



INTELLECTUAL PROPERTY | Issue No. 25 | *Think before you ink – Copyright in tattoos*

November 2016

If you are thinking about surprising your mother-in-law by showing up for Christmas lunch with a new copy of her favourite tattoo on your bicep, you might want to first consider who owns the rights in the design.

With tattoos having undergone an explosion in popularity in the last 20 years, it is now estimated that around 40% of people in the 18-35 year age bracket have at least one tattoo. Of course some have many more and by no means are tattoos the exclusive domain of Gen Y.

Cultural attitudes towards tattoos have also shifted. No longer are they secreted away or hidden under layers of clothing, but works are displayed openly as an expression of personal branding or 'body art'. They are not only worn with pride, but may also be applied with pride by the tattoo artist, particularly as designs become more detailed or intricate.

As many tattoos are now regarded as original works of art, the question that needs to be considered is who owns the intellectual property rights in them?

If we accept that some tattoos can be works of art, then it is easier to think of them in the same class of works as paintings. Many people are surprised to find that when they buy a painting they do not automatically acquire the copyright in it. They take ownership of the physical work (the canvas and the paint applied to it) but do not necessarily acquire the copyright and the right to reproduce the artwork in different forms. There are exceptions to that rule, including where works are produced on consignment and/or the parties agree to transfer or assign copyright. By extension, you might own the 'canvas' on which your new tattoo has been applied, but that does not automatically mean you acquire copyright in the artwork or design.

For copyright to apply, the works must be original and generated with some skill and effort. So a copy of a standard ship's anchor may not pass the test. If the tattoo artist copies someone else's tattoo, design or other

artwork, the fact that it is applied to your skin will not stop it from amounting to an infringement of their rights.

Copyright owners may also acquire moral rights in the work, which include:

- The right to be attributed as creator.
- The right to integrity of the work – not to have the work subjected to derogatory treatment such as distortion or removal.

The question may be whether the tattoo artist impliedly consents to the work being removed.

There have been high profile cases involving the infringement of rights in tattoos. Those include claims involving basketball stars Kobe Bryant, LeBron James and Rasheed Wallace. The artist who designed Mike Tyson's well known facial tattoo also made a claim against Warner Bros when his design was reproduced on an actor in a film.

While the subject matter may be a little more unique, the rules remain the same. Although it may be very uncool (and contrary to the whole idea of getting a tattoo) it may be worthwhile to check the rights in the design. If the design is unique, it may be worth having the rights in any tattoo artwork assigned to you (as many sports stars and celebrities are now doing), if you want to retain control of how the design is used, reproduced or removed. Particularly if the matching Christmas tatt is high on the agenda.



Andrew Nicholson

Partner

Mullins Lawyers

t +61 7 3224 0261

anicholson@mullinslaw.com.au