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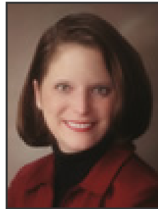

Copyright Infringement: What Rights Do I Have in a Label I Designed but Was Never Paid For?
Kristie Prinz

Q. Recently, while shopping, I ran into a product which contains a label I designed. I am a graphic artist, who worked for several years on the label design project doing rendering after rendering for this client up until about a year ago when the customer stopped returning my calls. Given I was never paid for my work and they are profiting from my art, what rights do I have in this situation?

-- *Anonymous*

A.

Assuming that you were not an employee of this client when you designed the label, you could have a viable copyright infringement claim against your former client, as well as a breach of contract claim, since you were never paid for your work.

Of course, it is unclear from the facts you have provided in your question above as to whether you signed either a written contract setting forth the terms of this work or an assignment agreement, which assigned your rights in the label to the client. If you had signed an agreement with this client, the terms and conditions of such agreement could impact your rights in the label design.

Having said this, if either no agreement was signed between you and your client, or in the alternative, an agreement was signed but breached by your client's nonpayment, then you likely would have viable claims against your former client on both copyright and contract grounds.

How does copyright law apply in this fact pattern? Copyright law protects works which are created in fixed form. The copyright in a work is owned by the person who creates the work. Copyrights can be transferred only by a written assignment, unless they are works made for hire. Section 101 of Title 17 of the U.S. Code defines "works made for hire" as:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of

> a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

In the case at hand, you still own the copyright in your work, provided that the work does not meet the criteria to be a work for hire. Therefore, any use of your work most likely constitutes infringement, assuming that you have not provided your former client a license to use your work.

My advice is to consult with an attorney in your jurisdiction who specializes in copyright infringement litigation, in order to discuss the specific facts of your case. Such attorney should be in a position to advise you on how best to proceed in your particular circumstances.

-- *Kristie Prinz*

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