

Copyright Protection for Jewelry

Amundsen Davis Fashion Law Alert

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Copyright protection may be available for your jewelry designs depending on the degree of originality or creativity they encompass. The degree of originality required for copyright protection is fairly low. A designer need only show that she created the item independently, without copying from another work, and must contain some sense of uniqueness not commonly found in the industry. It would be difficult, for example, to obtain a copyright registration in hoop earrings.

Copyright protection may be available for jewelry designs that incorporate elements inspired by nature, such as a stylized impression of a flower or an animal, so long as there is a degree of artistic inspiration and provided the other requirements for copyright protection are met. Though the degree of originality required is generally small, it is not always easy to determine whether a design meets that threshold. It is important, however, to recognize that copyright protection extends only to the original artistic expression, not the underlying idea, purely functional aspects of the jewelry, or to the process or system of making the jewelry. For example, a Federal Court in Colorado said that a designer's copyright in her "barbed-wire" jewelry was invalid, because her designs merely mimicked barbed wire, an item in the public domain. The court noted that the designer did nothing to "recast or arrange" the elements in an original way (*Todd v. Montana Silversmiths, Inc.*, 379 F. Supp. 2d 1110).

You should also note that while obtaining copyright registration in your jewelry may be relatively simple, it may not be as easy to prevent others from creating jewelry with similar elements. Remember, copyright protection prevents the copying or distribution of certain expressions, not general concepts. This means that independent creation and distribution of similar designs may not necessarily support a claim of infringement—a result that is particularly true if the design is inspired by common elements such as a natural phenomenon or something in the public domain such as an animal, a plant, or common shape such as a heart, cross or star.

Filing an application for copyright registration is fairly simple and inexpensive, though having an attorney assist you in the process, at least at the outset, will certainly reduce the likelihood of any errors. Mistakes in the application may not become apparent until you attempt to enforce your rights in court — a most inopportune time to discover that your copyright registration is invalid.

PROFESSIONALS

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Jewelry collections may be filed in a single copyright application so long as they are included in a “single unit of publication.” A piece of jewelry or a line of jewelry is considered to be published at the time it is first offered for sale or free dissemination to the public. Thus, collection registration can be pursued when a designer creates a line of thematically related pieces and releases them for sale at the same time as a part of the same collection. If some pieces are published prior to others, it’s possible that they may not be considered part of the same collection.

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