Why You Should Copyright Your Logo

In the mole-whacking world of website takedowns, copyright is king.

One of the fastest, cheapest and least complex ways to rid your brand of a counterfeit site is the process provided by federal statute under Section 512 of the Digital Millennium Copyright Act (DMCA). In short, section 512 provides that the copyright owner has the ability to deliver notice demanding an online service provider ("OSP"), or one who provides information location tools, to "takedown" material that the copyright owner claims is infringing. The elements required to be in the notice are clearly laid out by the Act. The notice is served on a designated agent whose job it is to receive takedown notices. If the notice meets the requirements of the statute, the service provider must "respond expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity."

Please note the word "Copyright" in that Act. Not trademark, not patent. And in the world of copyright, seeing is believing. So, if you see your brand's logo as sufficiently creative to be treated as a work of art, you should also believe it is worthy of copyright protection and consider registering it - before someone impersonating your brand copies your logo to their site.

Your logo probably appears on most pages of your website. Most logos are registered trademarks. Trademark law, however, is designed to prevent confusion, not copying. Adding copyright registration for your logo gives you the added advantage of easily proving your status as the copyright owner – a key element in the notice required under the DMCA to get those with oversight of the infringing website to take it down.

Most DMCA notices simply rely on screenshots of the web page copyright notices somewhere near the bottom of the page. But not all the content on that page may be yours. You could be using, with or without license, creative works owned by someone else, whether product photos, text or graphics.

And those with copyright experience know that the dynamic nature of a web page can create version problems when a page, if even registered with the copyright office, is not the same page as the one subsequently copied by an infringer. Some of the largest online service providers such as Google and Facebook, which receive millions of takedown notices *per week,* have overlooked or dragged their feet responding to an ostensibly valid takedown notice, because much of the content clearly belonged to third parties or was not clearly owned as a copyright by the party filing the takedown notice. The DMCA notice requires whoever sends the notice to warrant that they have copyright ownership in the original of the copied content they want taken down. Trademark rights alone are not persuasive under the DMCA.

But given the low cost and relatively low standard of creativity required for copyright registration, why not guild that trademark lily. Register your logo as a creative work with the Copyright Office and make

it easy for an OSP with the power of takedown to decide that the content you want removed is your copyright protected work.

If you have questions on whether your logo qualifies creatively or need help quickly taking down a counterfeit site that is infringing, spoofing or phishing your brand, consider consulting with counsel who is highly experienced in the DMCA’s expeditious takedown process.