

NICE WORK.

BUT IS IT YOURS?



OWNING AND PROTECTING YOUR CREATIVITY

Creativity for Hire

Devon Newman

Using Others' Creativity

John Mansfield

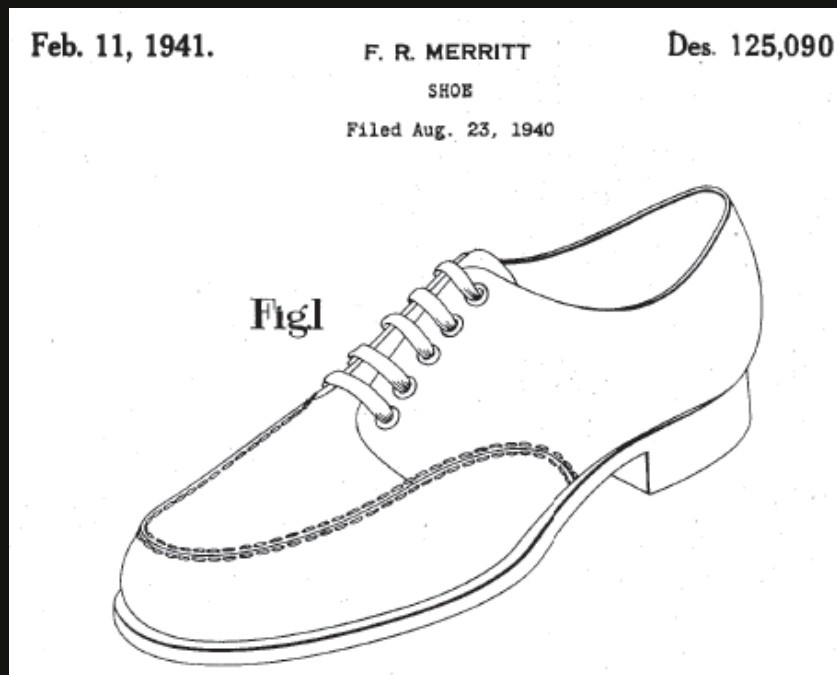
Creativity for Hire

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Patents

Design

Utility



I claim:

1. A paint mixture, comprising a latex base, 5% toluene...

Patents

- Oregon law: inventor owns his creations by law
- Employer can make assignment of rights to employee's creations a condition of employment
- Can apply to independent contractors: must give rights over for work created

Assignment of rights



Employee  Employer

Assignment of rights

- Employment agreement or written contract
- Generally assigns all rights for all purposes
- Creator may reserve some right to display work as own (artist portfolio)

*What if there is no written
agreement?*

Oregon common law principles

- Default: creator owns all rights
- Work done on own time not using employer's resources generally belongs to employee
- BUT, where employee
 - invents in competition with employer
 - has specialized training from employer
 - uses employer's resources to create invention
 - the employer may own the invention

Trademarks



Trade dress

Distinctive look and feel of a product



Also protectable and can be owned by a business

Trademark/trade dress

- Rights belong to owner of trademark trade dress, even if used by another unless abandoned
- Creator's works for trademark owner made with limited license to use work
- Generally spelled out in contract

Trade secrets

- Secret process learned from employer
(Coca-Cola recipe)



- Nondisclosure agreement may be required to learn trade secret
- Duty of loyalty to employer

Trade secret

- Employee cannot use outside of work even for purely personal reasons



Copyright

- Protects fixed tangible expression of creativity



- Can be hired to do this work: graphic design, technical writing, portrait

Work for Hire

Any work created by employee for employer
per agreement

The employer – not the employee – is the
legal author of the work

- employer can be individual or company

Work for Hire - statutory examples

- Work commissioned from independent contractor for:
 - compilation
 - movie/audiovisual product
 - translation
 - instructional work
 - supplementary work
 - test/answer material
 - atlas

Work for hire and copyright

- Term of copyright protection differs from non-employment context
 - Work for hire: 95 years from the date of publication or 120 years from the date of creation, whichever expires first

Work for hire agreements

- Employment agreement governs
- Form agreements (architecture)
- Changes can be made
 - Specificity is key

Using Other's Creativity

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The basic rule



If you didn't create it, you can't use it
unless...

Not protected under ©
License/assignment
Fair use
Public domain

Is it protected under ©?

- 1) Original works of authorship
- 2) Fixed in a tangible medium

Any text

Any drawing

Any photograph

Any creative work

Not protected under ©

Ideas

Functional elements

Short phrases

Titles

Governmental works

License/assignment



Express

Implied

Fair use

[T]he fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. 17 U.S.C. § 107

What use is fair?

Whether use is commercial

Amount & importance of part used

Effect of use on the market for or the value of the work

Public domain



<http://copyright.cornell.edu/resources/publicdomain/>

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