



THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Art attack

Touring exhibit tests the limits of copyright laws that block artists from using corporate images

By Chris Gaither, Globe Staff, 7/14/2003

SAN FRANCISCO -- Barbie sprawls naked in a blender. A familiar green-and-white logo bears not the Starbucks name, but the appellation "Consumer Whore." The familiar image of Bert, from "Sesame Street," hangs from a noose. All are images from "Illegal Art: Freedom of Expression in the Corporate Age," a new exhibit at the Artists Gallery of the Museum of Modern Art here that criticizes the increasingly strict intellectual-property laws that artists say hurt

their ability to borrow cultural imagery to reflect the impact of business on American society. At their most innocuous, the works -- which include visual art, music, and video -- highlight the depth to which corporate brands have been embedded in the consciousness of American consumers. At their most provocative, the pieces distort popular images, from Mickey Mouse to purple Viagra pills, to scold the companies responsible for them.

Organizers say that works in the exhibit are protected by copyright law, which allows for fair uses, such as parody, scholarship, commentary, and news reporting.

The "Illegal Art" show is "a great piece of copyright civil disobedience," said one participating artist, Kembrew McLeod. He trademarked the phrase "Freedom of Expression" just to see if he could and then sent an ironic cease-and-desist letter to AT&T for using it in an advertisement.

The organizers don't shy away from shaky legal ground. Although the exhibit itself has prompted no legal action after stops in New York, Chicago, and Washington, several of the artists represented had been sued by copyright-holders before the show. Compilations of songs used without the musicians' permission are distributed free on CDs outside the show and on its website, www.illegal-art.org, almost daring the recording industry to take action. It hasn't yet.

"Illegal Art" pieces include Pez candy dispensers topped with the heads of dead rap stars; pillows shaped like Zoloft, Prozac, and Thorazine tablets; and the first letters of famous logos, from Starburst candies to Tide detergent, spelling SUBVERT. The show is heading to Philadelphia this fall, but there are no plans to bring it to Boston.

"It's really a crapshoot when you set out to do this work: You may get sued; you may not," said Carrie McLaren, the exhibit's curator and editor of a Brooklyn-based magazine about American media and consumer culture, called Stay Free!

For their part, corporate lawyers say that lawsuits against visual artists are rare and usually are filed only when the artists try to sell copies of the images (on T-shirts, for example) or when the company believes that the work tarnishes its brand. Lawyers also argue that they sue because they have to. A facet of intellectual-property law called acquiescence compels them to fight every infringement they find or give up the right to defend the trademark or copyright when it really matters, such as when a competing company appropriates a logo.

"There's a reluctance, at least among my clients, to appear to be bullying individuals," said Thomas F. Holt, an intellectual property lawyer in the Boston office of Kirkpatrick & Lockhart. "On the other hand, not acting can have consequences."

Artists have long borrowed trademarked imagery from corporations, holding them up in an effort to critique consumer culture. Perhaps the most famous is Andy Warhol's "Campbell's Soup Cans." Painted in 1961, a year after Jasper Johns sculpted a pair of Ballantine Ale cans in bronze, Warhol's soup cans were intended as a brash comment on the sameness of mass advertising.

Two decades later, artist Richard Prince photographed magazine advertisements and then manipulated and reprinted them to make images designed for the masses his own. "I think the audience has always been the author of an artist's work," Prince said in 1987. "What's different now is that the artist can become the author of someone else's work."

But today artists say that such commentary has been increasingly hard to pursue.

In *Eldred v. Ashcroft*, the Supreme Court ruled in January that Congress had acted within its rights when it extended copyright protections by 20 years, to 70 years after the author's death and 95 years from publication by a corporation, delaying the arrival of images like Mickey Mouse in the public domain.

And while the Internet has made it easier for artists to spread their works, the medium offers an easy way for corporations to sniff out possible infringements of copyrights and trademarks, said Ray Beldner, a San Francisco artist who organized the show here.

Corporations also have a lot more money for legal fights than most artists. The end result, some lawyers and artists argue, is that many artists have begun to censor themselves out of fear of litigation.

Diana Thorneycroft's graphite drawings of Bert hanging from a noose, Barney Rubble of "The Flintstones" bleeding from a head wound, and Bart Simpson bound to a chair "reflect the hypocritical way that society ignores the violence that is often at the heart of child's play," according to the "Illegal Art" description of her work. But when she tried to exhibit the drawings in Canada, where fair use laws don't allow for parody, a lawyer advised the gallery that it would be liable for copyright infringement. Thorneycroft removed her drawings from the Canadian show, though they are exhibited in "Illegal Art."

"When people talk about fair use, they're saying you have the right to hire a lawyer to get the permission to create," Lawrence Lessig, a Stanford University law professor, said at a recent panel discussion here sponsored by "Illegal Art."

But Holt said it is too simplistic to portray the copyright debate as a David-vs.-Goliath struggle between individual artists and big corporations. Though corporations seem to

have an advantage in court cases, he said, artists rely heavily upon copyright laws to protect their own work and so should not undermine the laws.

"You'll find a lot of artists who are conflicted about this issue," he said.

Nowhere is there more debate on the issue than in the music business. The recording industry has little tolerance for unauthorized sampling and free Internet distribution of copyright music, leading to lawsuits between artists and against consumers who share songs online.

As a protest against the industry's drive to restrict copying of music for personal use, artist Eric Doeringer copied the 302 CDs in his personal collection, placed them in hand-printed and numbered cases, and displayed several in the "Illegal Art" show.

Ten of the 21 songs on the "Illegal Art" companion CD were used without permission from the artists, and each song is available for download from the "Illegal Art" website. The organizers say they have received no legal challenges from the music industry.

A spokesman for the Recording Industry Association of America, which recently announced that it would soon begin identifying and suing file-sharers, would not comment.

In deciding whether to sue for copyright or trademark infringement, corporations often strongly consider whether the potential violator is making money on the image. Disney didn't sue Wally Wood, an illustrator for Mad Magazine, when he drew "Disneyland Memorial Orgy" and published it in an underground newsletter in 1967, but the company filed a complaint against an entrepreneur who later tried to sell a poster of the image. They settled out of court.

In 1999, Mattel Inc., the toy maker, filed a copyright-infringement lawsuit against Utah-based artist Tom Forsythe, seeking an injunction to stop him from selling his photography series, "Food Chain Barbie." Forsythe had nestled nude Barbie dolls in kitchen appliances and dishware to comment on consumerism and the beauty myth, raising Mattel's ire.

After Mattel slapped him with a lawsuit, it took Forsythe five months of searching for legal representation before the American Civil Liberties Union of Southern California and the San Francisco law firm Howard Rice agreed to defend him pro bono. They got the case dismissed in August 2001, but Mattel's appeal is pending.

"I knew for a fact that I was protected under the fair use doctrine," Forsythe said in a telephone interview. "What I didn't know was just how difficult it would be to press that case."

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