

July 2022

DEALING WITH PRODUCT COPIES

I have prepared these notes about my experiences in dealing with product copies over the last five years. I am sharing them to (hopefully) shed some light on the issue and help others, in particular smaller companies with limited time and financial resources, and don't know where to begin when they see what they believe to be a copy of their original design.

These weren't written by a lawyer, *nor should they be considered or used as legal advice*; **always** consult a lawyer regarding your specific circumstances. They are also very much focussed on the UK market, not Europe or the US.

Dealing with potential copying situations is immensely stressful (and I say this as quite a strong-willed person). I have financial resources to pay lawyers, and friends who work at larger companies in the industry whom I can call for advice. Yet every time it happens, I find myself feeling powerless and scared. The experience pushes all my buttons about fairness and integrity.

I also feel like I don't know how to address it properly—or if it is even worth the fight. There are, of course, the potential legal costs – but more importantly there is the time it will eat up (already a limited resource). I hate conflict but I also hate bullies getting away with it. I feel if I don't fight or stand up for myself, they are operating entirely without consequences, which also upsets me. So I find navigating a path through this world very difficult.

The truth is, it can be difficult to enforce rights against copies. We have had mixed success doing so. I'm sharing here what we have done, when it worked and when it didn't. I'm also sharing some examples of letters we have both sent and received, and providing information which may help you decide if you want to contact lawyers.

WHAT IS AN ORIGINAL DESIGN?

I am not sure if there is such a thing. We are all ultimately riffing on every designer who has come before us. I had always understood the unwritten rule to be: You can take the inspiration, but you need to change it or evolve it.

Direct copies of antiques that are no longer protected by copyright—usually over 50 years—are OK (although personally I still think you need to acknowledge the original designer in the product description). If there is an existing maker somewhere in the world still in production and we know about them, we would avoid it entirely.

It is very hard, certainly legally, to prove something is an actual copy in that someone directly looked at your product when devising their own. The other party can and probably will argue that they saw the same references, they didn't know about you/your product, were simply following the same trends, or coincidentally came up with the same design. It will almost be impossible to prove otherwise, and most of the retailers who do actively copy make their version just different enough. Equally, there have been times when we have been working on a design and then come across one by a maker we didn't know and had no contact with. So I realise we are all following the same trends, or sometimes there's just something in the ether.

But an unfortunate evolutionary arc seems to have developed in the design world: smaller companies and individual designers develop new designs, and get love from the press and customers. Then, usually two to three years later, larger companies launch either direct copies or designs changed ever so slightly—essentially still copies—often at a substantially reduced price.

Instagram and Pinterest have definitely fired this engine, and the growing interconnectedness of the global economy makes it impossible to police; based in the UK, it is very hard for us to learn of and stop manufacturers in, say, Asia or Mexico making copies. And once a big-retail copy enters the ecosystem, it has a life of its own: they will have manufactured hundreds of them, so they will fight not to have to destroy that stock.

We tend to ignore instances where individual interior designers copy a single product for private installations. If it is not being made for ongoing sale, best to probably let it go—though our policy is to remove that interior designer from our contact database to minimise future interactions with them, and we have a list of banned customers whom we know to have deliberately copied our products.

Other retailers selling copies are worth challenging I think. Why does it matter?

With the example of our Flora mirror we invested a lot of time and money developing and launching that design. There were weeks of drawings and time spent considering how many petals, the radius of the curve, whether the internal petals should have points, the thickness and profile of the frame, the colour palette, the size options and methods of construction and materials. We paid a junior product designer and recent design graduate JB to work on this so he also got the experience of working on this and moving it through drawings to manufacturing. There were 4 prototypes made before photographing them and all the associated costs around photography. Then there are all the costs around PR and initial sales launch and marketing and building up awareness. Our initial outlay was well over £15,000 not including my time, and we've spent more on marketing it since. So when a large retailer simply buys one of our mirrors and sends it to a factory to copy – they are stealing all of this value. It is one step removed from stealing £15,000 directly from our bank account.

And probably my greatest frustration in this world is watching big retailers – who have the most money and resources to actually invest in new designs and new designers – are usually the worst offenders.

As a small company it can feel like you are powerless to stop them and it is terrifying to challenge a much larger, well-resourced corporate entity - but it is not entirely hopeless.

Here are some things I have learnt along the way dealing with “copies” of our **Flora mirror**
https://www.balineum.co.uk/search?q=flora&_pf&pf_pt_product_type=Master

– one of our most popular product designs and one we believe has been “imitated” by some large retailers as well as lots of smaller players too.

REGISTERING A DESIGN

If you think you have an original product design, you can register it.

Typical fees (all ex VAT):

Region	Official Fee	Lawyers Service Charge	Lawyer Fees Other
UK	£50.00	£400.00	Plan for £300-400 for additional advice
Europe	£325.00	£720.00	
USA	£580.00	£1160.00	
China	£580.00	£600.00	

Multiple designs can be included in one application, but your lawyer would need to advise on a case-by-case basis.

While you can of course submit the paperwork yourself, I have always used lawyers to do this. (And you may find ones find cheaper than the above guide.)

Theoretically you need to register the design in every country for protection in every country, which pragmatically doesn’t make sense. We have three key markets: the UK, the EU and the US. In the UK you have up to 12 months to register a design from launch, but the sooner you do it, the better. And only you can assess whether the cost of registering a design is worth the revenue it will bring in.

If you have a registered design, our lawyers have said it makes it easier to get someone producing and selling a direct copy to stop. You don’t need to “prove” they copied you. You can just say “we have this design registered” —so sod off, basically. It’s not an automatic protection; you would still need to send them a letter (possibly via a lawyer) requesting they

stop and alerting them to your registered design. But in the event a lawyer needs to get involved on your behalf, it makes it much easier for them to do their job if there is a registration in place.

We launched our Flora mirror in 2016. I recall I thought there was no point registering the design, as everyone had told me you can't police copyright, and scallops are so universal that it wasn't worth the bother. (And at the time I don't think we had enough money to register it anyway.)

The Flora has since turned into one of our best sellers, has been in all the major design press, posted widely across Instagram, and has been "copied" many times. And it turns out it was quite a unique design—there were very few scalloped mirrors available at the time of launch. (Although sales didn't really kick in until year two, meaning we missed the window for registering it. I should have done so. Hindsight is useful sometimes.)

In contrast, we recently registered a new light design to avoid same pitfalls—but it hasn't sold very well and has not yet been copied; and we spent roughly £700.00 registering it in UK & EU—which, given we're still a small company, wasn't a small amount for us. Again, the power of hindsight.

Nor is registering your product a fool proof protection. You can tell someone they have infringed your registered design, but the stubborn or uneducated ones will still fight you, costing both of you time and money. And if the design is not registered in the country in which the copying is happening or items are being made and sold, it's essentially futile.

You still have rights on a design that is unregistered. Though the Flora mirror wasn't registered, we have had a strong enough case over the years to call out imitations. So equally, **don't give up just because your design is unregistered.**

FIGHTING COPYING

Anytime you see what you think is a copy of your design, it's worth calling or emailing the infringing party to highlight your concerns. Do not start with an accusation or by threatening legal action without consulting a lawyer. Open calmly and courteously and see how they respond before escalating. Quite often the party will be embarrassed and acknowledge it and pull the product down. And it is always possible they didn't know you existed.

There have been quite a few makers / retailers on Instagram who I have direct-messaged (with, I'm not proud to say, varying levels of rudeness), and they removed the offending product and apologised before lawyers needed to become involved.

We sent an informal letter to one of Britain's largest department stores about what we thought was a copy back in 2019, and they immediately apologised and removed the product from sale. **You can see a copy of that letter here.**

https://cdn.shopify.com/s/files/1/2422/3661/files/PP_JL_Letter_Redacted.pdf?v=1656428344

They are known as one of the more ethical high street players – and to their credit, they were pretty great about it: they admitted their design was too close and that it was missed by checks on their end, and we both agreed to give their products to an affordable-housing charity. They also contacted their press database to remove images containing the product in question.

Others, though, may seem more egregious—and will ignore or dismiss you. If an informal letter doesn't work, or if you know you are dealing with a serial offender, it's worth then going to a lawyer's letter.

A legal letter will cost anywhere from £200 - £1000.00 depending on the complexity of the task. Your lawyers will need background information about your design—is it registered, how long you've been selling it, etc. Once you have one such template, it can be modified for future letters, so it shouldn't cost as much every time. Your lawyers will make the sure the letter is safe to send and that you aren't saying anything you shouldn't.

A NOTE ABOUT BRIEFING LAWYERS

Lawyers charge by the hour. Like, as much as £400 + per hour. You can give them a budget for a project, and they may agree to it, but they bill by time. So the only way to keep costs in control is to have your information clearly and concisely presented, and to do some research work yourself. Remember: you know your products and the market better than they do, so be prepared to assemble information for them. You can't just say "send them a cease-and-desist letter;" **it will always involve your time.**

That said, for a person like me who gets upset and takes it very personally, having someone with knowledge and expertise helping fight in your corner, guide you, and calmly explain the options is worth the spend.

PUBLICALLY CALLING OUT

Every lawyer in the UK will tell you NOT to do this— that you risk defamation, and penalties at a level far worse than anything you might recoup re: a copyright infringement. But there is no denying it can work. Bridie Hall and Ben Pentreath took on H&M and "won" publicly.

With a recent personal recent example - I posted a slightly oblique post in my stories – not even tagging the other company in question and they removed the product from their website and instagram the next day (before we had even sent a lawyer's letter, though we did still engage lawyers to make sure it didn't reappear later).

So, the short answer is, make the call with extreme caution.

There are Instagram accounts like **Design Within Copy**

(<https://www.instagram.com/designwithincopy/>)

who will call out scenarios they spot (they tend to be focussed on interior designers copying, and are US-based) and also, they post sporadically.

Here is a very classy example of a callout by Wayks in Germany which publicly addressed a questionable product without any outright accusation of copying:

<https://www.instagram.com/p/CdX-bSms5Mk/>

MY RECENT EXAMPLE WITH A POPULAR ONLINE RETAILER

We have most recently been through a little “tussle” with well known online retailer. They will tell you that they develop unique designs that are affordable and accessible. I don’t agree. I think they are serial offenders: I’ve watched them for years launch designs that reminded me too much of existing designs by Rose Uniacke, Soane, Marinna Kennedy, Melodi Horne, Rosi di Ruig, and BTC amongst many others. They would vehemently disagree with me, and legally they may be correct (morally, not so much).

In March 2022 they launched a mirror which we felt was too close to our Flora mirror.

Quite a few people messaged me to say, “Have you seen this??” after it went public. After checking the details on their website, we found the frame profile was so like our diameter and cross section that it even seemed possible someone on their team bought one of our mirrors for reference (but were smart enough not to use their work email).

I left a slightly snarky comment on their Instagram post on 23rd March. I then posted an Instagram story of my own on 27th March—not tagging them just trying to gather information as I considered my options. The next day the item disappeared from their Instagram and website.

I still engaged lawyers trying to stop the mirror from going live again. With this company we went straight a lawyer’s letters. We didn’t bother with niceties, knowing already that many of my peers had already had interactions with them.

We received an email response from the company suggesting that we amicably resolve the issue without lawyers and offering us £50.00 royalty per mirror. I did kept my lawyers involved to negotiate the outcome – a) I didn’t (and don’t) trust them and b) I wouldn’t have been able to speak to them myself – I was too angry and upset.

Because our design is unregistered and it is after five years from launch, my lawyers had advised that a likely outcome was that they could manufacture the design but they would

need to pay royalties (hence their response with an offer to pay us £50.00 per mirror). My lawyers have suggested that we should accept the offer.

So we have agreed to take the royalty payments and the company will sell the mirror on their website— but we are going to give this money away to other designer-makers who need help paying for legal advice matters relating to the copying of designs.

CUSTOMER BASES

Arguably the people who buy a copy aren't the same customer you are presently selling to. It's not an excuse or justification to allow the copy, but pragmatically it is probably true.

The questionable mirror for which we are being paid a £50.00 royalty on sells for £290.00 inc VAT. Our mirror retails at £1495.00 inc VAT.

I heard Holly Hunt recently on a podcast talking about RH, who apparently are notorious in the US for “taking inspiration” from others. She feels the customer bases are different, that they are not cannibalising her revenue, that her business has still grown and that there are always people who will pay for quality and original design.

This is true to a degree: we make our mirror to order and our quality is far superior. If you want a pink mirror instead of a red one, or different size or colour, we can make it. Big retailers can't do this. They have to manufacture hundreds of units at a time in order to sell at those prices. There are serious questions to be raised about how they manufacture and sell at the prices they do but that is for another piece.

So whilst I think the “anyone who can afford your quality wouldn't buy our tat” argument is a pretty shitty one, it is essentially also true (as I try to remind myself when my stomach is churning with rage). I may feel they possess zero integrity, but it is also likely to be true that they aren't stealing our customers, or sales.

PRESS

I have wanted to send blanket emails to our press database, saying “see this versus this”. And again, every lawyer has told me not to—you risk defamation—so I haven’t. But I will have private conversations with press or PRs we know and trust. We say, Here’s our design vs this new one: you make your own mind up if it is too close.

I wish the press didn’t give oxygen to copies, but I also understand that journalists are not IP police, and often the offending companies are paying advertisers (which are necessary for print magazines to survive). That said, editors do wield considerable influence in our design world. Interior designers and consumers alike rely on these publications as a guide for good design. So I would say to the press: your edits elevates some products above others. You are a key part of the design eco-system in the UK. Please use your influence to shape it in ways that make us all better designers, and make our design community better.

MENTAL HEALTH

I run a small company. At the time of writing, we are five people in our head office, with a larger network of makers in the UK and Italy. But we are small.

As is likely pretty clear by now, this is a very hot topic for me. I have to personally be vigilant about not to get too worked up over it, because I am limited as to what I can control or influence.

Recently when two copies hit my radar in the same week, I was already dealing with Covid- and Brexit-related shipping issues, and with being short staffed. Having to then face dealing with them whilst keeping everything else afloat felt completely impossible. There was a lot of “Oh my god, are you f**king kidding me ??????” That week my time prioritising was between sending client quotes (which is our future revenue that keeps us in business) or allocating hours instead to challenging them. It was incredibly frustrating—and ate up a weekend at a time when I needed a break.

So whilst I would urge you to speak up and I know from experience that this can work... it takes a real mental and emotional toll. I have had to let a few questionable designs I’ve seen slide, because I simply don’t have the mental bandwidth to deal with them.

A NOTE TO LARGE COMPANIES

If you are still reading at this point, and you work for a large company that knowingly looks to smaller designers for inspiration, here are a few thoughts for you:

- When you copy a small company, it scares them and crushes them. It's a form of bullying. Designing and selling products is not a game to us; it is our livelihoods. When you compromise that, you threaten our financial security.
- You didn't bust your ass for three or four years of design or business school *to end up copying other people's designs*. When you are in that meeting – speak up! Argue for better design. Argue for making it sufficiently different. Use the position of power you are in the right way.
- It's not good for your career to be associated with copies. There is a group of retail brands which anyone with any knowledge of the design world knows are bad actors. Balineum would categorically never hire anyone who has worked at any of them; any candidate with one of their names on a resume, I automatically consider to have learnt too many bad habits.
- We totally understand that designs can be “inspired by”, and cheaper alternatives should have place in the marketplace, and I know that I don't own the design rights on all things scalloped. But make your cheaper designs sufficiently different from the originals. Just take the design and make it better. Do something more interesting with it. Put a spin on it. Add more to it. Just don't copy it.

LAWYERS

I really like the lawyers I work with and I trust them. If you would like a recommendation, please get in touch. I will gladly share their details.

To be clear: any letters I have shared in this document are just examples. They are specific to our company, product and the particular circumstances of each instance and relevant parties. They are being shared as a guide only. You cannot re-use them. You could modify my

lay person letter (which could actually be improved upon) but if you want to send a legal letter you must engage your own lawyer who will advise you on your specific circumstances. Copyright and design law is complex and there are numerous variables to consider when weighing up your legal options and approach.