



Copyright

LIFTING THE BLINDS ON COPYRIGHT LAW

With so much product imagery now easily accessible via the internet, intellectual property lawyer Sharon Givoni analyses the potential copyright pitfalls for window furnishings businesses, and offers practical solutions.

The window furnishing industry, like other industries, is currently experiencing major changes and challenges due to the evolution of multi-channel retailing such as online stores, mobile app stores and of course physical retail stores.

Consumer expectations are high, with many requiring interaction and engagement at various stages. The window furnishings industry has a significant advantage in that physical stores remain, offering consumers a tangible experience.

The Internet is a powerful tool which offers many marketing benefits and opens doors to potentially endless exposure and marketing opportunities. Customers are now demanding the advantages of digital sales. However, a certain degree of control is lost once a piece of work is posted in cyberspace.

Since the beginning of Internet based commerce, online copyright infringement has been an issue for copyright holders. A common issue for retailers who operate online stores is that a competitor may take an image of a product which has been featured online, and then use it for their own digital display. What happens then? Can you stop them? How?

This article aims to explain how copyright works in this digital age. In the process, we will dismiss the myth that everything on the Internet is free for the taking.

How can you protect your marketing images?

The Copyright Act 1968 (Cth) (the 'Act') offers protection to minimise the risk of a competitor copying a certain images, products, patterns or designs.

The purpose of copyright law is to provide incentive for people to create original works. A person who creates the original work is known as the 'author'. In Australia, copyright protection is automatic and "springs" to life when an original work is created. These works can take the form of designs on curtains and marketing material.

An author or owner of the work has certain exclusive rights which can include the right to reproduce or publish the work (e.g. allowing it to be featured in a magazine or communicate the work to the public (e.g. posting it on a blog)).

Photographs are protected under the Act, and therefore, if someone is "taking" the images off a competitor's site, this could amount to copyright infringement (or other things, such as misleading or deceptive conduct). The same applies to

Facebook - if someone were to take images from your website of nice curtains or other products and make comments, that could infringe your copyright even if it is on their own private Facebook.

What are the Dangers of Online Retail?

No one would dispute that online stores are an essential part of businesses today.

Here is the catch: when you publish an image of your product online, it becomes a lot easier for someone else to copy the image and use it for their own business.

From a legal perspective, we can tell you one thing - it is surprising to see how often works are copied just because they have been posted online.

While the Act seeks to prevent this practice, enforcing copyright

in this digital age can be a challenge, especially when dealing with a global economy.

Retailers who put their products online are clearly not inviting someone else to reproduce this work in any way they please. If someone else were to reproduce or publish a pattern of your product on their own website, this would infringe your “exclusive” rights.

A prudent and practical way to avoid this sort of reproduction would be to monitor the marketplace. Also, warnings and prominent digital watermarks can be a practical way to help to deter copying.

What is the Public Domain?

Often when I ask people why they took an image from the internet without thinking twice, their answer is simple. “I thought it was ok as it was in the public domain.”

This reflects a common misconception by many that images on the Internet are in the “public domain” and “free for the taking”.

The term “public domain” has a specific meaning in law however.

It generally refers to works that are no longer protected under copyright law or are open to public use. For example, copyright to a work lasts for 70 years after the death of the author. Once the copyright to a work has expired, the work will then be in the “public domain”, and will be free to be used.

It follows that in the window furnishings industry, if a product has been posted on another website, you are not allowed to take that photo and display it on your own website. As stated above, photographs are protected by copyright, so you cannot simply just cut and paste someone’s marketing material.

This may constitute a copyright infringement.

What to do if a Competitor is Using Your Products Image?

If you see a work that looks identical to one that you have created, first try to find out as much as you can about the work you think is a copy.

If you still believe the work is a copy of yours or if you think someone has actually “copied and pasted” your photographs, you may want to see a lawyer.

Under the Act, there is a prohibition against making groundless threats of copyright infringement. Extra care is always warranted before sending any sort of “threatening” letter or email to someone.

Copyright or designs law?

Copyright is not the only means of protecting your business’ “intellectual property” and in some situations you may actually need to register your product as a design.

It is important to register your designs before you display your product publically though as otherwise it may be too late to register. Designs protect the visual appearance of an article, a topic to be covered in a future issue.

If you are unsure whether your product is protected by copyright, or needs to be registered as a design, it is always best to get legal advice.

Conclusion

Intellectual property issues arise consistently in a digital era and businesses need to be aware of not only how to protect their own intellectual property, but to ensure they are not treading on others’ toes.

Being aware of your legal rights is essential to best protect your assets and being aware of whether or not you need to register your product in order to be protected. Speak to a lawyer if you are unsure or if you feel your rights are being infringed.



Sharon Givoni

*is a Melbourne-based intellectual property lawyer with clients in the window furnishings industry. She does trade mark and designs work as well as contracts and copyright advice. Sharon’s book *Owning It: A Creative’s Guide to Copyright, Contracts and the Law*, available through *Creative Minds Publishing* (link to www.creativemindshq.com/owningit), aims to demystify the law for creative and small business owners regarding the protection of their designs, trade marks, copyright, reputation, confidential information and other intellectual property.*

Sharon can be contacted by email (sharon@iplegal.com.au) or called on 0410 557 907 or 03 9527 1334. Her website for “Sharon Givoni Consulting” is: www.sharongivoni.com.au.

