

Understanding design rights and rules

BY SHARON ELAINE THOMPSON

Intellectual Property

Few things disturb artists more than finding someone is “ripping off” their designs — copying the pieces and selling the work. In the 21st century, the Internet and globalization have contributed to the speed and spread of the misuse and theft of intellectual property (IP).

Intellectual property is defined by the World Intellectual Property Organization, an agency of the United Nations, as “creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.” IP theft may be innocent:

a student sells jewelry made from a pattern you provided in a class; someone asks a jeweler to copy your design (which they’ve seen on the Internet) so she can have the piece set with her stones. It is not innocent, however, when the jeweler who should and often does know better, takes the job. There are countless tales of designers whose work was molded, cast, and sold — sometimes in mass quantities — and always without permission or payment.

As painful as the lost income is a poorly done copy, which reflects badly on the original creator. Especially bad is when pieces that are meant to be hand crafted, such as Michael Good’s anticlastically formed pieces, are molded and cast by copycats. “We’ve seen our work cast and it’s horribly ugly,” says Karen Good, President of Michael Good Designs, Inc.

the Goods. "It was a very expensive and frustrating experience," says Karen Good. "If someone is going to be handling those kinds of cases for any art form, and maybe for jewelry in particular, they have to have a visual education. If they have no visual education, you might as well conduct the whole thing in a foreign language."

"Artistic savvy" in lawyer and judge is an especially important quality if someone is not making exact copies of a piece but is copying the "look and feel" of your work.

What does that mean?

"If you make a cola drink and you put it in a bottle with the same shape as a Coke bottle, and the same style of lettering as Coke," explains Paisin, "then it may not say Coke, but it has the same look and feel as Coke." If someone brings you (or another jeweler) a poorly made copy that isn't yours but the customer thinks it is, or someone advertises a piece as yours on a secondary market, such as eBay, you may be able to show the infringing work confuses customers and is costing you revenue and damages your reputation.

3.) "Even if you win, what do you win?" asks Karen Good. "If the person you're pursuing has no resources, you're just throwing money away." Although the suit may stop the manufacture of work specified in the suit, the manufacturer may then imitate your other work, forcing you to sue again.

4.) U.S. citizens are only protected in the U.S. To pursue copyright infringement in other countries, you must have your hallmark/trademark registered in those countries along with your copyright. You can, however, prevent copies made overseas from coming back into the U.S. First, do your research and find out who's bringing it into the country, says Paisin. The third time Michael Good Designs, Inc. pursued infringement a Turkish company was importing copies of their work into the U.S. The Goods were able to stop the imports and have the copies destroyed. However, the manufacturer could still make and sell the work overseas.

"The only way to protect yourself is first to register, then to police your work," says Paisin. That means finding out where the wearer or seller got the copy, then working back through the distributor to find the maker. "Then write a cease and desist letter, which says I own the copyright, and you are in breach of copyright. You have to stop any further manufacture and distribution, and give a full and accurate accounting of what has been sold." The way to sweeten the C&D letter, says Paisin, might be to say "if you give me a full and honest accounting, we may come to terms without me going into court." You don't have to talk about licensing or royalties, he says, but depending on quality of the work and the amicability of your contact with the copier, you may end up negotiating a licensing fee. Everyone agreed that this personal approach is best if you can make it work. "If you go to an attorney, it's very expensive because it's federal court work," says Paisin.

#105 MEDIUM OPEN
HOOP EARRINGS
by Michael Good.
Bronze and 22K gold.



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Find them

Michael Good, www.michaelgood.com

Harriete Estel Berman, askharriete.typepad.com

Boris Bally, www.borisbally.com

opened. Once they had the piece, they served papers on the gallery and on the artist to cease and desist. "We had him remove his work on opening day."

The best defense, as they say, is a good offense. In addition to registering your copyright and policing it vigilantly, attorneys and artists alike say the best way to protect yourself and your livelihood is to do what you do best: continue to design, innovate, and stay ahead of the copy cats. Says Avi Good, "If you're doing something that is easy to copy, then that may tell you something."

1.) Make work that is very difficult to duplicate. Ronda Coryell incorporates 3000-year-old bronze bracelets into some of her modern bracelets. The quality, texture, and patina of the ancient bronze are unique to each bracelet making them impossible to copy. Harriete Estel Berman's work with tin is so time intensive and complex that few imitators want to try it. "In my opinion, the best defense is creating such a unique aesthetic and innovating and developing new ideas so quickly, that it would be difficult for anyone to copy you."

2.) Think about what work is best to protect. When Bally developed his idea for a chair from traffic signs, "I thought that if there was any way for me to make this chair out of traffic signs, I'd figure out the easiest and most logical way to do it and that would be the design I would protect." If others want to make chairs out of traffic signs, they must get his permission or develop another — and probably more complex and expensive — means to do so.

3.) Promote your work widely. "I saturate the market with publicity so my name is bound to the material as the originator of traffic sign works," says Bally. "I've tried to get my work into as many public exhibitions as possible." Lectures and website provide collectors with the history and the background of his use of the material. "What I try to do is equate the material with Boris Bally, so any one who wants to collect the work would rather collect mine [than anyone else's]."

4.) Use a hallmark. Hallmarked work not only proves it's yours, as your reputation grows, it adds value to the work. All Michael Good's work is stamped with the company's hallmark. When auction houses get Michael Good look-alikes with no hallmark, "they have no value," says Karen Good. "Hallmarked pieces retain their value in an artistic sense."

5.) Do your own work. If you buy ready-made patterns, molds, wax patterns, and findings, and set caliber cut stones, how can you claim originality? "You put yourself at a disadvantage," says Berman, "because you've purchased what someone else can and they can copy whatever you make. Unless you start making your own patterns and making them completely original from the time you pick up the first tool, it will be very hard to protect your work."

Finally, keep your eye on the prize. Why do you make jewelry in the first place? "If your motivations are pure," says Avi Good — in other words you are making art

IF YOU THINK SOMEONE IS COPYING YOUR WORK...

...the **FIRST** thing to do is **BREATHE**, says Sarah Feingold, Esq., General Counsel for Etsy.com. "Take a closer look at all the work, not just one piece. Perhaps only one work is like yours; the artist might have come to it through a series of logical extensions of the rest of the work." Avi Good, General Manager of Michael Good Designs, Inc., knows two artists who produced very similar pendant designs. Each pendant fits logically into the artist's lines, although the rest of their work is very different from each other.

SECOND, try **COMMUNICATING** politely first. "You don't have to go in with guns blazing or threatening a lawsuit," says Feingold, a jewelry maker herself. "They may not realize what they're doing. Be polite and you can probably resolve the question amicably."

When colleagues let Boris Bally know that someone was doing very much the same work, Bally, knowing what a lawsuit would cost, had a "heart to heart" with the other metalworker, encouraging him to find his own area of specialty. "He took it to heart," says Bally. And though the other artist still works with recycled traffic signs, he uses them to make a different line of products.

THIRD, if communication fails, send a **CEASE AND DESIST** letter citing your copyright registration. "This usually makes it go away," says Karen Good, President of Michael Good Designs, Inc. You can do this yourself, but if you think the situation deserves "ramping up," have an attorney write it. An attorneys' letter threatening lawsuit and spelling out the cost of infringement — which can be thousands if not tens of thousands of dollars in addition to legal fees — might give the copycat pause.

FOURTH, if the copy cat is still not responding, or responding belligerently, take another deep breath and decide whether a lawsuit is worth the time and expense. Will the damages you may be awarded (and the operative word is "may" — you may lose) outweigh the costs of the suit? Would it be clear to your galleries and collectors that there is a quality and design esthetic difference between the works? Is the design one that has about done all it can for you? Are you moving on in other directions? Can you bury the copycat in promotion for your own product? Is there another way you can compete and beat the copycat at his or her own game?

FINALLY, if you're still smoking, your livelihood is on the line, you registered your copyright in a timely manner, and you think you can present a strong defense, head to court and may the copyright gods be with you.

because you love to create and you can't stop yourself — "then frankly, the issue of someone copying you is not your primary concern. It only becomes a concern if it starts crippling you, having a negative impact on your business and what you're doing."

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