

College of Visual Arts
Art and the Law Class
Trial Materials
Chronology

[Note: the *Grim Reaper* image that is the subject of this case study was actually created by illustrator Dani Jones. She has given permission for us to use her image in this case study for the class.]

June 1, 2007:

Background: Chris Scribe, a professional illustrator, created the *Grim Reaper* image as part of a professional portfolio sometime in February 2007. The image had been on Scribe's professional web site since March 2007. Scribe worked as a freelance illustrator and entered into a contract with Bullseye Stores, a major national discount chain, to provide some images to be used as part of an ad campaign for a new line of video games.

Contract with Bullseye, dated June 1, 2007: the contract between Scribe and Bullseye Stores gave Bullseye limited reproduction use rights for 30 days only, in advertising circulars to be printed for Sunday newspapers and in store posters for point-of-sale advertising. Bullseye's use rights began on June 15, 2007 and expired on July 15, 2007. All other rights were specifically reserved to Chris Scribe.

June 16, 2007:

Scribe prepared and mailed a Form VA copyright registration form to the U.S. Copyright office, claiming sole authorship of the *Grim Reaper* image and listing June 15, 2007 as the "date of first publication."

June 20, 2007:

The U.S. Copyright Office stamped Scribe's Form VA as "received" on June 20, 2007. The approved copyright registration Form VA notes that the "effective date" of the copyright registration is June 20, 2007.

July 4, 2007:

Pat Tracer, another illustrator, was browsing in a Bullseye store and saw the *Grim Reaper* poster as part of the point-of-sale advertising for the video games. One of Tracer's businesses is a web site that sells pumpkin carving patterns. The image looked to Tracer like a perfect base for a new pattern, so Tracer made a sketch on the spot. Tracer's sketch contained a notation of the name "Chris Scribe" by the image.

July 18, 2007:

Tracer was busy getting new patterns ready to put up on the web site, Cool Pumpkin Patterns on the Web, and came across the sketch of the *Grim Reaper*. After a Google search for the name "Chris Scribe," Scribe's web site came up, and Tracer downloaded a copy of the *Grim Reaper* image.

The image was far too complicated for a carving pattern, so Tracer simplified the image so that it was suitable for a carving pattern.

August 2, 2007:

Tracer's web site was updated to include the new Reaper pattern. Tracer's way of selling patterns makes it somewhat difficult to know the exact impact of the Reaper image, as single images are sold for \$4.95 and a "pumpkin carving pattern collection" containing 20 different patterns goes for \$15.95. Single image sales of the Reaper seemed to be an immediate success, selling over 20 copies in just the first week.

September-October, 2007:

Tracer traveled around Minnesota, Iowa, Wisconsin, and South Dakota, attending fall festivals and exhibiting examples of pumpkins carved from the patterns sold through the web site. The Reaper pattern was included in the display. Pattern stencils could also be purchased at the festival booths for \$4.95 each. Tracer sold 1,540 copies of the Reaper pattern at the fall festival exhibitions.

October 20, 2007:

Chris Scribe attended a fall harvest festival on Harriet Island in St. Paul. Pat Tracer was there at an exhibition booth, showing off pumpkins carved with patterns from Cool Pumpkin Patterns on the Web. Scribe looked closely

at the Reaper pumpkin and thought it looked very familiar. Without giving a name, Scribe asked Tracer where the inspiration had come for that image. Tracer replied that the image had been adapted from a Bullseye Store poster and simplified for use as a carving pattern. Scribe did not want to confront Tracer at the festival, so left quietly, but was very upset that the *Grim Reaper* image had been used without permission.

October 22, 2007:

The following Monday, Scribe checked Tracer's web site and found that the Reaper pattern was on the site. Scribe located Tracer's telephone number, called, and demanded that the pattern be removed immediately from the Cool Pumpkin Patterns on the Web site. Tracer refused to remove it, claiming that the original *Grim Reaper* was only the idea from which the carving pattern had been created, and had been significantly transformed for use as a carving pattern.

Scribe contacted an attorney and commenced this lawsuit, alleging infringement of copyright in Tracer's commercial use of the *Grim Reaper* image.