

Ohm's Law: Jewelry
By Hun Ohm*

You're a recent art school grad with plenty of talent, but not a lot of disposable income (yet). This year for Mother's Day, you decided to put your artistic talents to use and fashioned a replica of an unusual pendant you saw at a local jewelry boutique. Your resourcefulness has paid off, and your mother absolutely loves her gift. She wears it wherever she goes and receives compliments from everyone. And then it strikes you – perhaps you can parlay your knack for metalsmithing into a business. Replicas of great looking jewelry for a quarter of the price. What can stand in your way? Well, possibly the creator/owner of the original jewelry design.

Jewelry designs are frequently the fruits of an intense creative process - that slippery combination of ingenuity, inspiration, knowledge, talent, and countless hours that ultimately results in an aesthetically pleasing design. Given this significant expenditure of resources, it should not be surprising that jewelry designs can be protected under a variety of intellectual property laws. Here are a few to consider.

Copyright

Copyright protects an original expression of an idea that has been fixed in tangible form. Visual works such as paintings, sculptures, and drawings are protected under copyright law. Assuming that the jewelry design is adequately original, the design may be protected under copyright law. Copyright protection attaches automatically once the jewelry design is created (copyright registration does provide additional benefits). Copyright laws provide the creator/owner of the copyright in the work with a set of exclusive rights (*i.e.*, the right to reproduce the work, to prepare derivative works based on the work, among other rights) and help the creator/owner protect against the unauthorized use of such work (including, possibly, your intended use).

Design Patents

A jewelry design that is new and sufficiently different from prior designs may be eligible for design patent protection, which protects the visual appearance (*e.g.*, ornamental elements) of the jewelry design. A jewelry design that does not qualify for copyright protection could, in some instances, qualify for design patent protection, though design patent protection lasts for a shorter duration than copyright protection. Of course, this also presumes that the creator/owner of a jewelry design has gone through the expense and effort to file and successfully prosecute a design patent application; in other words, protection is not automatic. Design patent protection gives the creator/owner the right to stop others from making, using or selling an item that is a copy of the design.

Trademark/Trade Dress

If a distinctive jewelry design is non-functional and has come to serve as a source-indicator for the creator/owner of the jewelry design - for example, it has acquired secondary meaning through longstanding, exclusive use and substantial marketing such that consumers immediately associate the design with the creator/owner - your use of a confusingly similar jewelry design could violate the jewelry designer's trademark rights. Likewise, if a distinctive brand is used on or in connection with a particular jewelry design or by a particular jewelry designer, your use of

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a confusingly similar name for your own jewelry (regardless of whether you are also using the jewelry design) could violate the original designer's trademark rights in that brand name.

Where does that leave you? At the very least, before you embark on a new venture recreating or using existing jewelry designs you have come across, you might take a step back and consider whether there are any indications that the design is protected under various intellectual property laws. The fact that jewelry is available for purchase in a boutique window does not necessarily mean you can freely create jewelry based on it; on the flip side, bear in mind that jewelry designs have been developed by artisans over many, many centuries, with a plethora of designs and elements that may be in the public domain and free to be utilized by the public. The trick and catch are understanding which is which. Careful consideration and planning will help lead you away from potential disputes, and perhaps lead to the creation of a line of jewelry of that is truly your own, one that might even make your mother proud.

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