



California Fashion Association

This is the first of a series of articles, written expressly for CFA by our member attorneys, providing information about our industry's vulnerable IPR issues. The current case studies, along with their outcomes, will send a clear "protect yourself" message, and are part of CFA's continuing effort to be of assistance.



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"PROTECT YOURSELF"

INTELLECTUAL PROPERTY AND THE INTERNET

"But I found it on the internet..." is not a defense when it comes to a claim of copyright infringement. As a general rule, don't take anything from the internet, or anywhere else, because it almost always is copyrighted material.

INTERNET CASES IN POINT

Case 1: Mr. Manufacturer finds that a 3rd party is producing a cheaper version of his product, and is under pricing his product *and* boasts, on its web site, its ability to "...bring you the best of Mr. Manufacturer's product but at affordable prices." Is there an infringement?

Result 1: *Yes, Mr. Manufacturer wins!* You have the right not to have your name associated with the 3rd party's product. A 3rd party's use of your name without permission in the promotion, advertising and sale of its goods violates your rights under the unfair competition and misleading advertising laws of the U. S. and applicable state laws.

Case 2: Mr. Manufacturer finds that a seller on eBay is using a photo of his product to promote its "inspired" version of the product. Taking a closer look at the photo, it is discovered to be the same as the one on Mr. Manufacturer's web site promoting the product. Is there an infringement?

Result 2: *Yes, Mr. Manufacturer wins!* Assuming that Mr. Manufacturer (and not the hired photographer) owns the photos on his original

Case 3: Now the tables are turned. Mr. Manufacturer has created a **Press Page on his web site using several magazine covers** and pages displaying his apparel. Mr. Manufacturer then receives a 'cease and desist' from the magazine based on a claim of copyright infringement. Is there an infringement?

Result 3: *Mr. Manufacturer loses!* You do not have the legal right to use a magazine's copyrighted materials on your web site without the periodical's permission. Furthermore, the fact that your product was photographed and appeared in the magazine doesn't necessarily mean that the magazine endorses your product. As such, the magazine has the right not to have its name associated with your product or your advertising.

Case 4: Mr. Manufacturer finds a **caricature on a random web site** that would make an adorable logo for his new line, and starts using it on his web site and in company advertising. Because it is not a photo of an actual person, Mr. Manufacturer is certain that he has nothing to worry about. However, he receives a 'cease and desist' and a demand for \$2,500 for a license to use the caricature. Is there an infringement?

Result 4: *Mr. Manufacturer is on a losing streak - he has to pay up!* The fact that the caricature is not a real person is not a defense to a claim of copyright infringement!

Case 5: Mr. Manufacturer, you have been around forever but since you are 'old school', you never appreciated that having a web site can be an extremely valuable marketing tool for your business. Unfortunately, **a 3rd party knows the value of a web site in today's market and has registered and is using the domain name** corresponding to your company. Is there anything you can do or are you sorry out of luck for not having acted sooner in securing the domain name for yourself?

Result 5: You can either choose a different domain name or fight to get the domain name back from its current owner which may not be a cheap proposition. To win such a lawsuit it must be determined that the domain name was registered in bad faith which may not be easy to prove. Moral of the story: Mr. Manufacturer, **don't be so resistant to change in the future!**

Some other common misconceptions about copyrighted materials and the internet:

1. Scanning an image yourself and then posting it to your web site creates a new copyright for you - **WRONG!**
2. Taking a screen shot of something and then posting it to your web site creates a new copyright for you - **WRONG!**
3. Using someone else's copyrighted material for non-commercial or non-profit use is always acceptable - **WRONG!**

As a general rule, *don't take anything from the internet* ; if it is copyrighted material you need either the owner's permission or a license to use the copyrighted material.

While some areas of the law can be very complicated, the basics of copyright law and the internet are very simple. If the material isn't yours or you don't have permission to use it, don't!

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