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Names, titles and copyright

Enquiries such as 'Can I copyright a name?' are one of the most common questions we are asked, and this seems to be one of the most misunderstood aspects of copyright law.

The short answer is to simply say that names, titles, short phrases, (and also colours), are not considered unique or substantial enough to be awarded copyright protection in their own right, but as this is such a common question, it is perhaps worth explaining the logic behind this.

Understanding why copyright cannot apply to names and titles

Lets take an example:

In March 1981, popular author Dick Francis published a book called 'Reflex'. The book itself is most certainly a copyright work, but lets imagine the situation if copyright applied to the title in its own right.

- Copyright law restricts the copying and publication of a work.
  In our example, this would mean anyone using the word 'Reflex' without permission would now be infringing copyright. Also, as copyright prohibits unauthorised adaptation, use of derived words like, reflexes, reflexive, reflexed may also be prohibited.
  In effect no-one could ever publish these words in a book or document without first obtaining permission.
- Copyright exists regardless of format; e.g. a sound recording of the work. This would mean the word could no longer be used in songs, or public performances without permission.
- Typically copyright in a literary work (under UK law) will apply for the lifetime of the author and a further 70 years after their death, so we may never be able to use the word in our lifetimes.
- As copyright is an automatic international right, this restriction would apply across the globe.

Clearly this would be a ridiculous situation, but it illustrates why copyright law as it stands is not suitable for such items.

How are names protected?

When people ask about protecting names, they are typically referring to a trading name or the name of a product, and the primary focus is on preventing a competitor using the name.

'Passing off' is a term used when a company or individual represents themselves in a way that may mislead potential customers into believing that they are dealing with a different company.

If a competing company/person sets up with a similar or identical name to an establish brand or company, or portrays themselves in a way that implies that they are associated with the established brand, they may be guilty of passing off. The original company or brand owner can take action to defend their identity.

Passing off is not always as simple as determining who was using the name first, and public perception of who the name is associated with should also be taken consideration.

To prove passing off you should be able to demonstrate that:

- The name is yours.
  This requires some proof of ownership and/or creation (such as a copyright registration of a logo including the name) that predates the offence.
- Customers associate the name with you.
  You need to show you have been trading under that name and have historical customers that have bought from you under that name.
- You have been harmed by the other person's use of the name.
  e.g. loss of revenue.

Registered trademarks

Sometimes trademarks may be used to protect a name or a brand image. It is generally easier to prove a passing case or claim to the brand if the trademark has been registered. Trademarks are primarily aimed at commercial trading organisations, and are administered by national patent or trademark offices.

It should be noted that a registered trademark will apply only in the countries where the application was made, and that they also tend to be issued for use within a specific trading sector. Some additional information regarding trademarks may be found on our intellectual property rights page.

Please note that we do not provide trademark registration service, for information on trademarks you should contact your national trademark or patent office.

Can names be registered with Copyright Witness?

As names are not copyright works, they should not be registered in their own right. It is still true that any registration that includes the name does by definition prove use of the name, but as other factors may come into play with passing-off, we would not regard this as a suitable use of this service.

Registrations should always contain actual copyright works, (i.e. documents, recordings etc). Although it is worth noting that a logo that combines the name with other artistic or design elements can be subject to copyright as an artistic work. Registration of a logo that includes a company name or strap line will at least show you were using that name/branding at that point in time, and this can help to establish your prior claim in a passing off case.

Further reading

Our Copyright Protection of Logos page at https://copyrightwitness.com/protect/logo_copyright.

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