

## Copyright Damages: a Costly Lesson to Learn

By Isak J. Howell

Keep good records. Don't hide the ball. And, whatever you do, don't use someone else's products in your own showroom and promotions. Those seem to be the lessons of a recent case from just down the road at the furniture mecca of High Point, North Carolina. A New Jersey company is learning these lessons to the tune of \$11.2 million.

The case, *Universal Furniture International, Inc. v. Collezione Europa, USA, Inc.*, highlights several important points of intellectual property law, including the potentially costly results of what the courts call willful copyright infringement. Both Universal and Collezione are companies that design, import and distribute furniture. Universal is based in North Carolina, Collezione in New Jersey. Back in 2007 a federal court in North Carolina found that Collezione had infringed on Universal's copyright, "passed off" Universal's furniture as its own in violation of the Lanham Act, and engaged in unfair and deceptive trade practices, all stemming from sales of look-alike pieces of Universal's copyrighted furniture. The more recent case, decided earlier this year, dealt only with calculating and imposing damages. The court, in what must have been a stinging opinion for Collezione, ordered it to pay Universal \$11.2 million in damages – that's Collezione's gross revenue for the infringing furniture, based on less than a year of customers' orders.

According to the court, Collezione specialized in low-cost alternatives to furniture found in retail stores. Shortly after Universal designed, unveiled and copyrighted its "English Manor" and "Grand Inheritance" collections, Collezione displayed, as its own, Universal's English Manor furniture in a High Point showroom. Collezione also sold two lines of furniture very similar to Universal's lines.

When it came time to calculate damages, Universal sought to recover Collezione's profits, which a plaintiff is entitled to seek under 17 U.S.C. § 504 (b) of the Copyright Act. Once Universal presented sufficient proof of Collezione's gross revenue, the burden fell on the infringer, Collezione, to prove any deductions or to exclude profits that do not relate to the copyrighted work. This can be a heavy burden, since all gross revenue is presumed to be attributable to infringement unless the infringer can demonstrate otherwise. And, because

the infringement was "willful," the court gave extra scrutiny to every deduction that Collezione claimed.

In this case, the court repeatedly found fault with Collezione's calculations and efforts to prove certain deductions to gross revenue. The court said Collezione's calculations were confusing and unreliable, and that Collezione, since long before trial, had engaged in an "inexplicable obfuscation" of its deductible costs. A Collezione representative was unprepared to answer key sales questions at deposition, and was equivocal on the witness stand as to the accuracy of certain sales figures.

The court found that Collezione never explained its calculations with any clarity, and had actually violated the court's previous orders requiring a total cost calculation. The court ultimately simply rejected the calculations outright and simply dismissed the Collezione testimony. At this point, the stage was set for the whopping judgment.

The court's opinion gives the distinct impression that Collezione sought to hide or "massage" sales numbers. The effort to mitigate damages ended up costing the defendant its credibility with the court. The court found the records confusing and found sales figures shifting over time (with calculations of sales rising yet profits "inexplicably" dropping). Once willful infringement is found, the playing field is heavily tilted, so that only clear, well-documented expenses and non-infringing sales will offset damages.

As for Universal, it decided early on to protect its investment in the design of the furniture by filing for copyright protection. It obtained protection in November 2003 for the English Manor furniture. Less than a year later, a Universal employee was taking pictures of those copyrighted pieces over in Collezione's showroom. Universal probably considers that copyright protection well worth the effort. Meanwhile, the case reads like a stern lesson on keeping detailed records, being forthright with the court, and, yes, on making sure the items in your showroom weren't designed (and legally protected) by your competitor.

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