

Do you own the copyright in your brand?

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The ironic thing about copyright in logos is that the ownership resides with the person who created the work. This is so regardless of whether the logo was created by someone on commission or whether money was paid for the creation of the logo.



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You would think that when you pay for creation of a logo it goes without saying that you will own the copyright. The question of ownership in logos recently came under scrutiny in the United Kingdom (UK) in *Atelier Eighty Two Limited v Kilnworx Climbing Centre CIC & Others* [2015] EWHC 2291 (IPEC). The directors of Kilnworx agreed that Kilnworx should have a logo. Banting, one of the directors of Kilnworx, commissioned Purple Penguin to create a logo.

Banting also served as director of Atelier Eighty Two Limited. Purple Penguin created the logo and invoiced Kilnworx. As Kilnworx was not in funds, the invoice for the logo was settled by Atelier. Banting later resigned from Kilnworx. Shortly after his resignation, he alleged that Kilnworx did not own the copyright in the logo, which was owned by the Purple Penguin and that only Atelier was licensed to use the logo. As a result Atelier Eighty Two Limited sued for copyright infringement against Kilnworx.

In holding that there was no copyright infringement and that Kilnworx was entitled to the transfer of the copyright in the logo, the court relied on the principles distilled in *Robin Ray v Classic FM plc* [1998] ECC 488 as confirmed in *R Griggs Group Ltd and others v Evans and others* [2005] EWHC 2291 (IPEC). In the *R Griggs* case, the court found that in order to give business efficacy to such a contract, it will not be enough to imply a term that the client will enjoy a mere licence to use the logo and nothing more because in most cases it will 'go without saying' that the client will need further rights. Where a designer is commissioned to create a logo for a client, in order to give business efficacy to the contract there will in the normal course be a presumption that the client has the right to prevent others from using the logo.

For obvious reasons it would be unusual and commercially dangerous for use of the logo by the client to be subject to the approval of the designer of the logo. It is also unlikely that the client would agree to the designer being free to sell off the logo, possibly to a competitor of the client. If this were the case there would have to be very clear evidence to support the existence of an agreement along such lines.

In considering how this case affects us in South Africa, for starters South African copyright law is based on UK copyright law. Therefore South African courts regard UK decisions as persuasive. It is therefore not improbable that a South African court faced with similar facts could potentially rule much the same as the UK court did in Kilnworx Climbing Centre.

Given the precarious nature of court proceedings about implied terms, companies should not leave the issue of ownership of the copyright in its brand to the courts. The pragmatic thing to do is to ensure that when you commission a third party to create a logo, there is a clear written agreement in place assigning the copyright in the logo to you.

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