

Ask a Lawyer

Ask a Question

Today's Q&A

Question & Answer Archive

Topic Schedule

Research Areas of Law

Bankruptcy

Family Law

Labor and Employment Law

Personal Injury

Real Estate

Related Links

Articles:

- [Do I Really Need a Lawyer?](#)
- [Selecting a Lawyer](#)
- [Lawyers' & Clients' Responsibilities to Each Other](#)

Ask a Lawyer > Question & Answer Archive

Ask a Lawyer Archive



Copyright Infringement: What Recourse Exists Against a Former Employee Promoting a New Business with Work Produced as an Employee?

[Kristie Prinz](#)

Q.

An employee who left last week is promoting his new company with commercials produced at my company on his web-site. He did work on them, but they were produced here. Do I have any legal recourse for making him remove the spots from his web-site?

-- Linda

A.

Yes, you may potentially have some recourse here, depending on the specific facts of the situation.

Your company would only have rights in the commercials if they were produced pursuant to a "work for hire" arrangement.

Section 101 of Title 17 of the U.S. Code defines "work for hire" as:

(i) a work prepared by an employee within the scope of his or her employment or (ii) a work specially ordered or commissioned for use as (a) a contribution to a collective work; (b) a part of a motion picture or other audiovisual work; (c) a translation; (d) a supplementary work; (e) a compilation; (f) an instructional text; (g) a test; (h) answer material for a test; or (i) an atlas, provided that the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of this definition, a "supplementary work" is defined as a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an instructional text is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

Browse for a Lawyer

- [Find Lawyers & Law Firms by State or Province](#)
- [Find Lawyers & Law Firms by Area of Law](#)

Find a Lawyer

Type in an area of law or a lawyer/firm name:

City:

State:

Country:

[Advanced Search](#)

[Search Help](#)

Thus, assuming that the former employee created the commercials in the scope of his employment, then your company would be the clear owner of the copyright in the works, and you would be in a position to enforce your copyright against any infringers. If, on the other hand, the former employee created those commercials outside the scope of his employment, then the former employee would be the owner of the copyright in the works, and would have the right to post the commercials on his website.

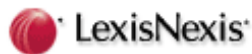
Assuming you establish that your company is the owner of the copyright in the commercials, then the former employee would not have the right to use the commercials, except pursuant to a license agreement with your company authorizing him use the commercials pursuant to certain terms and conditions. Without such a license, any use would likely be infringing. Legal recourse should be available on both equity and non-equity grounds.

Of course, one thing to consider here is how exactly this former employee is using the advertisements. If he does not own the copyright in the works and uses them as samples of his work without misrepresenting his role in the work, and he also appropriately attributes copyright ownership to your company, then there may be an argument that he is not really infringing your copyright by posting the advertisements on his website, particularly if the accepted practice in the industry is to provide work samples and he has adhered to such standard practice. It is not impossible to imagine certain fact patterns where infringement would be difficult to establish.

My advice is to consult with an [attorney](#) in your jurisdiction specializing in copyright law. Such an attorney should be able to look at the specific facts of your case and advise you on how best to proceed.

-- *Kristie Prinz*

[Find a Lawyer](#) | [Research Legal Information](#) | [Ask a Lawyer](#) | [Blogs](#) | [Contact Lawyers at attorneys.com](#) | [Community](#)



LexisNexis Martindale-Hubbell is the most complete, trusted source for identifying qualified legal counsel.

Disclaimer: The information provided on Lawyers.com is not legal advice, Lawyers.com is not a lawyer referral service, and no attorney-client or confidential relationship is or should be formed by use of the site. The attorney listings on Lawyers.com are paid attorney advertisements and do not in any way constitute a referral or endorsement by Lawyers.com or any approved or authorized lawyer referral service. Your access to and use of this site is subject to additional [Terms and Conditions](#).

[Martindale.com](#) | [Canada](#) | [attorneys.com](#) | [LawyerLocator.co.uk](#) | [www.findalawyer.cn](#) (China) | [www.law24.co.za](#) (South Africa) | [www.martindale.jp](#) (Japan) | [anwalt24.de](#) (German) | [martindale.co.il](#) (Israel) | [Lexis Nexis](#) | [lexisONE Free Case Law](#)

[Help](#) | [Site Map](#) | [About Us](#) | [Press Room](#) | [Info for Lawyers](#) | [Contact Us](#) | [Home](#) | [Index Map](#)

©2008 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.