Lakeside DESIGN

July 23, 2015

Maria Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559-6000

RE: Notice of Inquiry, Copyright Office, Library of Congress
Copyright Protection for Certain Visual Works (Docket No. 2015-01)

product development

Dear Ms. Pallante and US Copyright Office Staff:

I am writing to ask you to take the needs of visual artists, and the manufacturers who license their art, into consideration when drafting the new Copyright Act. I own a small design studio, Lakeside Design, where we specialize in developing products for the Gift, Craft, and Stationery industries. Products designed and developed at my studio have been sold in most major retailers in America, including Wal-Mart, Target, Costco, Michaels, JoAnn Fabrics, Bed, Bath & Beyond, QVC, Hobby Lobby, Hallmark, American Greetings, Family Dollar, Dollar Tree, Barnes & Noble, Books-a-Million, and Amazon.

art direction

As background, let me tell you that my expertise is primarily in greeting cards, lettering, inspirational product design and art licensing. Most of my 30 year career has been spent in art and editorial; I wrote a regular design column for Greetings etc. magazine for more than a decade, and have authored more than a dozen books. My 5 Zenspirations® titles are highly ranked on Amazon and have collectively sold more than 225,000 copies over the last three years, and my YouTube videos have had more than 900,000 views. Over the last three decades I've been involved in many industry organizations; I've served on the board of the Greeting Card Association, co-chaired the Craft & Hobby Industry's License & Design section, and was the founding President of the Association of the Calligraphic Arts. I often speak at trade shows on topics related to design trends, and I enjoy teaching artists the ins-and-outs of the art licensing industry so they may maximize their royalty revenue. I have worn many hats throughout my career, but the bulk of my time has been spent as a freelance Art Director. Having art-directed product lines for a variety of manufacturers has given me a fairly good handle on how products are brought to market, and the role that the artist plays in this process.

graphic design

Now that you know a little bit about my background, I would like to share my thoughts on the issue at hand. Of the many things covered in the Orphan Works and Mass Digitization Report, the two which are of most concern are the discontinuing of statutory damages as a deterrent to infringement, and not requiring registration in order to protect a copyright.

Let me walk you through a typical 'Key Account' product development cycle as a way of explaining my concerns. A 'Key Account' presentation is one made to a retailer, usually at their invitation, by the manufacturer's sales & marketing team. Retail shelf space is planned well in advance; 'in-line' programs (merchandise lining the aisles) are 'set' for an entire year; 'end-caps' (merchandise shown at the end of an aisle) are usually swapped out quarterly. When the retail buyer is determining what to order for the next season, they usually invite several manufacturers to come show their lines. In order to earn the retailer's business, a manufacturer will need to present trend forward, well designed, good quality merchandise at an affordable price, and have a proven track record for on-time delivery. If all other things are equal, ultimately it is the company presenting the most attractive design which will get the retailer's business.

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That's where I come in; manufacturers often hire Lakeside to help them prepare for these big presentations, which can cost thousands of dollars, and take several weeks to develop. When I am hired to handle a key account presentation, my first job is to help determine the product mix, and my next job is to source art to apply to these products. Since there is no guarantee that my client will ultimately win the business, they do not want to invest in art at this point, so rather than commissioning an artist to do something specifically for the line, I look for artists with large libraries of existing art who may have something appropriate for my project that has not already been licensed in the category. I have thousands of images from hundreds of artists on file, both digitally and physically, so I begin this process by looking through my files to determine who to send a 'call for submissions' to. I often reach out to several dozen artists and licensing agents during this phase of product development. The artists and agents respond by emailing me low res visuals; it is not uncommon for me to look through thousands of individual images to find ones that are appropriate for my current project. Let's say I'm working on an end-cap which will hold twenty different coordinated items. Since buyers like choices, I try to provide at least three different design options for each of the twenty items, which are presented as a 'look-line' plan-o-gram. Sometimes in this situation I work with only three artists, each of whom provides designs for the twenty items; other times I wind up working with 40 or 50 different resources to present a more varied look. Once I select the art I'd like to use, I reach out to the artist and ask if they would be willing to put a 'hold' on the design for a period of 3 to 6 months (meaning that they would not show that same design to another manufacturer for the same product that I'm pitching). If they are willing to do that, then I request high-res files, so my staff can format them into the product template, print them out and create the mock-ups which the sales & marketing team will take to the presentation. In some instances I may need to ask an artist to sit down and create something specific for the presentation (for which they are compensated by my client).

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art direction

The bottom line is that in order to do this type of work, I need access to LOTS of art... and I have developed relationships through the years with many artists who are willing to let me show their work 'on- spec' because they know that if my client gets the order, they will get a nice royalty contract. Many of the artists I work with are extremely prolific—it is not uncommon for an artist to create several thousand images a year. Artists are able to share their work freely because our current copyright law gives them complete control over it. They get to decide whether they want it to be manufactured by a particular company, or see it decorate a particular product. They can share it freely because copyright is inherent in the creation of their designs... the don't have to take the time to register it, or even sign and date it. I know there are artists who take registering their copyrights very seriously... but I'm afraid I know many more who never register their copyrights. Most artists are notoriously "right-brained"—they excel at creative pastimes, but struggle with paperwork and organization. If, in order to protect their work, artists would have to fill out paperwork, and register their designs, they would wind up spending the majority of their time NOT creating! And most artists struggle financially... if they had to pay to register their designs, they might not have the funds to do it. Taking this further... it would definitely have a serious impact on my ability to help my manufacturing clients bring product to market because a) there would be less accessible art, and b) artists would be less willing to share it unless they knew it was protected. For this reason I implore you to maintain the vital concept that copyright is inherent in the creation of a design, and is protected by our government.

graphic design

My second major concern is the potential lack of statutory damages. I have been asked to serve as an expert witness in a number of infringement cases, so I've had a first-hand glimpse at how the legal process works. Although most companies in the industry operate with integrity, there are always those who don't. Right now, the only thing which prevents willful infringement is the risk of having to pay statutory damages. Most companies recognize that this is a real risk, and

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don't feel that it is worth the potential exposure. If statutory damages were removed from the picture, what's to prevent a company from utilizing someone's work (if they can't find the copyright holder) for whatever purpose they want, knowing that the worst thing that would happen is that they'd probably have to compensate the artist after-the-fact for the same amount that they would have had to pay up front. And worse, what if they used a design on a product that the artist had already licensed to their competition? One of the things manufacturers strive to do is differentiate themselves from their competition... exclusivity of design in a product category is essential in this regard.

My fear is that without the deterrent of statutory damages, infringement issues would increase. It's well known that artists are generally not in a financial position to sue unless they can hire an attorney on a contingency basis. Without the potential for a large financial judgement, no attorney could justify taking an infringement case on contingency, which would leave artists unable to protect their intellectual property. Please consider this when drafting the new legislation.

I would be happy to answer any questions you may have about the industries I work in, and/or the product development process.

Thanks you for keeping our needs in mind.

Best wishes,

Joanne Fink

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