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Ownership Of Copyright In Advertisements: If A Magazine Creates The Design For A Company's Advertisement In That Magazine, Can The Company Re-Use The Same Advertisement In A Competing Publication?

[Kristie Prinz](#)

Q. I am the Graphic Designer for a home improvement magazine. We create ads to be published in our publication only. Often we also create logos for the ads. Recently we have discovered the ads and logos we created being reprinted in a competitor's magazine. It is legal for the company we created the ad for to use the logo or ad without our permission and give it to our competitor? They only paid money for ad space in our publication, not for design or logo creation. Isn't it taking advantage of our goodwill?

*-- Jennifer***A.**

You have raised an interesting issue.

As I am certain you are aware, the standard practice for the creation of graphic designs is to create them through a work-for-hire arrangement, meaning that the employer and not the employee, is considered the author of the designs or works. In the case of designs created pursuant to an independent contractor arrangement, then the work may only be owned by the business if there is a written agreement between the parties specifying that the work is a work made for hire.

In the circumstances you describe, the fact pattern falls outside of either work-for-hire scenario, so, unless there is a clear agreement in place firmly establishing who owns the rights in the designs, there is some ambiguity here. Your magazine perhaps would have the stronger argument in the absence of an agreement, but the businesses evidently believe that they have rights as well. Indeed, there is a reasonably strong argument that these business established some common law trademark rights in the logos and perhaps even in the advertising, upon publication of both in the magazine.

My best advice going forward would be to consult with an [attorney](#) in your jurisdiction who specializes in intellectual property transactions, and to have that attorney review the agreement that these businesses routinely sign. The agreement should specifically address the issues you are raising, and perhaps expressly state that graphic designers are on staff and that custom work can performed for an additional fee pursuant

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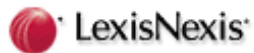
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to a work for hire agreement. Your attorney should be able to review the agreement you are currently using and advise you as to what terms and conditions would work best.

As for what to do about the prior issues that have come up, you should probably consult the attorney about the specifics of these cases too. If the agreement your company had in place with the advertisers at issue expressly deals with these issues, then perhaps you may want to enforce the agreement. If not, your magazine will have to make a decision as to whether or not it makes good business sense to raise the issue with your previous advertisers. You may very well determine that the best business solution is to just change your practices going forward and live with the mistakes that have been made in the past.

-- Kristie Prinz

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