

Copyright in trade marks



Copyright exists in some trade marks. Copyright in New Zealand arises under the Copyright Act 1994. In general, there is no copyright in a single word or a short phrase, no matter how unique the word or phrase is. Copyright can exist in an artistic work which includes drawings, irrespective of artistic quality or merit. The only qualification is that the drawing must be 'original'. A drawing that consists of a combination of parts drawn from elsewhere may qualify as original. The term of copyright is usually the life of the author plus 50 years.

Copyright infringement

Copyright is infringed where the work or a substantial part of it is copied. There must be a link between the original work and the infringing work; independent creation is not an infringement no matter how similar the two works may be.

Copyright protection

Here are some important points about copyright protection in trade marks.

- Trade mark labels and logos are usually prepared by a graphic design, advertising or marketing company. The Copyright Act 1994 states that where artistic works are executed under commission, the copyright will vest in the party commissioning the work. Copyright ownership should be clarified when the logo or label work is first commissioned and if necessary, an assignment of the copyright should be secured.

- Copyright exists in original drawings. It is important to keep the original and all revisions of the drawings and to indicate the creation and publication dates as well as the names of people who created the design, their relationship with the design company and circumstances surrounding the design. These will be useful evidence in any disputes.

In addition to the trade mark notice, 'TM' or ®, it is also useful to include a copyright notice, ©, with logos. The copyright notice shows that copyright is claimed and may defeat an infringer's plea of ignorance in any disputes. The usual copyright notice is ©, followed by the name of the copyright owner and the year of first publication eg, © AJ Park 2007.