

# Commercial General Liability Coverage for Trademark and Copyright Claims

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As a business owner, you regularly assess the risks associated with your business and how to limit exposure. Almost all business activities carry some risk of liability and the possibility of being named as a defendant in a lawsuit. One of the first questions asked when that situation arises is whether the company's insurance policy will cover the claims asserted. In some instances, commercial general liability (CGL) insurance will help you in intellectual property disputes, and we regularly recommend that clients speak with an insurance broker to determine the right coverage for their business.

## Commercial General Liability Coverage

While specific IP insurance coverage is available — e.g., through a Multimedia Liability Policy — most often your business will carry CGL coverage. It is in the “advertising injury” provisions of your CGL policy that you may find insurance coverage for a trademark or copyright claim brought against your business. Advertising injury is defined by the International Risk Management Institute as “a general liability coverage, combined in standard CGL policies with personal injury (PI) coverage, that insures the following offenses in connection with the insured's advertising of its goods or services: .... copyright infringement, and misappropriation of advertising ideas”.

## Trademark and Copyright Claims

Copyright infringement coverage through an advertising injury clause will cover any inadvertent copying by your business of another party's creative content that you use in promoting your business. Misappropriation of “advertising ideas” can include acts of trademark infringement that your business unknowingly committed — that is, the inadvertent use of another party's brand name or logo or a confusingly similar name or logo — to promote your business.

Importantly, willful acts of infringement generally will not be covered; the copyright or trademark infringement must be inadvertent. Likewise, patent infringement will not be covered. Whether you have coverage in a particular case will depend on the specific language of your CGL policy's advertising injury clause. Even before getting an attorney's advice as to whether your policy provides coverage, it is smart to notify your carrier immediately on receipt of a demand letter or suit naming

your company as a defendant in a copyright or trademark dispute. Failure to give such prompt notice may result in the carrier denying coverage.

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