

Threading the law together

When you make the decision to start a beading-related business, things on the legal side can be tricky. Expert Sharon Givoni reports.



Recent years have seen a growing demand for authentic items that are handmade. One-size-fits-all assembly line products increasingly have more limited appeal. The area of handcrafted beads and jewellery is no exception. This has led to an increasing

number of new artisan, crafty businesses opening their doors.

If you are inspired to start your own beading business, this article is for you.

While many considerations apply when starting a new business, here we focus on legal considerations such as trademark,

copyright law and the like, and hope to clear up the many misconceptions in this area.

For any business, laws are always relevant, however when it comes to the creative industries, especially jewellery design and beading, intellectual property laws (which protect creative endeavours) are of central importance.

COPYRIGHT LAW

Let's start with copyright law. In Australia, copyright protection arises automatically and, unlike in the US, there is no formal registration system. Copyright law essentially gives the owner of the copyright (the creator of the work) certain rights, including the right to reproduce works of an artistic nature (such as drawings and works).

Works of "artistic craftsmanship" are also covered. However, as a general rule, these works will include a combination of artistic qualities. The courts have defined the additional requirement of craftsmanship to include a durable, useful, handmade object made in a skilful way. Crafty, intricate and creative beading designs may come within this definition (so long as they are not mass produced).

Another example of a "work of artistic craftsmanship" may be a handcrafted pendant with stones hand set in it, or a detailed bead made of polymer clay with intricate designs painted on it.

The theory behind copyright law is to encourage the creative industry by eliminating the fear of "copycats". In that way, it is also an incentive for people to create and promote progress of art. This is particularly

important in today's age where jewellers often feature their designs online, making them more accessible.

LOGOS

Many jewellery designers are proud of their logos. Remember that, as a general rule, logos and elements of your website design may also be protected under copyright law as "artistic" works.

Thus, as you can see, copyright is an extremely relevant area for business growth in the artistic community. If you have artworks and photography created for you, you should ensure that copyright is formally assigned to you in writing. Otherwise, even if you pay for it, you generally will not own it.

Beyond copyright, there is another area of law that you should be aware of: trademark law.

TRADEMARK LAW AND YOUR BRAND NAME

Often, when starting a business, you will come up with a distinctive brand name (see below for examples). Trademarks, once registered, offer many benefits that are worthwhile. For example:

- A trademark is a valuable asset that a person or company can licence to others and sell.
- Details of an Australian trademark registration are on the public record so others can see that you own it.
- Trademark registration is a defence to any claim of trademark infringement brought by another trademark owner.
- If another person copies it, having a trademark registration makes it far easier to enforce your rights against them.
- Unlike a business name registration, registered trademark rights are Australia-wide.

The table at the end of this article features a number of interesting trademarks that beading businesses and jewellers have registered in Australia. However, there are thousands more.

CAN YOU REGISTER YOUR OWN NAME AS A TRADEMARK?

I often get asked if people can "lock up" their own names by registering them as

trademark? This is particularly relevant to jewellery designers who often build up goodwill in their own name, and people sometimes buy it as they want to "connect" with the artist.

Michael Hill, for example, is known for diamond jewellery. Georg Jensen is about "quality craftsmanship" and Michal Negrin is decorative. All are names and all are well-known.

When it comes to trademark protection, if a surname is common, it is harder to get protection, for example, the surnames "Chan" and "Wright" are so common that the theory is that it would be unfair for any single person to have a monopoly over the use of that name.

There is, however, a possible way you can work around this.

If you reinforce the association between your particular name and product and build a reputation over a reasonable period of time, that name may become associated with you and your business and, thus, be registrable.

COMBINING TWO SURNAMES

To make the trademark more unique, you can also combine two surnames together, as the following case study demonstrates.

Riley Burnett

Borne out of their love of craft and design, Jennie Riley and Jason Burnett, based near Byron Bay, have together built a thriving beading business, largely inspired by their love for beads and travel adventures. Today, they proudly sell their exquisite handcrafted pieces in boutiques Australia-wide and online under the brand name Riley Burnett (rileyburnett.com).

Knowing the importance of intellectual property, they have also registered 'RILEY BURNETT' as a trademark in Australia for jewellery, clothing and retail services (Australian trademark number 1352340).

USING YOUR OWN NAME AS A TRADEMARK IF SOMEONE ELSE "GOT THERE FIRST"

Trademarks are generally granted on a "first-come first-served" basis, so apply early!

The following two case studies are on point:

Case study No 1: Colette by Colette Hayman versus Colette by Colette Dinnigan

Colette Hayman has registered a number of trademarks in Australia being "COLETTE HAYMAN" (trademark number 1442243) and "COLETTE BY COLETTE HAYMAN". You can view her jewellery designs on her website (colettehayman.com.au).

Iconic Australian fashion designer, Colette Dinnigan has registered the words "COLLETTE BY COLLETTE DINNIGAN" so both trademarks can co-exist (trademark number: 1429111).

However, neither of them have the words COLETTE or COLLETTE registered on their own.

Case study No. 2: Fighting over "Tiffany"

Back in 2009, US luxury jewellery chain Tiffany & Co was unsuccessful in trying to prevent New York-based fashion designer Tiffany Koury from registering her own name as a trademark for clothing. According to media reports, it was considered that Ms Koury's clothes were sufficiently different from Tiffany & Co's products and that the words "TIFFANY" and "TIFFANY KOURY" look and sound very different. Thus, both Tiffanys could co-exist.

Make sure you get the next edition of *Beading* for advice on logos.

DISCLAIMER: This article is of a general nature only and must not be relied upon as a substitute for tailored legal advice. Further, it is current as at May 2013. ●

About the writer

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