

ADVERTISEMENT



Angie Avarad Turner
Attorney at Law

Volume 1, Issue 1

September 2021

A boutique law firm representing creative entrepreneurs-retailers, wholesalers, artists, bloggers, event planners, and interior designers.



Why “Asked and Answered”?

Why call the newsletter “Asked and Answered”? What does it mean? Simply put, it is a play on words. Historically, the phrase “asked and answered” is an objection that attorneys love to use in court when opposing counsel has asked a question repeatedly, maybe in several different versions, but nonetheless, it is the same question. The witness is sick and tired of answering the same questions. Everyone is sick and tired of hearing the same answers. So, the attorney objects. Maybe it’s overruled; maybe it is sustained. Well, here we are in quite a different setting. This is not a court room. We are not in adversarial proceedings. And NO ONE is tired of hearing the same questions. I know because you have asked them of me for the last 20 years!

Second, you have questions; you have asked. I will try to help explore those answers; I will do my best to teach, to answer. We will walk down this creative path together.

As I am sure you have already gathered, the shortest distance between two points is a straight line. Not so for the creative entrepreneur; part of the creative process is meandering, sprinting, taking a breath, falling, dare I say, failing, and getting back up. I want this to be a tool that you will use to think and further your knowledge and deepen your understanding of the business behind your craft. So here we go!



Creativity is a habit, and the best creativity is the result of good work habits. Twyla Tharp

Fab Five

Great reads for creative entrepreneurs!

1. [All Marketers are Liars](#), by:Seth Godin
2. [The 21 Irrefutable Laws of Leadership](#), by:John C. Maxwell
3. [You Can Negotiate Anything](#), by:Herb Cohen
4. [The 7 Habits of Highly Effective People](#), by:Stephen R. Covey
5. [Never Eat Alone](#), by:Keith Ferrazzi

Connect with Us

 [FACEBOOK](#)

 [LINKED IN](#)

 [INSTAGRAM](#)

Legal Learning: Copyright Issues

Don't be a Copycat!

In this digital age where marketing your business relies greatly on social media which involves chronic posting, scheduled posts, selfies, content, photos, memes, gifs, captions, and so much more, is it any wonder that being confused by “the rules” happens on a daily basis? Businesses must now navigate the world of daily posts without “stepping on another company’s toes,” also known as infringement.

In the United States, copyright law goes back as far as the Constitution. The founding fathers recognized that creating new things, whatever those things were, was important to the new country. They understood that the foundation of progress in business, even then, was in creating new things. Copyright protection, much like other forms of intellectual property, are further codified in federal statutes. These federal laws are what spell out the specific rights of a copyright owner and their remedy when someone else infringes.

Within in the federal copyright statute, a copyright owner has several exclusive rights, meaning that they, and they alone get to make the decision as to how to exercise those rights. Here are the six exclusive rights afforded to a copyright owner:

- The right to reproduce and make copies of an original work;
- The right to prepare derivative works based on the original work;
- The right to distribute copies to the public by sale or another form of transfer, such as rental or lending;
- The right to publicly perform the work;
- The right to publicly display the work, and
- The right to perform sound recordings publicly through digital audio transmission.



Understanding the exclusive rights of a copyright owner allows one to know what one can and cannot do with regard to using photos online and in social media. The scenario that is most common is one business will find a photo that it wants to use on social media or its website. The business owner copies the photo in one way or another, and then posts the photo on its website, social media, or both. When the business posts the copied picture on their website or social media,

the business gives credit, by listing or tagging the business whose photo was copied. The question I receive on a weekly, if not daily, basis is whether this is legal or whether it is copyright infringement. The short answer is it is not legal. It IS infringement. Here is why.

The simple reason this is copyright, and possibly trademark, infringement is because the photo is copied without permission.

Words to Live By

“Raise your words, not your voice. It is rain that grows flowers, not thunder.”

Susan McCann

Motivational Coach
IG: @susanjmccann

Learning Legalese

Original work of authorship-
Under US Copyright law, refers to any type of expression independently conceived of by its creator.

Synonyms: creative works, art, designs

Antonyms: knock offs, copycat works

Creative Law A to Z

by Angie Avard Turner, J.D., LL.M.

A is for...Attorney
B is for ...Branding
C is for ... Copyright
D is for...Distinctiveness (in TM law)
E is for ...Examiner's Action
F is for ...Franchising
G is for ...Generic Mark
H is for ... Hire, Work for
I is for ... Interstate Commerce

Copyright laws are very straight forward in defining what infringement is. One copies and uses without permission. It does not matter whether the infringer makes money or is copying for personal use only. The act that the law is attempting to deter is the copying, so the purpose of the copying infringement, in most cases is inconsequential. There are few exceptions. In fact, when one gives credit to the owner of the photo, one is, actually, tipping off the owner that the photo is being used without permission. That is the ironies of all ironies! Now, there are times when the business owner of the photo does not mind that someone is using their photos. However, there are times when the business owner does not want others using their photos. How does one know whether it is okay? That is the problem. One doesn't know short of asking permission.

The penalty for infringement is \$150,000 per incident. I personally, have seen situations where the copyright owner has demanded at least \$8000 per photo. Either way, a business owner does not want to receive that kind a mail, whether it is a demand letter or a lawsuit. How does one avoid this precarious situation?

There are a few things a business owner can do to avoid this potentially costly situation.

1. Create your own content.

The most clear-cut way to avoid infringing on another's content, is to create your own content. It can be time consuming, however creating one's own content avoids the infringement dilemma.

2. Use content that is either part of the public domain.

Content that is in the public domain is content that, at one time, did have copyright protection, but now that protection has lapsed. Generally speaking, the way to determine whether a work is part of the public domain is the life of the author plus 70 years. If the work is older than life of the author plus 70 years, then most likely, it is in the public domain.

3. Subscribe to memberships that sell content.

There are new companies emerging that sell professional content and photos. As long as you are a member, you are paying to use the content they create.

4. Ask for permission.

If there is content that you would like to use that aligns with your brand, at the very least ask for permission to use the content. This can be done by sending a quick email or requesting the content owner to sign a short agreement detailing how you may use their content. Another way to structure this is making the use of content mutual. This will look more like a collaboration. However, the benefits of a collaboration could be greater than simply requesting to use another's content. So, think about the end goal; be strategic.

In this age to create more and more content, it is imperative to protect your work. Taking steps to ensure that your business is not infringing another business's content is equally paramount to the

J is for ...Judgment, declaratory
K is for ...Knock-out Search
L is for ...Library of Congress
M is for ...Maintenance
N is for ...Non-Disclosure Agreement
O is for ...Original Works
P is for ...Patent
Q is for ...
R is for ...Royalties
S is for ...Specimen
T is for ... Trademark
U is for ...US Patent+ Trademark
Office
V is for ...Visual Arts
W is for ...Willful Infringement
X is for ...eXamining Attorney
Y is for ... Your Mark (word or
design)
Z is for ...Zealous Protection of IP

Contact Us

Angie Avard Turner Law, LLC
Post Office Box 291
(mailing address)
101 Mathewson Avenue
(street address)
Pelham, GA 31779
229.234.0713

angieavardturnerlaw@gmail.com
www.angieavardturnerlaw.com

NOTICE + DISCLAIMER

Information contained in this newsletter is general in nature, for informational purposes only, and it is not intended as legal advice. Legal advice should be obtained before action is taken based upon this information. Receiving the "Asked and Answered" newsletter, in no way, creates an attorney-client relationship. If you wish to unsubscribe, please let me know.

Copyright © 2021 by Angie Avard Turner,
Attorney at Law. All rights reserved.

success of your business. If you are not sure, err on the side of caution. Unfortunately, posting and asking for forgiveness later could be a costly decision.

Case Study: Trademark/Branding

What's in a Name? Let's call a Spade a Spade.

Before the tragic and untimely passing of Kate Spade, there were some interesting trademark issues that developed and were developing that shed light on why it is critical to protect your brand, even if it is your own name.



As many of you know, Kate Spade and her husband built a fashion accessory empire beginning in the early 1990s. I mean who didn't want one of those snappy little bags?

Kate Spade, the person, sold her shares in Kate Spade, the company in 2007. At the time, she and her husband wanted to focus on other endeavors that were important to them. So, you may have a few burning questions, "Could Kate use her name in a commercial manner?" or "Where is Kate?" {a new marketing campaign aimed at explaining in a whimsical and tongue-in-cheek way why Kate has begun a new line without using her name} This situation is so very fascinating from a legal standpoint. Kate built Kate into a brand. Kate sold Kate, and Kate started a new brand non-Kate. But at the time of the new non-Kate brand, Kate was just figuring out a way to use Kate without using Kate to promote non-Kate. Got it?

So, let me break it down for you. Kate's new brand is called Frances Valentine. It is fabulous, I might add! Anyway, the dilemma is that when Kate sold her company Kate Spade, she also sold the trademark rights to her name. That meant she could not, I repeat COULD NOT, use her name for commercial gain. So, what was an internationally famous designer to do? She changed her name in order to differentiate the old brand with the new brand. Trademark rights hinge on use in commerce. As long as Kate Spade, the brand maintains and uses that name, Kate, the designer could not use it commercially. Why? The legal standard for infringement in trademark cases is will the use cause likelihood of confusion to the consumer. If Kate used her former legal name Kate Spade to promote Frances Valentine, her new brand, it is conceivable that consumers could be or would be confused. They might think they were buying Kate Spade, the brand, when in fact, they are buying Frances Valentine.

When choosing a name for a brand, choose wisely. Or you may find yourself in the thick of an identify and brand crisis

About Angie

Angie Avard Turner Law, LLC

Angie Avard Turner is an attorney with a fancy for all things patterned with a punch of piping hot color. After almost 20 years in retail, 10 years in wholesale, and 5 years in licensing, Angie decided to give the people what they were asking for—an attorney who was familiar with the needs of the creative entrepreneurs. She doesn't just represent those in this industry, she's part of it. As a designer, artist, and entrepreneur, she understands the legal needs of creative businesses because she has owned and operated one herself, and still does!



Angie has always loved being creative; since she started Hype Strype, a wholesale stationery and gift brand in 2003, when people learned she was an attorney too, they were very quick to ask all sorts of legal questions pertaining to the gift industry. She also knew if she practiced law, it would never be in a conventional brick and mortar, “law office” setting. So now she is combining both of her loves—creativity and law.

Her goal is to provide outstanding service by giving sound legal advice and helping you protect your business interests. Here's what Angie believes. You deserve great service. Your attorney should be part of your business resources team (just like your accountant or banker). And last, the legal advice you receive should be easy to understand.

In addition to practicing business law and intellectual property law for creatives, she is also a contributing writer to GIFT SHOP Magazine, and several other blogs. Angie is also a frequent speaker and guest at various conferences and podcasts where creative entrepreneurs can be found.

The Resource Guide

SEPTEMBER THEME: Fall—All In

Each month, as added value to our readers, we will present to you various brands, small business owners, products, and services that we think may be fun to purchase from or beneficial to you. These companies have not paid for this placement, nor does our firm receive

any added benefit from highlighting each. This is simply our way of spotlighting small businesses we love and we hope you will, too.

KING BEAN ROASTERS



ABOUT

King Bean Coffee Roasters was founded on the simple idea of bringing good coffee to the south. The Italians perfected the art of coffee roasting, so when upgrading our roasting system, they sought an Italian-made Petroncini roaster. Considered by some the masterworks of Italian engineering, Petroncinis are lauded for their exceptional temperature stability throughout the roasting drum.

THE BUSINESS

Now shipping nationwide! King Bean Roasters start with the finest quality coffee, cold brew it at a consistent 40 degrees for over 16 hours, run it through a patented three-phase filtration, and infuse each can with nitrogen to bring you an undeniably smooth and well-caffeinated coffee experience.

WHERE TO FIND THEM

<https://kingbean.com/>

IG: @kingbeanroaster

FB: King Bean Coffee Roasters

SOUTHERN BAKED PIE COMPANY



ABOUT

Founded in Gainesville, Georgia in 2012, Southern Baked Pie Company (formerly Buttermilk Pie Company) was launched by University of Georgia graduate and creative entrepreneur, Amanda Wilbanks. With family recipes, Southern charm and an all-butter pie dough that melts in your mouth, Amanda and her team of bakers create gourmet sweet and savory pies for all of life's special occasions and celebrations. Southern Baked Pie Company masterfully creates a variety of decadent flavors and specialty selections utilizing seasonal fresh fruit

from local Georgia farmers and businesses. We offer pies in a variety of sizes including whole pies, petite pies, and bite-size tassies.

THE BUSINESS

Enjoy the flavors of fall from the comfort of home by joining Sothern Baked Pie Company's Pie of the Month Club. Each month, they will send out a new pie selection from their decadent menu of sweet varieties. Pies will ship on the last Tuesday of every month.

WHERE TO FIND THEM

<https://www.southernbakedpie.com/>

IG: @southernbakedpie

FB: Southern Baked Pie Company

GIDDY PAPERIE



ABOUT

Meet Leslie and Lauren! As a mother-daughter team, both ladies have pooled their talents together to launch Giddy Paperie. Artist, mom and designer, Leslie, has long been a painter with a keen love of paper. Lauren's greatest passion lies in writing and Public Relations. The two have discovered you can't beat working together and every painting and project brings them closer together.

THE BUSINESS

Add some preppy pumpkin spice to your fall home or workspace with Giddy Paperie's newest fall arrivals! What could be better than the perfect little patch of preppy for your fall mug collection? These pretty pumpkin prints are also available in notecards and notebooks.

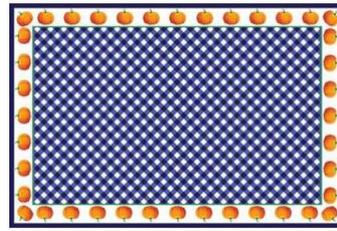
WHERE TO FIND THEM

<https://giddypaperie.com>

IG: @giddypaperie

FB: giddy paperie

WH HOSTESS



ABOUT

The WH Hostess Social Stationery brand is known for translating fresh designs onto paper. Their collection focuses on items to help you execute the social graces of everyday life: announcing a new baby, celebrating a birthday or special occasion, sending the perfect thank you note, or giving a thoughtful, personalized gift. Their luxe, printed products are available in our shop, as well with a variety of online retailers and brick & mortar stores around the country.

Known for designing personalized stationery and party invitations for the modern hostess, they aim to help you create a stylish party using coordinating, decorative elements. Their designs feature modern trends with touch of preppy pizzazz, yet overall have a classic feel that resonates so deeply with their owner and designer, Kelly Lyden. Their invitation designs inspire full party themes, and they offer coordinating paper goods, such as banners, signage, food table accessories, custom fabric, and foil-stamped napkins, to help you execute a stunning event right down to every detail.

THE BUSINESS

WH Hostess houses several spectacularly seasonal pieces that are guaranteed to make every day feel more like fall. Whether it be pumpkin placemats, personalized fall gift tags, or seasonal autumn cups, WH Hostess is your one-stop-shop for preppy autumn home and office accessories.

WHERE TO FIND THEM

<https://www.whhostess.com/collections/halloween>

IG: @whhostess

FB: WH Hostess: Social Stationery + Entertaining

MANDY BARKLEY



ABOUT

Amanda Barkley is a Freelance Florist and Events Designer with over two decades of experience. Mandy has been the lead designer for the White House and its Christmas decorating endeavors. Her work has been featured in numerous national publications and on television. Her perfectly curated florals can be purchased through Instagram or Etsy.

THE BUSINESS

Follow @amandabarkleyfloral for fall florals and updates on how to add autumn botanical touches to your home or office space.

WHERE TO FIND HER

<https://www.amazon.com/shop/amandabarkleyfloral>

IG: @amandabarkleyfloral

FB: Amanda Barkley Freelance Florist & Event Designer