

Using Competitor's Images On Website Leads To Injunction and Damage Award

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If you discover that a competitor is using your organization's images or text on their website, a recent court decision will be of interest to you. If you've ever thought about using content from a competitor's site on your own, you should also take heed.

In 2009, Flowserve Corporation filed a complaint in federal court in Texas against its competitor, Hallmark Pump Company, over three images on Hallmark's website. According to Flowserve, the three images were copies of Flowserve's industrial pumps, two of which were the subject of federal copyright registrations by Flowserve. Flowserve alleged that by displaying the images in an advertising brochure via a link on its website, Hallmark was infringing Flowserve's copyrights. Flowserve also alleged that Hallmark was engaging in false advertising prohibited by the Lanham Act. Prior to filing the complaint, Flowserve sent a cease and desist letter to Hallmark, however, Hallmark did not remove the link until after the lawsuit was filed.

Flowserve filed a motion for summary judgment, which the court granted as to the two copyrighted images. The court found that the images were substantially similar (with only some changes in color) and that Hallmark's use of the images constituted willful copyright infringement. The court also ruled in Flowserve's favor on the Lanham Act false advertising claim, finding that Hallmark was depicting images of Flowserve's products rather than its own. In addition to enjoining Hallmark from displaying images of Flowserve's products in Hallmark's advertising, including on its website, the court awarded \$20,000 in statutory damages (\$10,000 per image), plus \$75,000 in attorneys fees in Flowserve's favor.

The decision serves as a reminder to diligently detect and stop the use of your organization's copyrighted materials on competing websites as well as a warning to make sure your organization is not engaging in conduct that violates the rights of others.