

MARQUETRY AS INTELLECTUAL PROPERTY

Intellectual property covers patents, trademarks, copyrights and trade secrets. A patent covers inventions and is valid for 20 years from the date of application for a patent. It usually takes 3-5 years to get a patent. A patent is not a right to make an item but is the right to exclude others from making that item. It may still infringe or overlap on another, i.e. a patent for a bottle may overlap/infringe on a patent for a bottle cap.

A trademark or brand is used to distinguish one from another, and can be confusingly similar. In the case of United Airlines and United Van Lines, the word "United" can be used for multiple trademarks, but something like Coca-Cola cannot be used as a name for a car or clothes. A name can be a trademark, and signing the back of a picture can be considered a trademark. Common law generally protects these in the region/geographic area you do business.

Copyright is for an authors' or artist's original works. The life of a copyright is for 70 years after the death of the originator, but can be extended, i.e. Disney. It limits the right to make copies, to distribute by sale, and to display. A copyright should be obtained as soon as the work is "fixed in a tangible medium" but carries no protection while "thinking about" the work. You must file for a federal copyright to get protection and there is a \$40 fee for each item. Each change to the original can be a copyrighted element. A copyright application can be filed for a collection of works, such as photos, but it will cover the body of work as a whole, and not individual items within the body of the work. Before anyone can recover damages for a copyright violation, they must prove how much they were damaged by the infringement.

Some large companies, such as Disney, colleges, professional sports teams, are extremely protective of their logos, colors, and fonts, and require payment of a franchise fee if one wants to use any of their images. They will often go after anyone they feel is using their logo/trademark/etc. without their permission, and the penalties in this case can be quite substantial.

As a marquetarian, your main consideration should be the practical aspect of what you are doing, rather than the legal aspect. A "fair use defense" may protect you against infringement penalties from the general public, but not from some entity like Disney. This "defense" considers the purpose and character of your use; whether the use of the original is transformative; the nature of the copyrighted work; the amount of the original work used; and the effect of use on a potential market, i.e. use of rubber stamp designs on cards. A parody is almost always a successful defense. Also, use as an educational tool is almost always all right.

Prepared by Beth Woody based on a presentation by Chris Clark, Attorney-at-Law, April 2015