Process Color Printing, PANTONE, <https://www.pantone.com/articles/technical/spot-vs-process-color?srsltid=AfmBOorlxZ4pPY2o1ou6H9q7vLkYvE7k6waKWRjMYX0engQ2czNvUUrT>.

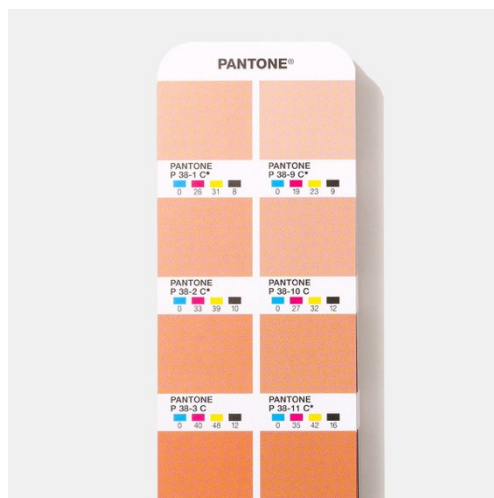
<sup>34</sup> Known as halftoning or CMYK. See Halftone, WIKIPEDIA, <https://en.wikipedia.org/wiki/Halftone#:~:text=The%20general%20idea%20is%20the,into%20small%20circles%20or%20rosettes> ("by varying the density of the four secondary printing colors, cyan, magenta, yellow, and black (abbreviation CMYK), any particular shade can be reproduced.")

<sup>35</sup> Spot color vs Process Color Printing, PANTONE, <https://www.pantone.com/articles/technical/spot-vs-process-color?srsltid=AfmBOorlxZ4pPY2o1ou6H9q7vLkYvE7k6waKWRjMYX0engQ2czNvUUrT>.

<sup>36</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 4:39.

colors are mixed from potentially 11 base inks.<sup>37</sup> Pantone 219, for example, creates a shade of pink made of eight parts Rubine Red and 8 parts White.<sup>38</sup>

The instructions in the Pantone Matching System are not only for solid, spot color, however. Pantone guides can also connect the recipes for solid Pantone colors with comparable color recipes for CMYK.<sup>39</sup> Not only does the Pantone Matching System offer a color matching system for solid, spot colors – the system also *translates* those recipes into other color languages beyond Pantone's.



*Pantone's CMYK Color Guide Set*  
*Image from Pantone.com*

But how can Pantone have a successful business model based on its color matching system? Under copyright law, a system or language is uncopyrightable.<sup>40</sup> In *Baker v. Selden*, decided in 1879, an owner of books on accounting sought to copyright their book as a work of authorship.<sup>41</sup> The Supreme Court noted that there *could* be a copyright in the book itself, but that the copyright in the book would *not* give a copyright in the underlying system of accounting described in the book.<sup>42</sup> Pantone may have a copyright in their guides, but they *should not* have a copyright in the Pantone Matching System.

<sup>37</sup> Id. at 10:23

<sup>38</sup> Id. at 5:15.

<sup>39</sup> Id. at 16:50.

<sup>40</sup> 17 USC 102 (“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained illustrated or embodied in such work.”)

<sup>41</sup> *Baker v. Selden*, 101 U.S. 99 (1879).

<sup>42</sup> *Baker v. Selden*, 101 U.S. 99, 101–02 (1879) (“There is no doubt that a work on the subject of book-keeping, though only explanatory of well-known systems, may be the subject of a copyright; but, then, it is claimed only as a book. Such a book may be explanatory either of old systems, or of an entirely new system; and, considered as a book, as the work of an author, conveying information on the subject of book-keeping, and containing detailed explanations of the art, it may be a very valuable acquisition to the practical knowledge of the community. But there is a clear distinction between the book, as such, and the art which it is intended to illustrate. The mere statement of the proposition is so evident, that it requires hardly any argument to support it. The same distinction may be predicated of every other art as well as that of book-keeping. A treatise on the composition and use of medicines, be they old or new; on the construction and use of ploughs, or watches, or churns; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective,—would be the subject of copyright; but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein.”)



The problem with the application of this legal rule to Pantone is that one court ruling in the 1960s granting Pantone a permanent injunction against another company producing similar guides seems to have given way to the idea that Pantone *does* have a copyright in the Pantone Matching System. Pantone registered its guides as original works of authorship with the Copyright Office in 1963 and obtained accompanying certificates of registration.<sup>43</sup> In 1968 Pantone won a preliminary injunction against an Illinois based company Para-Tone, Inc.<sup>44</sup> Pantone's claim was one of copyright in the "Pantone Matching System" booklet.<sup>45</sup> The booklet (or guide), the court noted,

*consists of 72 pages, each bearing a series of bands of carefully selected colors which are arranged in a fashion or plan designed, through variation of certain basic colors, to provide an extensive range of selection derived from use of eight basic colors plus black and transparent white. Plaintiff's selection of the eight basic colors and of blends of these colors to provide a range of acceptable color values, presented in attractive gradations moving from one basic hue and its variations into another, was the product of a great deal of effort which required careful consideration of numerous artistic factors including the aesthetic attributes of each shade and its use in the commercial art field.*<sup>46</sup>

Pantone argued that the guide was sufficiently original to benefit from copyright protection.<sup>47</sup> While other "color cards, color matching booklets, or other publications designed for selection or matching of colors" had existed on the market before<sup>48</sup>, Pantone had re-presented the color system.<sup>49</sup> Recognizing that the contribution of Pantone's guide had to be more than a "trivial variation"<sup>50</sup> on previous booklets, the District Court in New York defined originality simply as a work "'ow[ing] its origin' to the 'author.'"<sup>51</sup> Even "the a re-arrangement of age-old ideas, is sufficient"<sup>52</sup> for originality, the court reasoned based on precedents including *Baker v. Selden*.<sup>53</sup> Holding that Pantone's guide "possess[ed] sufficient originality and uniqueness in its embodiment of its mode of expression to qualify it for copyrightability"<sup>54</sup>, the court noted that the booklet had a "unique quality" which had "gained ready recognition on the part of artists in a critical profession."<sup>55</sup> In this sense, the guide was more than "the mere portrayal of a series of gradations of color shades."<sup>56</sup> Unlike other color books, Pantone's Color Matching

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<sup>43</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968) ("Some weight must also be given to the existence of valid certificates of registration issued by the Copyright Office, which give rise to at least prima facie evidence, or a presumption, of copyright validity.")

<sup>44</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 546 (S.D.N.Y. 1968)

<sup>45</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968)

<sup>46</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968)

<sup>47</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968) ("Plaintiff, however, contends that its arrangement and mode of expression of its color matching system is unique and original, and had never before to plaintiff's knowledge been presented in the form found in plaintiff's copyrighted booklet.")

<sup>48</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968)

<sup>49</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968) ("Plaintiff's booklet, unlike any of the others shown to the Court, presents the color system in the following fashion...")

<sup>50</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968)

<sup>51</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968)

<sup>52</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

<sup>53</sup> See also Mark Edward Blankenship, Jr. *Reconsidering the "Aesthetic Nondiscrimination" Doctrine in American Copyright Law*, 14(1) *Berkeley Journal of Entertainment & Sports Law* (2025).

<sup>54</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

<sup>55</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

<sup>56</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

System guide uniquely “‘bridge[d] the gap from the artist to the printer.’”<sup>57</sup> The Pantone Color Matching System guide was original because it had a

*new arrangement...to facilitate selection and matching of colors, which was accomplished by placing each basic color or mixture in the center of each strip or page of related colors and then placing on each side of it the lighter tints achieved from addition of transparent white and on the other side of it the darker shades achieved by the addition of black.*<sup>58</sup>

While it described a guide that may look slightly different from the guides Pantone currently offers, the District Court identified the originality of Pantone’s guide in its arrangement of colors; in what we might call its authorial recognition by artists; and in a quality that seems particularly linked to the guide’s underlying system – bridging the gap from artist to printer. Each of these reasons point to strong counter-arguments against the guides’ copyrightability today. The arrangement of colors, while understandably original in light of the Supreme Court’s decision in *Feist*<sup>59</sup>, seems applicable to a *different* arrangement than the arrangement currently in Pantone’s guides. Second, even if Pantone still had some originality in its arrangement, it would seem to point to a very thin copyright. The authorial recognition the District Court speaks of may follow the rule in *Dastar*<sup>60</sup> that copyright is about “the person or entity that originated the ideas or communications that ‘goods’ embody or contain.”<sup>61</sup> At the same time, the recognition the District Court speaks of also seems to point to a quality of the guide as a tangible product that may be more appropriate to categorize as part of trademark law.<sup>62</sup> Do artists recognize Pantone as the “author” of the book and, perhaps, the originator of the idea for the Pantone Matching System contained within the book? Or do artists recognize the quality of the book as a tangible, matching good which Pantone placed on the market? It is also unclear whether the uniqueness of the guide that informs its originality for the District Court is in the book, as a book, or in its underlying color matching system. If the uniqueness is really in the underlying color matching system, it would seem that Pantone should *not* be entitled to a copyright.

The issue of whether the District Court’s reasoning still holds for Pantone’s guides today matters because *The Business Insider*’s reporting and Pantone’s marketing make much of the Copyright Notice on Pantone’s formula guides.<sup>63</sup> In an article on its website addressed to those who both wish to use Pantone’s products and collaborate entitled “Color Identification and Control” Pantone shares the following copyright notice:

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<sup>57</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

<sup>58</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 548 (S.D.N.Y. 1968)

<sup>59</sup> *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).

<sup>60</sup> *Dastar Corp. v. Twentieth Century Fox Film Corp. et al.*, 539 U.S. 23, 26 (2003).

<sup>61</sup> *Id.* at 32.

<sup>62</sup> Felicia Caponigri, *Iconic Copies*TM, 23 Chi.-Kent J. Intell. Prop. 1, 30 (2024), <https://scholarship.kentlaw.iit.edu/ckjip/vol23/iss2/4> (discussing *Dastar* - “the Supreme Court held in *Dastar* that “origin of the goods” in trademark law meant “the producer of the tangible product sold in the marketplace”<sup>118</sup> and understood its scope to also include “the actual producer, but also the trademark owner who commissioned or assumed responsibility for (“stood behind”) production of the physical product.”)

<sup>63</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 6:40 – 6:45. The Pantone website has a page devoted to Color Identification and Control contains a Copyright Notice. See Color Identification and Control, PANTONE, <https://www.pantone.com/articles/how-to/color-identification-and-control?srsltid=AfmBOooxtMgg9rwBTec6eVq8z-pDD4FKoPvHZDtQAHHoYkoNZ5IxiN3X>.



**“Copyright Notice** Published materials of Pantone LLC are protected by copyrights and include, for example, graphic presentations, color references, Pantone Colors, Pantone Names, numbers, formulas, and software, and the foregoing should not be copied or published without the written permission of Pantone LLC. An unauthorized claim by third parties that any referenced color or color system is the same as, or equivalent to, a color standard or color system of Pantone LLC, may be a violation of Pantone LLC’s proprietary rights and as such, is strictly prohibited. Similarly, any cross-referencing, in whole or in part, to any Pantone Color System including, but not limited to, the Pantone Numbers and Pantone Colors, by third parties, may be a violation of Pantone LLC’s proprietary rights and, as such, is strictly prohibited.”

Colors alone, like systems and ideas, are not, in fact, copyrightable subject matter<sup>64</sup>, despite what this notice may imply. As Pantone’s website suggests, the question of how Pantone claims a copyright may be based in control:

**“It’s all about control.** Maintaining control over color has been, and continues to be, a primary concern of design and design-related professionals throughout the world. Fortunately, the growing family of Pantone Color Tools offers reliable methods for achieving consistent color from concept to reproduction. With over 55 years experience in the development of color languages, Pantone has become the world leader in electronic color technology, traditional graphics color systems, and media-specific systems for textiles, coatings, and plastics. Thousands of products licensed by Pantone are sold each year in over 65 countries – from paper, ink, textiles, etc., to computer hardware and software.

**Get the right color, and get the color right without compromise.** The confidence you have in Pantone would be impossible to uphold without safeguards. There has to be someone you can rely on to maintain the integrity of your color, acting as the final authority and setting standards to prevent deviations from any Pantone-Identified Color. That someone can only be Pantone. Before we put a Pantone Identification on any color, Pantone Color Specialists verify and re-verify it to make sure it meets a rigid set of requirements. It is the only way we can be certain of protecting the unequalled color fidelity of Pantone Color System technology. That is why we cannot allow any unauthorized or unchecked reproduction and distribution of Pantone-Identified Colors. This is done for your protection.”<sup>65</sup>

This concern with control over color, an expressly *uncopyrightable subject matter*, through copyright seems troubling. Pantone’s control over subject matter that might be *out of* copyright, and in a public domain, risks inhibiting artists’, and competitors, access to colors that may otherwise be freely available. As Stuart Semple said in reference to the colors Pantone

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<sup>64</sup> *Boisson v. Banian, Ltd*, 273 F.3d 262, 271 (2d Cir. 2001) (“Taken together, these cases teach that even though a particular color is not copyrightable, the author’s choice in incorporating color with other elements may be copyrighted. This lesson is in accord with the holding of *Feist Publications*. See 499 U.S. at 348, 111 S.Ct. 1282...”)

<sup>65</sup> Color Identification and Control contains a Copyright Notice. See Color Identification and Control, PANTONE, <https://www.pantone.com/articles/how-to/color-identification-and-control?srsltid=AfmBOooxtMgg9rwBTec6eVq8z-pDD4FKoPvHZDtQAHHoYkoNZ5IxiN3X>.

develops, “Pantone doesn’t actually own anything. The only thing they own is the code that they associate with that color...they don’t own the color. They just own the language that we use to describe the color.”<sup>66</sup> But does Pantone own the language of color it has created *as a language*? Copyright would likely, again, say no.<sup>67</sup> Overlooking questions of whether Pantone’s guides are a proxy for a copyright in an uncopyrightable system or language leads to a thicker copyright than Pantone should have under the law.

In the same 1968 opinion recognizing the originality of Pantone’s guides that may seem questionable today, the District Court held that the company Para-tone’s “four-page leaflet entitled ‘Transparent Color Sheets’ ”<sup>68</sup> infringed Pantone’s copyrighted color guide. Like Pantone’s Color Matching System booklet, the Transparent Color Sheets had a color placed in the middle of a horizontal line, with different variations placed on either side of it.<sup>69</sup> Like Pantone’s booklet, Para-Tone’s also had numerical identifiers under each color that corresponded to the color recipe.<sup>70</sup> The main difference arose from the textual categorization of these colors – in Para-Tone’s leaflet, the middle color was a “Hue” and the colors on the side of the hue were “Shades” and “Tints”.<sup>71</sup> This difference reflected other categorizations of color in other matching systems that pre-dated Pantone. While Pantone’s Color Systems are dominant today, other companies have historically offered color matching systems. Some of these alternative color systems, like the Munsell Color System created in the early 20<sup>th</sup> century, and other textile color books, pre-date the creation of the Pantone Color System.<sup>72</sup> The main differences between the Pantone Color System and the Munsell Color System, like the differences between CMYK and Pantone, lie in how to identify individual colors that are part of one single color. Pantone will identify parts of other colors in its recipe and name these parts as individual shades (Rubine Red, for example). Munsell divides colors into hues (color themselves), values (whether the color is light or dark), and chroma (the color’s “saturation or brilliance”).<sup>73</sup> Whereas letters and numbers may apply to a Pantone color and represent the percentage of the color to mix, letters and numbers in the Munsell Color System refer to hue, value, and chroma.<sup>74</sup> There are still other color system options beyond Pantone. RAL Colors,

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<sup>66</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 6:50-7:01

<sup>67</sup> See definition of literary works as made up of words, and not words themselves. 17 USC 102. *But see* Nina Srejovic, Copyright Protection for Works in the Language of Life, 97 Wash. L. Rev. 459 (2022) (arguing that “DNA is a medium in which information is stored” and that because “DNA compounds are ‘copies’ in which an original copyrightable work or functional creation may be fixed” ...“literature is entitled to copyright protection whether it exists as a copy printed on paper or encoded into DNA”, although the author would treat Genetic DNA as “like any other uncopyrightable machine component”).

<sup>68</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 549 (S.D.N.Y. 1968)

<sup>69</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 549 (S.D.N.Y. 1968) (“Each row (except for two rows at the end), like each page of plaintiff’s booklet, bears in the middle a sample of a basic color in a square area under a column headed ‘HUE’ with two different variations labelled ‘Tints’ in square areas on one side and three different variations labelled ‘Shades’ in separate squares on the other side. Each of the ‘Tints’ and ‘Shades’, like the tints and shades shown on each page of plaintiff’s work together with the basic hue, is achieved by addition of quantities of white or black, respectively, to the basic color, according to a formula supplied by Para-Tone.”

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 3:38 (describing the Munsell System); at 3:46 (describing a 1922 textile color book). *See also* Carnets of Colors from the 1920s in Antonio Ratti exhibition, *Textile as Art: Antonio Ratti: Entrepreneur and Patron*, PALAZZO TE, MANTOVA, <https://www.centropalazzote.it/en/textile-as-art-antonio-ratti-entrepreneur-and-patron/>.

<sup>73</sup> How Color Notation Works, MUNSELL COLOR, <https://munsell.com/about-munsell-color/how-color-notation-works/>

<sup>74</sup> How to Read a Munsell Color Chart, MUNSELL COLOR, <https://munsell.com/about-munsell-color/how-color-notation-works/how-to-read-color-chart/> (“Each color is designated with what is referred to as a color notation; for example, 5R 7/2. As explained above, each of these indicators refer to the 3 attributes of color. 5R is the Hue (or color), 7 is the Value (or lightness/darkness) and 2 is the Chroma (weak/strong). These colors can then be referenced on a Munsell color chart to see what the notation looks like.”)

created in Germany in 1927<sup>75</sup>, offer another color matching and standardization option beyond Pantone.<sup>76</sup> RAL Classic Colours are assigned the letters RAL with an initial number indicating a particular shade (“1: yellow, 2: orange, 3: red, 4: purple, 5: blue, 6: green, 7: grey, 8: brown and 9: white and black shades”<sup>77</sup>) with subsequent numbers indicating other shades from which designers and printers can presumably recreate the color.<sup>78</sup> RAL has also identified a series of colors for designers<sup>79</sup> which build on the Munsell Color System by defining a color in terms of hue, lightness, and saturation<sup>80</sup> and “follow[ing] the CIE Lab color space.” The CIE Lab color space “is a color space defined by the International Commission on Illumination (abbreviated CIE)”<sup>81</sup> based on human vision. The CIE Lab defines color in terms of lightness and its place on the green-red and blue-yellow spectrums.<sup>82</sup> In addition being identified by the letters RAL and numerical identifiers, RAL colors, like Pantone colors, are often described with a name, like Sea Green.<sup>83</sup>

Notwithstanding the fact that there may have been similarities between Para-tone’s guides and other color matching systems *other than* Pantone’s, the District Court reasoned that Para-Tone’s and Pantone’s guides’ “system of arrangement and portrayal...is essentially the same and is offered to artists, designers and printing manufacturers for the identical purpose.”<sup>84</sup> The court also noted that the color systems themselves were substantially identical.<sup>85</sup> In deciding that the similarities between Pantone and Pare-Tone’s booklets were enough to warrant a preliminary injunction for Pantone, the court *did* note *some* differences between the two booklets. “[Pantone] uses separate sheets of its booklet for each series of seven related colors,

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<sup>75</sup> Ral History, RAL, [https://ral-usa.com/wp-content/uploads/RAL\\_History.pdf](https://ral-usa.com/wp-content/uploads/RAL_History.pdf) (“The history of RAL COLOURS began in a period of economic transformation: the first series-production automobile was being manufactured, the age of the talking movies had begun and an economic recovery in Germany had resulted in a rise in prosperity. RAL set the first binding standards in 1927 with a collection of the 40 most widely used colours in industry and public life. These 40 colours were defined for the first time and uniquely classified using RAL numbers. Today, the 2,328 RAL COLOUR are a defining worldwide standard used in industry, trade and design, as well as by professional users of colour.”)

<sup>76</sup> RAL’s history is rooted in offering service and quality marks as an independent third party organization participating in a free market before World War II. Ral History, RAL, [https://ral-usa.com/wp-content/uploads/RAL\\_History.pdf](https://ral-usa.com/wp-content/uploads/RAL_History.pdf) at pgs. 4-5.

<sup>77</sup> FAQ, RAL COLOURS, <https://www.ral-farben.de/en/faq>

<sup>78</sup> FAQ, RAL COLOURS, <https://www.ral-farben.de/en/faq> (“RAL CLASSIC is a collection which has grown historically and currently includes 216 shades. One of these is a micaceous iron colour, one is a metallic colour, six are daylight luminous colours and 15 are pearlescent colours. In order to be included in the colour collection, a colour must not only be of specific interest to the company, it is also not permitted to be based on fashionable influences and must serve a superior public interest. Examples of this are the applications of RAL colours in the field of traffic signage or public authority vehicles (fire brigade, police, etc.).”)

<sup>79</sup> RAL Design System Plus, RAL COLOURS, <https://www.ral-farben.de/en/ral-design-system-plus> (called “RAL Design System Plus”)

<sup>80</sup> RAL DESIGN SYSTEM plus – precise colour communication made easy, @RALCOLOURS, YOUTUBE,

<https://www.youtube.com/watch?v=wHo6JKtsUX4&t=88s> at 1:28, 2:02; see also Videos, RAL COLOURS, <https://www.ral-farben.de/en/videos>

<sup>81</sup> CIELAB color space, WIKIPEDIA, [https://en.wikipedia.org/wiki/CIELAB\\_color\\_space](https://en.wikipedia.org/wiki/CIELAB_color_space).

<sup>82</sup> Id. (“the lightness value, L\* (pronounced “L star”), defines black at 0 and white at 100. The a\* axis is relative to the green–red opponent colors, with negative values toward green and positive values toward red. The b\* axis represents the blue–yellow opponents, with negative numbers toward blue and positive toward yellow.”)

<sup>83</sup> RAL DESIGN SYSTEM plus – precise colour communication made easy, @RALCOLOURS, YOUTUBE, <https://www.youtube.com/watch?v=wHo6JKtsUX4&t=88s> at 2:04.

<sup>84</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 550 (S.D.N.Y. 1968)

<sup>85</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 550 (S.D.N.Y. 1968) (“With respect to each color system, the artist is told that he can order artists’ papers or sheets that will exactly match each of the varied shades shown on the sample booklet with assurance that identically reproduced colors will be furnished by printing ink manufacturers, to whom the originator of the system (Pantone in one case and Para-Tone in the other) have furnished mixing directions which set forth the correct formulas for use of the eight basic primary colors plus specific amounts of black and white to reproduce each shade. This substantial identity in the two systems and in their embodiment is illustrated by the following statement of defendant’s sales manager describing the Para-Tone system: ‘The most comprehensive and multifaceted system is being produced by Para-Tone Company. Its system consists of opaque papers and transparent color sheets that can be matched easily with standard printer’s inks. There are 140 colored acetate sheets available in matte and gloss in two sizes: 10’ by 14’ and 20’ by 28’. The opaque papers are identical to the acetate sheets. For the printer there are mixing charts which furnish the correct formulas to the 140 colors. The formulas are based on ten standard colors: black, white and the eight primary colors. These inks can be combined to equal the color of the specified sheet. One pound of a medium red results from the combination of ten ounces of process red, two ounces of white and four ounces of black. This red will match closely the reflective value and transparency of a red Zipatone acetate sheet.’”)

whereas Para-Tone shows them in separate horizontal rows on four pages... [Pantone] offers 505 colors, whereas Para-Tone offers only 140...[Pantone] provides the mixing formula under each color shade, whereas Para-Tone supplies the formula separately to the printer.”<sup>86</sup> Despite these differences, Para-Tone’s booklet still substantially copied the essential parts of Pantone’s booklet. Para-Tone had, in fact, created comparison sheets which cited Pantone’s colors and offered a Para-Tone color as an alternative. As the court observed, this comparison sheet was

*a typewritten cross-reference sheet entitled ‘Para Tone New Colors’ (a copy of which is attached hereto). It lists each of the hues, shades and tints offered by Para-Tone and [Pantone] opposite a very similar color, shade or tint offered by Pantone, together with the respective Para-Tone and Pantone serial numbers for each, in such a way as to create the impression that each such correlated color is the same. The inference is inescapable that the publisher’s intent was to demonstrate that the two color matching systems were interchangeable and lead customers to believe that there was a Para-Tone color that could be substituted for at least 140 of the colors offered by [Pantone].*<sup>87</sup>

While Para-Tone raised technical defenses, like an insufficient copyright notice and previous publication<sup>88</sup>, it did not raise the possibility that the Pantone booklet *expressing* the color matching system merged with the *idea* of the color matching system.<sup>89</sup> Nor did Para-Tone fully explore the possibility that the booklet itself indicated an uncopyrightable system and not an expression at all. Disregarding merger, the court only discussed *Baker v. Selden* for the proposition that a copyrightable expression need not be novel but only original if it adds something more than trivial variations.<sup>90</sup> Focusing on the way in which Pantone arranged its booklet, the line the court drew between the color matching system and its expression in a book seems to be a thin one.<sup>91</sup> At the same time as the court seemed to treat Pantone’s book like a photograph, discussing its arrangement of colors, it also saw Pantone’s book as part of the books on accounting which *could*, if they did not copy other books, benefit from a copyright:

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<sup>86</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 550 (S.D.N.Y. 1968)

<sup>87</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 550 (S.D.N.Y. 1968)

<sup>88</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 551 (S.D.N.Y. 1968) (“...there is no merit to the various affirmative defenses asserted by the defendant. No valid support is offered for the contention that plaintiff’s notice of copyright, which described its work as ‘Copyright 1963,’ was improper... Defendant’s contention that plaintiff defrauded the Copyright Office by failing to mention, when it registered its work in 1968, ‘that material and substantial portions \* \* \* had been previously published’, apparently refers to plaintiff’s mistaken reference in its 1968 application to the publication date as September 30, 1963 (instead of September 25, 1963) and that it was labelled ‘Pantone Matching System’ with the added words (in smaller letters) ‘Printer’s Edition’. The defendant has filed affidavits, however, conceding that it has examined both works and finds them identical except for these differences, which are too immaterial and inconsequential to invalidate the registration certificate or render it fatally defective.”)

<sup>89</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 547 (S.D.N.Y. 1968) (discussing *Baker v. Selden* for originality and novelty)

<sup>90</sup> *Id.*

<sup>91</sup> *Baker v. Selden*, 101 U.S. 99, 101–02, 25 L. Ed. 841 (1879) (“There is no doubt that a work on the subject of book-keeping, though only explanatory of well-known systems, may be the subject of a copyright; but, then, it is claimed only as a book. Such a book may be explanatory either of old systems, or of an entirely new system; and, considered as a book, as the work of an author, conveying information on the subject of book-keeping, and containing detailed explanations of the art, it may be a very valuable acquisition to the practical knowledge of the community. But there is a clear distinction between the book, as such, and the art which it is intended to illustrate. The mere statement of the proposition is so evident, that it requires hardly any argument to support it. The same distinction may be predicated of every other art as well as that of book-keeping. A treatise on the composition and use of medicines, be they old or new; on the construction and use of ploughs, or watches, or chums; or on the mixture and application of colors for painting or dyeing; or on the mode of drawing lines to produce the effect of perspective,—would be the subject of copyright; but no one would contend that the copyright of the treatise would give the exclusive right to the art or manufacture described therein.”)

novelty of a color matching system and its description was not necessary for Pantone's copyright.<sup>92</sup>

The challenge with the implicit links the District Court drew between Pantone's guide, the color matching system, and Para-Tone's own guide is that the spectre of this preliminary injunction from over 50 years ago seems to give Pantone a thick instead of a thin copyright *in the Pantone Color Matching system itself*. In 1968 the court explained when ordering the preliminary injunction that Pantone could only "enjoin the use of the infringing booklet and materials, or activities that would infringe the plaintiff's copyrighted work"<sup>93</sup> and that Para-Tone could still advertis[e] and sel[l] its [other] sensitized color sheets to artists and others."<sup>94</sup> In practice, however, the line between what is infringing and not infringing of Pantone's color systems and booklets seems blurred and opaque, especially when Pantone messages that they "cannot allow any unauthorized or unchecked reproduction and distribution of Pantone-Identified Colors."<sup>95</sup> As evidenced by *The Business Insider's* reporting, Pantone has relied on the injunction it won in this 1968 case to market a copyright in the *language* that its color system provides.<sup>96</sup> The system, *The Business Insider* reports, is sufficiently unique and original, not the booklet.<sup>97</sup>

Pantone's copyright claim seems ripe for reconsideration, especially in a copyright environment where the digital world has created more opportunities to arrange and present colors. Given the lack of precedential value of the decision, and artists' misconceptions about what Pantone can actually own and prevent other companies from offering on the market, the time also seems ripe to re-consider whether Pantone can have *any* copyright in its booklets at all.

## **b) Unfair Competition and Trademark: Licensing Pantone's Color Matching System to Create Pantone Color on the Market**

When deciding the copyright infringement claim, the District Court's reasoning seems to have approximated a passing off claim. As another claim Pantone had raised a claim of false designation against Para-Tone under 43(a).<sup>98</sup> The District Court addressed that claim separately, although it reached a similar result as that under the copyright claim. In the court's opinion Para-Tone's distribution of its leaflet called Para Tone New Colors<sup>99</sup> also violated

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<sup>92</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 547 (S.D.N.Y. 1968) (In order to be copyrightable plaintiff's work need not be strikingly unique or novel as long as its contribution is more than a trivial variation. *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99 (2d Cir. 1951) (per Frank, C.J.); *Ketcham v. New York World's Fair 1939*, 34 F.Supp. 657 (E.D.N.Y.1940), *affd.*, 119 F.2d 422 (2d Cir. 1941) (color plan for 1939 World's Fair). "Original" in reference to a copyrighted work means that the particular work 'owes its origin' to the 'author.' No large measure of novelty is necessary. Said the Supreme Court in *Baker v. Selden*, 101 U.S. 99, 102-103, 25 L.Ed. 841: 'The copyright of the book, if not pirated from other works, would be valid without regard to the novelty, or want of novelty, of its subject-matter. The novelty of the art or thing described or explained has nothing to do with the validity of the copyright...')

<sup>93</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 552 (S.D.N.Y. 1968)

<sup>94</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 552 (S.D.N.Y. 1968)

<sup>95</sup> Color Identification and Control contains a Copyright Notice. See Color Identification and Control, PANTONE, <https://www.pantone.com/articles/how-to/color-identification-and-control?srltid=AfmBOooxtMgg9rwBTec6eVq8z-pDD4FKoPvHZDtQAHHoYkoNZ5IxiN3X>.

<sup>96</sup> <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 7:08

<sup>97</sup> <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 7:13 – 7:25

<sup>98</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 552 (S.D.N.Y. 1968) ("Section 43(a) of the United States Trademark Act, 15 U.S.C. § 1125(a), prohibits use of false designations or misrepresentations in connection with goods or services.")

<sup>99</sup> *Pantone, Inc. v. A. I. Friedman, Inc.*, 294 F. Supp. 545, 552 (S.D.N.Y. 1968)



43(a) because it “would lead the ordinary observer to believe that the Para-Tone colors and color system are the same as plaintiff's Pantone colors and system”<sup>100</sup> when the colors and color system *were not the same*. Instead, Para-Tone's colors “differ[ed] in shade, tint and quality from the Pantone colors”<sup>101</sup> - a Para-Tone Yellow #101, for example, should have had a greener tint if it was to completely match a Pantone color.<sup>102</sup>

The court's ability to objectively differentiate Pantone's colors from Para-Tone's colors on the market in shade, tint, and quality raises the issue of how exactly we tell the difference between Pantone's colors and competitors' colors. Yes, the Pantone Matching System *does* create solid spot colors whose difference is visible to the naked eye. But the notion that a Pantone Color produced by the Pantone Matching System is *better* than a color produced by another matching system is overwhelmingly the fruit of the Pantone trademark.

Pantone's colors are, by definition, not trademarks *for* Pantone. Instead of indicating Pantone as the source of a product in a specific Pantone color, Pantone colors indicate the specific brand, or other corporate entity, that uses them. Think of how a specific shade of a Pantone red may indicate Coca-Cola when on a soda can. While Pantone may not have trademark rights in the colors which they identify through recipes and otherwise facilitate through their color-matching technology, Pantone *does* have a number of trademarks that apply to parts of their business activities. The word PANTONE is a registered trademark for a number of products, including “color cards and color books displaying varieties of colors”<sup>103</sup>, “computer hardware and software and manuals supplied therewith, for use in the field of computer graphic design”<sup>104</sup>; “printing ink pigments”<sup>105</sup>; and the business activity of “specifying colors for corporate identification programs by providing color analysis for matching against standards for a color, including its strength, tone and transparency.”<sup>106</sup> The Pantone Chip, or the illustration of any color with a white border beneath it and/or a figurative outline, is a registered trademark for “printing ink”, “color swatch books”, as well as “promoting the study of the psychology of color and societal color trends”.<sup>107</sup>

Just as Pantone shares a Copyright Notice on its website for customers and prospective collaborators seeking to work with or use Pantone matches shades, the company also shares a Trademark Notice.

***“Trademark Notice Pantone, Pantone Matching System, Pantone Textile Color System, Pantone Plastics Color System, PMS, the Pantone Chip Logo, the Pantone Fan Chip Logo and the Pantone Window Logo are Pantone LLC's check-standard trademarks for color***

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<sup>100</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 552 (S.D.N.Y. 1968)

<sup>101</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 552 (S.D.N.Y. 1968)

<sup>102</sup> Pantone, Inc. v. A. I. Friedman, Inc., 294 F. Supp. 545, 552 (S.D.N.Y. 1968) (“...the cross-reference sheet ‘Para Tone New Colors’ shows Para-Tone's ‘Yellow #101’, whereas in fact the former has a greener tinge to it than the latter. Similar differences pervade the two color matching systems. However, an artist, designer, ink manufacturer or innocent purchaser of color sheets, could be misled by the defendant's works, including the cross-reference sheet, into the belief that the two color systems were substantially the same and that each of the cross-referenced colors was identical.”)

<sup>103</sup> U.S. Registration No. 811718 (since 1966).

<sup>104</sup> U.S. Registration No. 1674917 (since 1992).

<sup>105</sup> U.S. Registration No. 926076 (since 1971) (likely because Pantone began as a printer, even though it does not sell ink today).

<sup>106</sup> U.S. Registration No. 1003494 (since 1975).

<sup>107</sup> U.S. Registration No. 1987373 (since 1996); U.S. Registration No. 2501852 (since 2001); U.S. Registration No. 2705124 (since 2003).



*standards, color data, color reproduction, and color reproduction materials, and other color-related products and services, meeting Pantone's specifications, control, and quality requirements. Written permission from Pantone's Licensing and Trademark Department is required prior to reproduction or digital display of a Pantone Color with trademark and/or copyright identification or use of Pantone's trademarks for any color-related products or services. X-Rite, Munsell, and ColorChecker are trademarks or registered trademarks of X-Rite, Incorporated in the United States and/or other countries.*"<sup>108</sup>

Licensing is a key part of Pantone's business model. While it doesn't make ink, Pantone does *license* its marks to ink producers. Pantone also licenses its trademarks, and its color recipes, to software companies.<sup>109</sup> Pantone also sells co-branded products, like markers, in specific colors that can, like a printer, help to make art or an advertisement or other commercial product as direct tools.<sup>110</sup> Talens Pantone markers may be *based* on the Pantone Matching System, Pantone's main product, but they are significantly different as a product. A designer could, for example, buy these markers directly from Pantone and make a poster without resorting to the services of a printer who uses the Pantone Matching System.



*Talens Pantone Market 9 set*  
*Image from [Pantone.com](https://www.pantone.com)*

<sup>108</sup> Color Identification and Control, PANTONE, <https://www.pantone.com/articles/how-to/color-identification-and-control?srsltid=AfmBOoxxtMgg9rwBTec6eVq8z-pDD4FKoPvHZDtQAHhoYkoNZ5IxiN3X>.

<sup>109</sup> Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 9:38-9:40

<sup>110</sup> <https://www.pantone.com/products/lifestyle/talens-pantone-marker-9-set> sold under the "Lifestyle" moniker

Markers like these raise the question – is there any added value to placing the Pantone mark on markers that are separable from Pantone's uncopyrightable color matching system and part of a wider color universe on their own? Licensing is a key part of *how* Pantone communicates the value of colors made with its Pantone Matching System on the market over other colors, but it is a bit unclear why or how a printer might need Pantone branded products (other than to participate in one form of communication with their collaborators and clients in the supply chain). Consider, for example, how different ink companies use their own inks to mix Pantone colors. There are co-branded inks that printers use, like the Pantone® UMX Ultimate Mixing System.<sup>111</sup> But there are other inks that are *not* co-branded with Pantone and can produce Pantone colors. FN INK Plastisol Screen Printing Ink has “15 bold colors and full compatibility with the FN-INK Mixing System [allowing a printer to] easily create custom Pantone matched shades...”<sup>112</sup> The inks themselves are not co-branded with Pantone and the description of the FN-INK Mixing System Ink Kit, a starter ink kit, also refers to buyers' ability to create “Simulated Pantone Coated Colors.”<sup>113</sup> In other product packages, FN Ink even seems to *resell* Pantone's guides alongside their own ink and separate non-Pantone branded ink scale.<sup>114</sup>



*The FN-INK™ Mixing System Premium Ink Kit with RevolvInk Mixer*

The FN Ink Mixing System allows a printer who buys these kits to choose some Pantone color numbers, input them, and then receive the recipe to create that color using FN-INK ink.<sup>115</sup>

The main added value of the Pantone Color Matching System seems to be in the standardization and color consistency that it offers *and* its popularity. Were an artist like Stuart

<sup>111</sup> Pantone® Ultimate Mixing System (UMX) Pint – The Complete Solution for Custom Color Matching, TOTAL INK, <https://totalink.com/products/pantone%C2%AE-umx-ultimate-mixing-system-pint-set>.

<sup>112</sup> FN-INK Plastisol Screen Printing Ink, SCREENPRINTING.COM, <https://www.screenprinting.com/collections/fn-ink-plastisol-screen-printing-ink>.

<sup>113</sup> FN-INK™ Mixing System Ink Kit, SCREENPRINTING.COM, <https://www.screenprinting.com/collections/fn-ink-plastisol-screen-printing-ink/products/fn-ink-plastisol-ink-kit-pints-and-quarts>.

<sup>114</sup> FN-INK™ Mixing System Premium Ink Kit with RevolvInk Mixer, SCREENPRINTING.COM, <https://www.screenprinting.com/products/fn-ink-mixing-system-premium-ink-kit-with-revolvink-mixer>.

<sup>115</sup> FN-INK Mixing System, FN.Ink, <https://www.fn.ink/pages/fn-ink-mixing-system>. See also What Are Mixing Systems and Pantone Colors?, @Ryonet, YOUTUBE, <https://www.youtube.com/watch?v=HxE2AoSVVSE>.

Semple<sup>116</sup> or another company in a specific industry like screen printing to create a viable and popular alternative to Pantone, especially with the public domain parts of its color matching system, Pantone could potentially become obsolete.

The screenshot shows the 'FN-INK MIXING SYSTEM' interface. At the top, there's a yellow header with the logo and a 'REQUEST A PANTONE' link. Below the header, a form allows users to select a 'PANTONE COATED COLOR' (currently '103') and a quantity ('100 grams'), with a 'LOAD FORMULA' button. The main content area displays the 'FN-INK PANTONE FORMULA: PANTONE 103' for '100 GRAMS' as of '7/24/2025'. It includes a table with the following data:

COLOR	NAME	AMOUNT(g)
	FN-INK Lemon Yellow	54.10
	FN-INK Royal Blue	4.17
	FN-INK Golden Yellow	41.73

To the right of the table is a large yellow lightning bolt graphic. The background of the interface features a colorful rainbow gradient at the top and a dark background with the lightning bolt.

*The FN Ink Mixing System  
Image from [FN-INK](https://www.fn-ink.com)*

### c) Antitrust: Is Pantone a Monopolist or a Market Innovator?

What would it take for printers, designers, and other consumers to switch from Pantone to another color matching system? This question is a key issue in antitrust law, which defines markets to determine whether one company is exerting a monopoly on the market, precluding competition and undermining consumers' choices.

The challenge to asking, and answering, whether Pantone is a monopolist in the market of color production is defining Pantone's product and what consumers are searching for and what competitors are offering instead. The market for color is multifaceted and complex. Color is a product which is, we might say, the product of an artificial scarcity on the market. Color *as color* is free for all brands to develop and use. Certainly, some brands might have a limited right under trademark law to stop other brands from using colors on similar products or services, like jewelry packaging.<sup>117</sup> But colors on certain categories of goods, like paint or ink, can never gain the secondary meaning necessary for a trademark right.<sup>118</sup> Stuart Semple's own foray reverse engineering Tiffany Blue paint is one such example.<sup>119</sup> Sure, a company like

<sup>116</sup> Semple has proposed an open source model to replace or, at the very least, compete with Pantone. Why Pantone Colors Are So Expensive | So Expensive | Business Insider, @BusinessInsider, YOUTUBE, Apr 19, 2025, <https://www.youtube.com/watch?v=xnpyTNK4U9U> at 21:21. Other designers doubt that such a replacement is feasible or on the horizon. Id. at 21:31- 21:35.

<sup>117</sup> Consider Tiffany & Co.'s registration for a shade of blue as applied to a jewelry pouch. Reg. No. 5176498, USPTO, Registration Date Apr. 04, 2017 ("The mark consists of a shade of blue that is used on product packaging in the form of jewelry pouches with drawstrings. The broken lines depicting the jewelry pouch and drawstrings indicate placement of the mark on the product packaging and are not part of the mark.")

<sup>118</sup> See Felicia Caponigri, *Color and Cultural Functionality*, 74 AM. UNIV. L. REV. 1255, 1264 et seq. (2025).

<sup>119</sup> TIFF BLUE, super matte acrylic, 5.1 fl oz (150ml), CULTURE HUSTLE, [https://www.culturehustleusa.com/products/tiff-blue?srsltid=AfmBOorA4GmR1cwK6RqrcYUQeegV\\_yQmyUWv6mzMraWY6zN\\_HySb1yrJ](https://www.culturehustleusa.com/products/tiff-blue?srsltid=AfmBOorA4GmR1cwK6RqrcYUQeegV_yQmyUWv6mzMraWY6zN_HySb1yrJ); TFL, *What Can Brands Learn From a New*

Tiffany could, with Pantone, as Semple reported, “hide the code” for the Pantone recipe for Tiffany Blue<sup>120</sup>, but this hiding does not stop the honest reverse engineering of the blue for categories of goods that are not part of a trademark right, as any artist painting in Tiffany Blue will tell you.<sup>121</sup> [trade secrets?]



*A Priceless Fashion Paint by Oliver Gal  
Image from [OliverGal.com](http://OliverGal.com)*

This also leads us to the challenge of identifying color as a business proposition. We might refer to a number of shades of blue as Tiffany Blue because a shade may *look like* Tiffany Blue to us, whether we are in a store, scrolling social media, or otherwise encountering the color in nature (in the sky, for example). How do we know a shade is Tiffany Blue? Like the endeavor of the Pantone Color Institute, where cultural events inform color choices which then inform brands’ designs which then inform cultural events, it’s thanks to a bit of a cultural feedback loop. While light’s reflection on a specific object can indicate a specific color to consumers that they see *individually*, color is also an inherently *collective* product. While each consumer may see an abstract color, and also think of an abstract color in their mind, consumers need to communicate the colors they see and the colors they are *thinking* of to one another. We either speak in the abstract language of color and bring in a swatch of the color we desire, or we speak in words and assign letters and at times perhaps numbers to a color. So, we may say “Tuscan Yellow” or “Sunflower Yellow” to a salesperson at Home Depot or to our family members with whom we share a home. Those textual phrases and descriptors help us to recall a specific color to our collective minds and offer us common cultural touchpoints to imagine a specific color.

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“Tiffany Blue” Art Stunt?, THE FASHION LAW, September 24, 2021, <https://www.thefashionlaw.com/what-brands-can-learn-from-a-new-tiffany-blue-art-stunt-about-the-protectability-of-colors-as-trademarks/>

<sup>120</sup> TFL, *What Can Brands Learn From a New “Tiffany Blue” Art Stunt?*, THE FASHION LAW, September 24, 2021, <https://www.thefashionlaw.com/what-brands-can-learn-from-a-new-tiffany-blue-art-stunt-about-the-protectability-of-colors-as-trademarks/> (what Semple says “makes Tiffany Blue different is that its trademark is across all uses since 1998, and they have even hidden the Pantone code.”)

<sup>121</sup> *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 155 (1989) (“The public at large remained free to discover and exploit the trade secret through reverse engineering of products in the public domain or by independent creation. *Id.*, at 490, 94 S.Ct., at 1890...”)

The challenge with the way in which consumers, and, therefore, businesses, identify color now is that it makes it hard to define *the product* that consumers seek and even *the product* over which businesses that sell color compete. Consumers – from printers to designers and more – may want a color that is bright, consistent, and a spot, not a halftone. But does that mean that consumers would switch to a company that sells inks, for example, in all colors, or does that mean that consumers would switch to another company with a color matching system instead of buying Pantone products? Would consumers see other products as comparable to Pantone co-branded products so long as they had access to Pantone's Matching System?

There are a few ways we could define the relevant market in which Pantone operates and entertain whether Pantone has a monopoly. As Chris Sprigman has detailed<sup>122</sup>, substitution is an important part of simplifying “what is usually a much messier economic reality” to define a market for anti-trust purposes.<sup>123</sup> There are two main ways that we can think of the substitution of products and, therefore, identify the relevant market for color in anti-trust terms. First, we can apply the “hypothetical-monopolist test” and, more specifically, the “SNNIP” test, an imaginative exercise focused on price elasticity that gathers substitutable products together in a specific geographic area while taking price hikes into account.<sup>124</sup> Another way to identify the relevant market is through the *Brown Shoe* test, which defines the products that might make up a market in greater qualitative detail beyond price.<sup>125</sup> Section 2 of the Sherman Act prohibits conduct by companies with monopoly power “that impermissibly tends to create, maintain, or extend monopoly power.”<sup>126</sup> As Sprigman and Francis have written, monopolization has two central elements under Supreme Court precedent – monopoly power and anticompetitive conduct.<sup>127</sup> In terms of the first element, ““industry,” “honest competition,” “innovation,”” are not included in monopoly power.<sup>128</sup> Instead, ““predatory,” “exclusionary,” and “anticompetitive”” are the relevant adjectives.<sup>129</sup> The line between honest competition and predatory behavior and, by extension, the difference between market share and monopoly power, can, however, be hard to draw.<sup>130</sup> As Einer Elhauge has written, there is often more success in identifying monopoly power and, relatedly, anticompetitive conduct, in “specific subsets of practices (such as exclusivity, tying, and predatory pricing) that fall within the broader definition of monopolization.”<sup>131</sup>

Making differentiating between market power and monopoly power more complicated is the need to identify the “substantial market powers” that a company must exert. Substantial market

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<sup>122</sup> See Christopher Jon Sprigman, *Copyright, Meet Antitrust: The Supreme Court's Warhol Decision and the Rise of Competition Analysis in Fair Use*, Yale Law Journal Forum, January 17, 2025, at p. 312 et seq.

<sup>123</sup> DANIEL FRANCIS AND CHRISTOPHER JON SPRIGMAN, *ANTITRUST: PRINCIPLES, CASES, AND MATERIALS* 67 (2<sup>nd</sup> ed., 2024).

<sup>124</sup> Christopher Jon Sprigman, *Copyright, Meet Antitrust: The Supreme Court's Warhol Decision and the Rise of Competition Analysis in Fair Use*, Yale Law Journal Forum, January 17, 2025, at p. 312, 316 (discussing “price elasticity” as the focus of the “hypothetical-monopolist test”).

<sup>125</sup> *Id.* at 316 (“Another way to define a market is through the appraisal of qualitative evidence about the relevant products or services, in an effort to identify the relevant similarities or differences that, in light of market practice, may affect whether those products or services are competing in the same market.”)

<sup>126</sup> DANIEL FRANCIS AND CHRISTOPHER JON SPRIGMAN, *ANTITRUST: PRINCIPLES, CASES, AND MATERIALS* 8 (2<sup>nd</sup> ed., 2024).

<sup>127</sup> *Id.* at 334 (“The Supreme Court has said that monopolization has just two elements: (1) monopoly power; and (2) “anticompetitive conduct.””).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* (“the resulting line between lawful competition and unlawful monopolization has always been complex, blurry, and controversial”)

<sup>131</sup> *Id.* at 335.



power may or may not mean that a single seller is involved in a “‘strict monopol[y]’”.<sup>132</sup> The evidence of monopoly power can be both direct (such as “evidence of actual control over prices and output levels in the relevant market”) and indirect (including “a high share of a defined relevant market protected by barriers to entry”).<sup>133</sup> Market share is usually the “starting point”<sup>134</sup> for evaluating whether a company has market power. A useful rule, as stated in *United States v. Aluminum Co. of America* is that while “ninety percent is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly[,] thirty-three per cent is not.”<sup>135</sup>

In the “hypothetical-monopolist test”<sup>136</sup>, we could focus on color matching as our main service. We would then progressively add other products that we may find to be the closest substitutes for color matching until we arrive at a group of products one of which, if owned by one company, could sustain a significant price increase for a year or more.<sup>137</sup> To find substitutes for Pantone’s products, the key is identifying what exactly Pantone’s product or service is. Color is really a *by-product* of Pantone’s main service. Pantone’s main service is providing recipes for colors that consumers buy from *other* people – printers. Pantone’s main product is a color recipe that then *results in* a specific color that may or may not have its own descriptor, like “Mocha Mousse.”<sup>138</sup> For the sake of argument, we will say that Pantone’s base service is the Pantone Color Matching System.

What is an adequate substitute to which brands, printers, designers, and artists would deflect? If we listen to Stuart Semple and other graphic designers, there seems not to be one. In part this is because of the quality of Pantone’s Color Matching System. In practice, however, we could identify the Munsell Color System, the RAM Color System, and others, even Stuart Semple’s own reverse-engineering which he may sell as a service to other creatives, as substitutes.

X-Rite, Pantone’s parent company, already owns both the Pantone Matching System and the Munsell Color System. And it seems, from reports, that X-Rite profitably raises prices on Pantone for a year or more. Consumers are complaining about the price increase, but they are not overwhelmingly defecting to the Munsell Color System or another substitute. And, even if they were, X-Rite owns the Munsell Color System too. So, it seems that we could, despite Pantone’s offering of other products for sale, focus only on the Pantone Color Matching

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<sup>132</sup> Id. at 337.

<sup>133</sup> Id. at 338.

<sup>134</sup> Id.

<sup>135</sup> Id. at 339; *United States v. Aluminum Co. of America* 148 F.2d 416 (2d Cir. 1945)

<sup>136</sup> Christopher Jon Sprigman, *Copyright, Meet Antitrust: The Supreme Court’s Warhol Decision and the Rise of Competition Analysis in Fair Use*, Yale Law Journal Forum, January 17, 2025, at p. 312

<sup>137</sup> DANIEL FRANCIS AND CHRISTOPHER JON SPRIGMAN, ANTITRUST: PRINCIPLES, CASES, AND MATERIALS 68 (2<sup>nd</sup> ed., 2024) (“Two ways to define a market are particularly important in practice. One way is the “hypothetical monopolist test” and particularly the version of it known as the “SSNIP test” (a “SSNIP” is a “small but significant non-transitory increase in price”). This test is essentially a thought experiment. It involves starting with the product or service that we are focused on and adding substitutes one at a time, starting with the closest substitute, until a hypothetical monopolist of all included products would find it profitable to increase the price of at least one of those products or services by a significant amount (traditionally, around 5%) for a non-transitory period of time (traditionally, at least a year). We do this in order to figure out how many of these products or services must come under common control before the supplier has gained the power to inflict economic harm on others.”)

<sup>138</sup> The 2025 Color of the Year, PANTONE, <https://www.pantone.com/color-of-the-year/2025?srltid=AfmBOoohGCRFyM52pXJVM5SUu2SywRxHX46w5oSmoQN46zQqPpZvpQQo>



System and identify the relevant market as color matching systems to produce tangible products and digital or intangible products. And Pantone, or, rather, its parent company X-Rite, seemingly has a monopoly because Pantone has actual control over prices in that market.

If we applied the *Brown Shoe* test, we might achieve conflicting results. The Pantone Color Matching System seems to be particularly unique. In all the reports of Pantone's raising prices and creatives' outrage, the Pantone Matching System's "peculiar characteristics and uses, unique production facilities, distinct customers...and specialized vendors"<sup>139</sup> mean that it is nearly impossible for consumers to switch to a different non-Pantone service. In this case, Pantone's Color Matching System may be like Coke or Pepsi – because of the taste, consumer loyalty to one brand over another, and other intangible factors, it may take consumers a great deal to switch from one to the other.<sup>140</sup> Coke, like Pantone's Color Matching System, may *never* be able to substitute for Pepsi. If this is the case, we may arrive at what seems to be an inapposite result: Pantone has no competitors in a defined market and, therefore in the specific market for the making and placement of bright, solid colors on materials across industries, Pantone is not a monopolist. On the other hand, Pantone may have the corner on this market, and may be *the* monopolist, with an over 90% share of its particular, un-substitutable product that makes up its own market.

[Add more...]

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<sup>139</sup> Christopher Jon Sprigman, *Copyright, Meet Antitrust: The Supreme Court's Warhol Decision and the Rise of Competition Analysis in Fair Use*, Yale Law Journal Forum, January 17, 2025, at p. 316. (citing to 370 U.S. 294, 325 (1962).)

<sup>140</sup> Id. at 320 (citing to Mark A. Lemley & Mark P. McKenna, *Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, 100 GEO. L.J. 2055, 2056 (2012)).