

"Types" of Protection for Font and Typeface Designs

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As a counterpoint to our [article last month](#) regarding a copyright infringement and breach of contract lawsuit filed against Target over a computer font program, we provide a brief overview of the options for *protecting* the IP in a typeface design in the U.S.

Design Patent

First, font designs are protectable by design patents—in fact, the very first U.S. design patent, issued in 1842, covered a typeface designed by George Bruce. Design patents can cover the underlying design of the typeface, so long as the design is deemed to be novel and non-obvious by the USPTO. Design patent applications filed after May 13, 2015 provide a 15-year protection term from the date of grant.

Unlike some countries that allow only one typeface set of letters, numbers, or signs and symbols in a single design patent, the U.S. allows a typeface set of all the letters of the alphabet, numbers, and signs and symbols in a single design patent; the U.S. also does not limit protection of the font design to a particular font size.

Copyright

Second, the Target case notwithstanding, the U.S. Copyright Office has determined that typeface, lettering, calligraphy, and typographic ornamentation are generally *not* registrable, no matter how creative. Compendium (Third) § 906.4, citing 37 C.F.R. § 202.1(a), (e). This is because the Office considers typefaces to be mere variations of un-copyrightable letters or words, which are “the building blocks of expression” and therefore not protectable by a single owner. *Id.*

However, a typeface may be registrable if they are made up of “pictorial or graphic elements that are incorporated into un-copyrightable characters or used to represent an entire letter or number.” The Office provides the example of “original pictorial art that forms the entire body or shape of the typeface characters, such as a representation of an oak tree, a rose, or a giraffe that is depicted in the shape of a particular letter.”

Notably, copyright law *can* (and often does) protect computer software programs used to create or use digital versions of a typeface, or font. It is important to note, though, that such a registration will only cover the source code that generates these designs, as opposed to the resulting typeface, typefont, lettering, or calligraphy itself.

Trademark

Finally, trademark law can protect the *name* of a typeface (e.g., “Times New Roman” has been registered by The Monotype Corporation since 1985), but not the underlying design.

However, a font design can be the subject of some trademark protection if it is incorporated into a logo, as in the case of Disney’s famous script.

As with all trademark rights, it is important to note that trademark rights – registered or unregistered -- pertaining to a font or logo design extend only to the goods and/or services for which they are used (and those that may be considered similar or related); thus, protection for a logo in a particular service area likely does not cover any and all uses of that logo design and the font contained within.

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