

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

IP FRONTIERS

Who says you can't buy me love?

The celebration of Valentine's Day, also known as Saint Valentine's Day or The Feast of Saint Valentine, is upon us. That time of year when love is in the air, and all things red and heart-shaped adorn every store window. Greeting cards are sent, flowers are delivered, chocolates are eaten, rings are sold, and proposals are made.

Far from its Christian genesis as a tribute to saints and martyrs, modern Valentine's Day has evolved as a celebration of romantic love with distinct commercial underpinnings. Research shows that more than \$13 billion is spent on the celebration of Valentine's Day, with the average consumer contributing \$116.

Where there is consumer consumption of goods, even of the heart-shaped variety, there is intellectual property (IP) and the rights, licenses, royalties and lawsuits that come with it. Whether it's music, poetry, movies, greeting cards, paintings, or jewelry -- the design, function, expression and brand is protectable IP.

What's in a name?

Let's start with Hallmark. Founded in 1910, Hallmark Cards Inc. was formed in Kansas City, Missouri, by a teenager with two shoeboxes of picture postcards. More than 100 years later, Hallmark is a \$4 billion business with products sold in 40,000 stores.

Arguably the world's best known greeting card brand, Hallmark® sells more than greeting cards, it sells an image. Hallmark, and its widely recognized gold crown symbol, encourages the consumer to associate its trademarks with quality goods that focus on people, relationships and love, as captured neatly in its slogan: "When you care enough to send the very best." Acutely aware of the value of its intellectual property, the Hallmark website reports that the corporation "holds licensing agreements for 7 of the top 10 most popular licensed properties."

Also a highly recognized brand and purveyor of Valentine gifts and services, Florists' Transworld Delivery Inc. ®, more commonly known as FTD, holds trademarks for its symbol depicting a flower deliverer and for its toll-free number, 1-800-SEND-FTD®.

If candy is your pleasure some well-known brands include Godiva®, Russell Stover® and Sweethearts® conversation heart candy.

In the jewelry world, the message of Carol Channing and Marilyn Monroe that diamonds are a girl's best friend has been taken to heart by stores such as Zales®, which markets itself specifically with the slogan, "Zales The Diamond Store®."

The language of love

It has been said that music is the language of love. What we know for sure is that much music has been written about all kinds of love -- love in bloom, love on the rocks, unrequited love -- whatever form it takes, love songs have consistently topped the musical charts.

Many sources, including Billboard Magazine, report that the top love song of all time is "Endless Love," written by Lionel Richie and released in 1981 as a duet by Richie and Diana Ross as the theme for the movie "Endless Love" starring Brooke Shields.

Endless Love is not just a popular ballad, however, but also the subject of valuable intellectual property. A musical composition can be copyrighted, including the music and any accompanying lyrics. The author of a musical composition is generally the composer and the lyricist. Also subject to copyright is the sound recording that results from the fixation of the musical work, spoken, in a tangible medium that can be played back.

The author of a sound recording is the performer(s) whose performance is fixed, the record producer/engineer who processes the sounds and fixes them in the final recording, or both.

The 1976 Copyright Act gives the owner of copyright in original musical works the exclusive right to, and to authorize others to, reproduce the work in copies or phonorecords, to distribute copies of the work and to perform the work publicly. Based on this, music is not only the language of love, but also the language of much intellectual property licensing.

Love on television

Just a few years before the release of "Endless Love," those of

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us who are old enough to remember were invited aboard "The Love Boat" by Captain Merrill Stubing and his crew. You may remember the theme song:

Love, exciting and new

Come aboard. We're expecting you.

Love, life's sweetest reward.

Let it flow, it floats back to you.

Produced by Aaron Spelling -- who also created and produced "Charlie's Angels," "Dynasty," "Fantasy Island," "Beverly Hills 90210" and "Melrose Place" -- "The Love Boat" was a ratings hit for most of its 10-year run, featuring a prominent laugh track and guest stars such as Charo.

In addition to the musical copyrights in "The Love Boat" theme song, the television program was subject to multiple copyrights. Although the general idea of a show is not copyrightable, copyright does protect the literary and dramatic expression of the author's idea. For example, the script can be protected in the form of a manuscript, printed copy or a film or video recording.

Additionally, choreography and pantomime can be protected by copyright. Choreography is the composition and arrangement of dance movements and patterns usually intended to be accompanied by music, such as those performed by Charo. Pantomime is the art of imitating or acting out situations, characters or other events. To be protected by copyright, the pantomimes and choreography must be fixed in a tangible medium of expression from which the work can be performed.

Valentine inventors

In case you were not aware of the connection between our patent system and Valentine's Day, you should know that Alexander Graham Bell's patent for "Improved Telegraphy" was filed on Feb. 14, 1876. Three days after filing the patent, the telephone carried its first official message as Bell summoned his assistant, "Mr. Watson, come here, I need you."

In more recent times, we have seen love and the information age cross paths via internet dating (think eHarmony and Match), yielding patent applications and patents for inventions such as "Method and system for identifying people who are likely to have a successful relationship" and "Method and system for balancing the supply of desirable users with the demand by other users to date them in an online dating system."

Other creative individuals have distinguished themselves in the patent arena, such as Yousef Daneshvar, the inventor of a "Romantic Card" which features "use zones" for adding personal items to a greeting card such as pictures, hair clippings and scents.

If sending (or receiving) hair clippings in a greeting card is not your idea of romance, then just stick with a rose, which, by the way, in 1931, was the first plant patent ever issued by the United States Patent and Trademark Office. You can never go wrong with roses.

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