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Questions & Answers -- Copyright Column

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Cases of Note
from page 63

found an appreciable number of reason-
ably prudent purchasers exercising ordinary
care.” Int'l Ass'n of Machinists & Aerospace
Workers, AFL-CIO v. Winship Green Nurs-
ing Ctr., 103 F.3d 196, 201 (1st Cir. 1996).

An ordinary confusion claim would
have an infringer diverting customers and
free-riding on claimant’s goodwill.
Attrezzi, LLC, however, claimed “reverse
confusion.” Purchasers might view
Maytag as the source of Attrezzi LLC’s
goods. See DeCosta v. Viacom Int’l, Inc.,
981 F.2d 602, 608 (1st Cir. 1992).

In reverse confusion, the infringer could
be selling an inferior product or it could “sa-
turate the market and ‘overwhelm the senior
user.’” The senior user loses its product
identity, control over its reputation and ability to
move into new markets. 3 McCarthy, supra, § 23:10, at 23-36 (quoting Ameritech, Inc. v.
Am. Info. Techs., Corp., 811 F.2d 960, 964 (6th
Cir. 1987)). Internal memos at Maytag
acknowledged problems with its products, and
whatever the degree of severity, this risked
tarring Attrezzi LLC with the same brush.

Let’s Compare and Contrast.
Winship Green, 103 F.3d at 201 holds the
series of factors to be considered.

Both companies use the identical word
Attrezzi. Maytag hooks it onto Jenn-Air
which might diminish confusion, but in a re-
verse confusion case the more recognized
Jenn-Air mark makes things worse to
Attrezzi LLC. A & H Sportswear v.
Victoria’s Secret Stores, Inc., 237 F.3d 198,
230 (3d Cir. 2000).

Edge Attrezzi LLC.

True, Jenn-Air is appliances, but Attrezzi
LLC has appliances along with gourmet
foods and dinnerware. The products are not
radically dissimilar. And Maytag had an-
nounced the possibility of extending its line
to include barware, cups, glasses and cut-
tery. 3 McCarthy, supra, at 23-73 to
23-74 & nn. 1-2 (collecting cases).

Edge Attrezzi LLC.

What about channels of trade, advertis-
ing modes and prospective customers?
Maytag is a big deal selling nationwide
through stores and catalogues while
Attrezzi LLC is one store patronized by
Portsmouth locals. But both have Websites
and those search engines turn up both. And
both are selling market products.

Edge Attrezzi LLC.

Aatrezzo LLC had eight emails griping
about the quality of Jenn-Air Attrezzi
products. And there were phone calls for Jenn-
Air coming into the LLC shop. A declara-
tion from an LLC customer read:
"I thought that Maytag operated
Attrezzi as one of a chain of retail shops.
Part of the reason for this belief is the dis-

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QUESTION: A photographer has do-
nated his negatives to the library. Does the library now own the copyright in the pho-
notographs?

ANSWER: No, the library owns the
physical objects, the negatives. The copy-
right is separate from any physical object in
which the work may be stored such as a print
or a negative. The library may own even the
only existing copy of a photograph, but it does
not own the copyright unless the copyright
owner (in this case, the photographer) spe-
cifically transfers the copyright in writing.

QUESTION: An employee in a non-
profit organization sends out email updates
to the staff that consist of items taken from
news stories/articles on the Web (from
Reuters, Associated Press and various news-
papers), news stories posted on other list-
servs, emails from colleagues, etc. Because
this is disseminated as an internal list the
employee thought it was okay just to repro-
duce the news stories in these emails. Now,

"he wishes to " disseminate the updates to a
much wider audience outside the organiza-
tion. What are the copyright infringement
concerns with circulating these internal emails containing the full text of articles?

ANSWER: If any of these sources are
licensed products, the license agreement con-
trols the redistribution of the content by an
employee. If the organization has a CCC
annual photocopy license, then redistribution
within the organization is permitted. If the
organization is not a CCC licensee, and re-
distribution of full text is done more than very
occasionally, permission is required, and of-
ten there is a fee, even for a nonprofit organi-
zation. He could, however, prepare a brief
description of the contents and distribute it
along with a link to where the item is found
on the Web. In the alternative, he could use
the headline and distribute that since head-
lines are not copyrightable in the United
States, in contrast with many European coun-
tries. Distribution outside the organization
other than headlines and links is even more
likely to be in-

QUESTION: A patron requested
an inter-library loan of a 124-page article published in a freely available
e-journal on the Web. The patron could not
download or read the article in the 30 minutes
time limit that the library imposes on
patrons using library computers. The library
printed the first 20 pages for free and the
patron paid for copying the remaining
pages. Did the library violate the
copyright law?

ANSWER: No, it did not. In fact, the
library could have printed the entire 124 pages
for the patron had it chosen to do so. Under
section 108(d), libraries are permitted to re-
continued on page 65
produce a single copy of an article from a periodical issue for a patron. If that article is available on the Web with no license agreement, then printing or downloading that article for the patron is the same as from a printed journal, and is no problem. Whether the library charges the patron for printing is up to the individual library and has nothing to do with copyright.

**QUESTION:** A professor of Communication Studies has written an article that analyzes, critiques and comments upon advertising appearing in a popular computer magazine. The article quotes from several of the ads, and the professor wants to reprint six of the advertisements in the article. Would this qualify as a fair use? If not, from whom should she seek permission?

**ANSWER:** Quoting from the advertisements, with proper attribution, is likely to be a fair use. The purpose of using the quotations is to produce a critique of them; the amount used is small; and there is likely to be no market effect. To reproduce some of the ads in their entirety, one does need permission since each advertisement is an entire copyrighted work. It would be like including a copyrighted photograph in the article; because each photo is a separate copyrighted work, reprinting one in the article requires permission.

The easy answer about from whom to seek permission is, from the copyright owner, which is not always easy to determine. Start with the magazine and ask permission to reprint the ad. It probably will refer her to the advertising agency that produced the ad, and the agency will know whether it or the company that hired the agency owns the copyright in the advertisement.

**QUESTION:** The library is sponsoring a book talk by a famous author. May it post a photograph of the author and a photocopy of his work on the library’s Website? The book jacket from his latest book?

**ANSWER:** Only with permission. The library should contact the author or the author’s agent about the photograph. Sometimes the agent will supply the latest photograph and perhaps even in digital form, and there is seldom a charge for use of the publicity photo. The publisher should be contacted about photocopying the work and about scanning the book jacket. The publisher can answer directly about the photocopy of the work but may not actually own the art work on the jacket. Often publishers contract with an artist to use their work on the jacket but the copyright remains with the artist. The publisher will know this, however, and can either further license the library (depending on its license from the artist) or put the library in contact with the artist.

**QUESTION:** The school has an old filmstrip that it wants to convert to DVD. May it do so?

**ANSWER:** Under section 108(c), the library must first try to buy the filmstrip on DVD. If it does not exist, then because the format is obsolete, the library may copy it into the new format. The statute states that “…a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.” Moreover, a library does not have to acquire used equipment, only new. Filmstrip projectors likely qualify as obsolete today.

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**Books Are Us**

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**Column Editor’s Note:** This column covers fictitious accounts of people in our industry — librarians, publishers, vendors, booksellers, etc. — people like us. All contributions, comments, suggestions are welcomed. — AR

Thanks to **Ramune Kibilius** (Collection Development/Special Projects Librarian, Galter Health Sciences Library, Northwestern University) for letting me know about **Alice Hoffman**'s sixteenth novel, *The Ice Queen* (NY: Little, Brown and Co., 2005, ISBN 0-316-05859-9). The narrator is a nameless librarian, and the tale is “a magical story of passion, loss and renewal.”

The story begins with the then-eight-year-old narrator cautioning the reader to “Be careful what you wish for.” Her wishes appear to come true with often dire circumstances. Because of this, she becomes introverted, quiet, and tries not to draw attention to herself. She also learns to listen and as she grew older became a confidante to others, offering advice when asked. Even though she was the quiet girl, she always had definite opinions. After high school graduation, she looked for a career where silence would be an asset. Of course she picked library science and pursued a master's degree. Described as serious, she became a reference librarian, a natural progression from being the one who listened and gave advice to the one who was turned to for information.

The librarian was well liked, reliable, and the employee who collected money for presents and functions for the staff. After fifteen years she left the library in New Jersey to go to another out of state. Her colleagues wanted to give her a going away party at the library, but without her there was no one to organize it.

In the first library, she “dole out assistance, silence, and comfort.” But she also had a dark side, becoming fascinated by death and an expert on the many ways one could die. As a result, the local police chief turned to her for death related information. Her tools for researching death included medical texts, the *Merck Manual of Pharmaceuticals*, and her favorite: *A Hundred Ways to Die*, a guide to suicide.

One story in the novel describes her as caretaker for her dying grandmother. She wants to keep her alive, and litters the house with books, thinking if there were always books to read, her grandmother would have to stay alive to read them. (This description struck a chord: I always seem to be mailing off books to my 90 plus mother and mother-in-law!)

She continued to withdraw within herself, becoming reclusive and frozen emotionally, incasing herself in ice, so to speak. Thus the title of the novel: *The Ice Queen*.

Her brother has convinced her to move near him, to a job at a public library in Florida. This library is described as unbelievably small, with only one other librarian, who is described as tidy and well-organized, who has worked there for forty years. Her failing eyesight has prompted her to hire another librarian “to be her eyes.”

The phone rarely rings, patrons rarely have a need for reference services, and the narrator has little to do and can’t imagine why she was really needed.

The library is seriously under-funded, most of the shelves are empty, no computers are available to patrons, and an old-fashioned card catalog is still in use. The only weekly activity is a pre-school reading group. There are very few patrons and very few calls for reference. When the occasional patron comes in to check out books, we learn there are innumerable boxes of card files kept by patron name, itemizing the items checked out over time.

Other great librarian descriptors in the novel:

“‘I was a librarian after all; I’d want to know how the story ended.’”

“‘I’m just a librarian....’”

continued on page 66

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