

INTELLECTUAL PROPERTY IN YOUR EVERYDAY LIFE

By Joseph Beckman (<http://www.IntellectLawGroup.com>)

Intellectual property gets short shrift from your average person. Patents, trademarks, copyright and trade secrets are very often treated cavalierly. And yet, intellectual property issues can pop up in the most innocuous of circumstances.

We all know about the “knock-offs” such as Gucci handbags and Rolex watches that are commonly found at area flea markets. As an end consumer, we can buy these items secure in the knowledge that we are unlikely to be the target of a “sting” operation, finding ourselves behind bars for trademark infringement. The mark holders have historically targeted the manufacturers and distributors, preferring not to alienate their consumer markets.

Peer to peer file sharing networks are, in some respects, the on-line equivalent of a flea market. Offering a mixed assortment of digital goods, Napster and its progeny have given rise to an entire community of on-line file-swappers. Everything from software to music and movies is available on-line. The problem is that most of these “goods” infringe on intellectual property rights.

As these networks grow and the sharing becomes more prevalent, the music companies have grown more desperate in their attempts to curb it. Verizon was subpoenaed to produce the name of a subscriber involved in heavy downloading of pirated music. Verizon is still fighting the latest court decision upholding the subpoena. Even college students have been sued for distributing pirated music using college network resources. To fight pirated distribution of her latest release, Madonna uploaded fake copies of her music files to “contaminate” the swapping network. Legislation has even been introduced to allow copyright holders a limited right to “hack” or disable a pirate’s computer system to prevent copyright infringement. While fraught with all sorts of problems, the legislation is being pushed hard by the music industry and has its supporters in Congress. Already, music CD’s are being released with copy protection schemes, preventing even the casual copying and fair use otherwise allowed by statute. All of these developments are taking the “battle” for digital supremacy directly to the consumer.

As a consumer, you would be outraged to find out that the Rolex watch you bought for \$2,000.00 was a knockoff worth perhaps only \$200.00 (if you are lucky). You might even sue, if you can find the guy that sold it to you. After all, it cost you a lot of money. So, of course, you can understand a furniture manufacturer being upset when it’s designs are copied, right? After all, it took time and effort to create those designs you enjoy so much. The furniture designer wants to be paid for those efforts. A federal court in North Carolina agreed and found a knock-off designer liable for copyright infringement. What was interesting about the case was that the infringement arose, not from wholesale copying of

the entire piece of furniture, but rather from copying only a portion of the furniture design. In that case, it was a triple-leaf design for use in a dining room suite. Collezione Europa U.S.A. v. Hillsdale House, Ltd., 243 F. Supp. 2d 444 (M.D.N.C. 2003). Other cases have involved patent or trademark protection extended to kitchen cabinet designs, ceiling fans and faucets.

Copyright and trademark issues also arise in home construction. Architects have a copyright in their work and, if it is sufficiently distinctive, they may similarly claim trademark protection. A builder cannot just copy a home design, even if the plans are readily available at the local planning office. One builder found this out the hard way, after the condominium development was built. John G. Danielson, Inc. v. Winchester-Conant Properties, Inc., 322 F.3d 26 (1st Cir. 03/06/2003). Even a private homeowner, hiring an architect to plan an addition needs to recognize that conditions may attach to their use of the plans, even after the architect has been paid. While payment may license the homeowner to use the plans, subsequent uses or the creation of derivative works (i.e. hiring another architect to modify the plans) may not be within the terms of the licensed use. You guessed it; someone found this out the hard way. Johnson v. Jones, 149 F.3d 494 (6th Cir. 07/21/1998).

Intellectual property may be intangible but it can touch our lives in so many innocuous ways. These are just a few examples of how intellectual property rights can affect the design of your home, your furniture, or how you acquire and access your music, movies and software.

Intellectual property infringement is so easily accomplished in our digital society, perpetuated by the pervasive presence of tools to access, copy and manipulate digital and paper information. Ideas, expressions and designs laid out in digital or paper format are intangible property different in nature than tangible property such as a television, computer or even your car. Nevertheless, intangible property does belong to someone. Forgetting that can come at a high financial cost.

Joseph S. Beckman is a registered Patent Attorney and Managing Member of The Intellect Law Group. He was recently invited to join the World Intellectual Property Organization's Arbitration and Mediation Center List of Neutrals. He may be reached for questions or comments at 561-776-9703 or jbeckman@IntellectLawGroup.com.

Copyright © 2003 The Intellect Law Group.