

Protecting Rights in Environmental Graphic Design Projects

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- To purchase the entire CD course "**Creating a Designer/Client Agreement**" see http://www.segd.org/prof/courses_cd.html

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Protecting Rights in Environmental Graphic Design Projects

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Agenda

1. Explain how to use Intellectual Property law to protect your work
2. Explain how to use contracts to protect your work
3. Explain options to settle contract disputes

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Outline

- Types of Intellectual Property (IP) protection
 - Patents – design and Utility
 - Trademark
 - Copyright
- IP types applicable to EGD work
 - Using contracts – model K
- Customizing Model K
- Settling disputes
 - Court, mediation, Arbitration

IP types – Patents

- **Utility patent** – - A method, composition or device that is novel and useful.
- **Design Patent** – ornamental look of an object (non-functional appearance).
 - The ornamental appearance for an article includes its shape/configuration or surface ornamentation upon the article, or both.
 - The design for an article consists of the visual characteristics embodied in or applied to an article.
 - Since a design is manifested in appearance, the subject matter of a design patent application may relate to the configuration or shape of an article, to the surface ornamentation applied to an article, or to the combination of configuration and surface ornamentation.
 - a "utility patent" protects the way an article is used and works, while a "design patent" protects the way an article looks.

Example of Design patent

(12) **United States Design Patent** (10) Patent No.: **US D439,619 S**
Swann (45) Date of Patent: **Mar. 27, 2001**

(34) **VEHICLE DISPLAY SIGN** 5,241,768 9/1993 Thompson
 * cited by examiner

(76) Inventor: **Dwain C Swann**, 314 Oak St.,
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Primary Examiner—Marcus A. Jackson

(**) Term: **14 Years** (57) **CLAIM**

(21) Appl. No.: **29/130,130** (57) **CLAIM**
 The ornamental design for a vehicle display sign, as shown and described.

(22) Filed: **Sep. 28, 2000**

(23) **LOC. (7) CL.** 29-02
 (52) **U.S. CL.** **D20-02**

(58) **Field of Search** D20:10, 39, 40,
 D20:42, 40:1, 124, 124:1, 134:2, 134:4,
 384, 517, 518, 524

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DESCRIPTION
 FIG. 1 is a front elevational view of the vehicle display sign of the present invention;
 FIG. 2 is a rear elevational view of the vehicle display sign of FIG. 1;
 FIG. 3 is a left side elevational view of the vehicle display sign of FIG. 1;
 FIG. 4 is a right side elevational view of the vehicle display sign of FIG. 1;
 FIG. 5 is a top plan view of the vehicle display sign of FIG. 1; and,
 FIG. 6 is a bottom plan view of the vehicle display sign of FIG. 1.
 The broken lines showing of the word logo in FIGS. 1 and 2 are for illustrative purposes only and form no part of the claimed design.

1 Claim, 3 Drawing Sheets



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IP types – Trademarks (TM)

- a word or symbol that is used to indicate the source of the goods/service and to distinguish them from the goods/services of others. E.g., Kodak film.
- Can include color, shapes, style of lettering etc.
- TM usually owned by the company

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IP types – Copyrights

- Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.
- **To reproduce** the work in copies or phonorecords;
- To prepare **derivative works** based upon the work;
- **To distribute copies or phonorecords** of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- ;
- **To display the copyrighted work publicly, ...**

WHAT IS NOT PROTECTED BY COPYRIGHT?

- Several categories of material are generally not eligible for federal copyright protection. These include among others:
 - Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
 - Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration

Copyright -HOW TO SECURE A COPYRIGHT

- **Copyright Secured Automatically upon Creation**
- No publication or registration or other action in the Copyright Office is required to secure copyright. There are, however, certain definite advantages to registration.
- Copyright is secured *automatically* when the work is created, and a work is "created" when it is fixed in a copy for the first time.

COPYRIGHT REGISTRATION

- the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:
- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U. S. origin.

Copyright REGISTRATION PROCEDURE

- To register a work, send the following three elements *in the same envelope or package* to:
- Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000
- 1) A properly completed application form.
- 2) A nonrefundable filing fee of \$30 for each application.
- 3) A nonreturnable deposit of the work being registered.
The deposit requirements vary in particular situations.

IP applied to EGD work

- Ways to protect the IP of a EGD
 - 1) relationship with the client
 - 2) In contract – See Std form (SEGD)
 - 3) maybe copyright – register it
 - 4) Design patent – Maybe not so useful

Contracts

- Ideas for EGD contracts – ownership - IP section
- See SEGD Standard Form for agreement – section “ownership”
 - add more details of exactly what work you want to protect.
 - Specify cost to client if the “design” is reused or duplicated at addition locations.
 - Clarify what the client owns at completion
 - Have an attorney review your contract

SEGD agreement

- Ownership: All artistic expression, design concepts, sketches, notes, photographs, drawings, specifications, computer files and the right to create copies or derivative works therefrom shall remain the property of the designer whether the project for which they are made is executed or not.

Use of project documents or derivative works by the client on other projects shall entitle the designer to further compensation equal to the original project fee unless otherwise agreed to in writing by both parties.

If the client reuses designs or specifications at any other time or in another location, the client shall hold the designer harmless against claims for loss or damages resulting from the failure of these designs encountered with such reuse.

The designer shall retain all artwork, drawings, and specifications for this project for a period of months from the date of the final invoice. Upon expiration of this period, all such materials will be discarded unless the client requests their continued storage.
- Ownership: Upon payment of all fees and expenses, the designer transfers ownership of the final Identity logo, logotype and/or typography developed to the client. [For identity projects] {* Note : Need to clarify this paragraph – what is transferred? Any *artistic expression, copyright, design concepts???? Need to be clear}

Ways to settle of contract Dispute

- Court
 - get attorney – file lawsuit
expensive, time-consuming etc.
 - Get discovery – can find out information

Ways to settle of contract Dispute- Mediation

- A mediator facilitates negotiations between the parties so the parties can come to a mutually agreeable resolution to the dispute.
- Neutral 3rd person -
- Unlike a judge or an arbitrator, a mediator will not take sides or make decisions, but will help each party evaluate goals and options in order to find a solution that works for everyone.

Ways to settle of contract Dispute- Mediation (continued)

- When you reach an agreement with an opposing party through mediation, you can make it legally binding by writing down your decisions in the form of an enforceable contract. Or, in some areas, you can have your agreement made part of a court judgment
- Find mediators in yellow pages, bar associations, court house, mediation organizations, etc.

Ways to settle of contract Dispute Arbitration

- arbitrator (Judge or panel) has power to decide the dispute – can be binding or non-binding. (also appeal-able or non-appeal-able).
- pay for services of the arbitrator.
different method for selecting the arbitrators.
- Good way to test case before trial (if non-binding) – can find strengths and weaknesses

Ways to settle of contract Dispute Arbitration - continued

- See model contract for clause on “binding arbitration”. etc...
- Many types of arbitrations
- Cheaper and faster than trial
- Find arbitrators in yellow pages, bar associations, court house, alternative dispute resolution organizations, etc.

Conclusions

- Very wise to make sure client and you have a clear understanding of project and client’s future use of EGD work
- Use relationship and contract to enforce creative rights
- Try to settle disputes out of court

References

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- US Copyright office <http://www.copyright.gov/>
- American Arbitration Association
<http://www.adr.org/index2.1.jsp>
- The dispute Resolution Institute Philadelphia area -
<http://www.adrdri.com/>
- Nolo Press – info on Mediation
<http://www.nolo.com/lawcenter/index.cfm/catid/FCE46694-6BEB-4A80-89B9048DA9877F61>
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