

# Copycat design: Knockoffs of Naples artist expose broad avenues for theft of creative work

13-16 minutes

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If you're an artist, you need supplies.

If you're a good artist, you need a lawyer.

You need eternal vigilance. And the foresight to copyright every design you're showing publicly.

And, finally, you need the knowledge that no matter what you do, you may not get justice.

Fabric artist [Jane Vallejo](#) of Naples learned that, in a shocking way, when a friend brought in just-purchased capris from a Flamingo Island Flea Market stall. They were printed in Vallejo's signature dot-and-floral designs.

Vallejo doesn't sell at the flea market. Nor had she licensed anyone to use the pattern. Her only public retail outlet is the boutique-gallery she shares with her partner, artist Thom Millsap, on Linwood Avenue at a corner of the Bayshore arts district.

"The design had been reduced in size, and a leaf or two moved from here to here, but these are definitely mine," said Vallejo, putting a pair of her own capris beside the counterfeits to demonstrate.

"My designs are my children. I felt like they'd been kidnapped." she said.

## Counterfeiters use many different modes

She's not the only local artist to suffer the copying of her designs. Unfortunately, nearly all other local artists contacted have had experience with theft or attempted theft of their designs.

For Robin Joy Griggsbee of Naples, the specter of design theft factored into her decision to close her gallery in New York and move here.

Griggsbee's work includes intricate patterns used in interior designs and fabrics, and a series of whimsical ink characters who make recurring appearances. She has sold across the U.S. and has even had a solo exhibition in the Musee de la Toile de Jouy in Jouy-en-Josas, France.

Griggsbee, who sells under the name [Robin Joy](#), recalled the day when a woman came into her New York gallery and had the audacity to ask for a disc of her designs:

"She picked up a lot of things — wall coverings and pillows. She was very blatant and quite rude," Griggsbee said. "She said she worked for Macy's and that they would want to use the designs, with some small changes."

Griggsbee said she refused to share them. She didn't even want the woman walking out with purchases of her goods.

"At that point I didn't know whether to sell to her. But someone higher must have been with me, because my credit card machine wouldn't work, and she left, in a huff," she recalled. "I was really shaken. There were two lawyers in the gallery at that time. I locked the door and said to the lawyers, 'I'm done.' "

In Southwest Florida, which could be the art festival capital of the U.S. during its balmy winters, copying opportunities are rampant.

Julie Carlson of Bonita Springs even found a counterfeit of one of her own large-format abstract paintings in an advertisement for a posh residential development in North Naples. Through a cease-and-desist letter, she had the copy removed.

"Apparently the designer shot a photo of it and had it enlarged," she said. "It's just amazing what people do."

Sophisticated image-editing software, along with websites and smartphones, have given counterfeiters the ability to copy works even when they have a watermark. Griggsbee said she gave up putting them on her photos.

For artists who sell at street fairs and art festival, counterfeiters take photos from displayed works. Carlson has learned to spot them.

"At a lot of these shows, what these people are doing is standing nearby till they have a clear image," she said. "They come in twos sometimes and one distracts you while they take a picture."

Yet, she added, some people are taking photos because they're looking for a piece for a certain room.

"But those people will usually come in and talk to me," she said. "They'll show me pictures of their room. So it works both ways."

## **Many points of copycat entry**

Vallejo said she felt her work had been copied directly from her fabrics. She even named Lou Nardi, under whose name clothing with what is essentially her designs had shown up at the flea market. Nardi had visited her booth at Naples Artcrafter shows; his wife also bought a number of things at Vallejo's studio, then brought them back and changed them for different designs and sizes, Vallejo recalled.

At one point, Nardi had come to her store and offered to help her "grow" her business., she said.

"I said I'm pretty small, and I like to take things slow. I'd like to grow my business on my own," she recalled. "I said I appreciate your offer, but I politely declined."

Nardi is not the first to approach her, she said. Vallejo is not interested in any of them.

"I think I would like it to be at a place where I can see the clothing in the resorts in the Caribbean, high-end resorts," she said. "But if I do grow, I'll grow gradually and steadily — not too fast, without any foundation."

She likes her clients knowing the thought process behind the designs in their clothing. For Vallejo, this is art.

"I tell them the story behind every painting, every image, names of the paintings and what they mean to me. A lot of them are inspired from India and Tibet, and they have prayers included in the actual painting process," Vallejo said. "Because I'm Buddhist, colors are for a certain buddha, and when I'm doing the colors I say the mantra for that buddha."

Vallejo recalls one question Nardi had asked: Whether her works had been copyrighted. She told him the truth — that they had not been.

The next time she saw Nardi was as a label: on tops and pants bearing designs nearly identical to hers.

Nardi, who lives in Naples, feels she is accusing him wrongly.

"I did not take any of her garments to China," he said.

Asked if he sent any of her designs to China, he said "No, I did not.

"If I thought her work was copyrighted I wouldn't have touched it," he said.

Nardi describes himself as a former designer, semiretired, and said he's familiar with copyright law because he has won a lawsuit himself against a fashion boutique. That could not be verified by the Daily News. Nardi did own his own registered trademark between 2007 and 2014.

Nardi said he had been looking to supplement the pleated denim fashion line he was selling at the Bonita Springs market and had unsuccessfully approached Vallejo. Later, Nardi said, he attended a trade fair in Canton, China, where he saw fabric that looked extremely close to Vallejo's pattern.

"I like the stuff or I wouldn't have made her the offer to help her," he said. He said his wife also liked her fashions and bought a good number of clothes from Vallejo. "She cost me a lot of money. "

After Nardi saw the fabric in China, he had about 100 garments made, he said. Did he worry about being accused of design theft?

"How would I know that she didn't license her work to someone?" Nardi asked. He dismissed the idea of asking the vendor whether that fabric design was licensed. "What do you think they would say?"

Nardi pointed out, as Vallejo did, that there are several points at which fabric designers' and artists' creative work, called "intellectual property," could slip away from them:

- The printmaker who drafts the originals into print can quietly sell some of them.
- The clothing manufacturer may photograph and counterfeit the design.

"I've done a ton of research," Vallejo said. She has her designs printed by a Bonita Springs company and her clothing made by a New York company.

But she concedes she can't guarantee it's made in New York: "A lot of companies — even when you do the research — have sister companies in China or in other countries."

Vallejo wants her clothing off the racks of Nardi's booths. Nardi said he had no plans to buy more of her fabric and at first said he would "throw it out."

But then he changed his mind. "I'd like her to buy it from me," he said.

"What I think what she's so mad about is that I'm showing things for \$15 and she's selling them for \$85."

Irish-born artist Elaine Murphy, whose studio is on Shirley Street in the Naples art district, has already been through such pain with her wall pieces. In 2012 she learned from a collector that her art was showing up at a fraction of its cost on a website based in the People's Republic of China.

**Counterfeited!:** [Another Naples artist's nightmare](#)

Murphy hired an attorney. But in the end she didn't go past cease-and-desist letters.

"Nothing was resolved because they have your information. There's nothing you can do," she said. "A warning letter will shut one site down, but another will spring up just as fast."

Murphy still creates paintings. But her works also now include apparel that carry her depictions of animals, with a portion of each sale going to a charity. She still puts her works on her website — in as low a resolution as she can use, she added.

"I have to just accept that as soon as something is out there, the Chinese will copy it," she said. "I have to stay creative, to keep coming up with new things."

## **You can protect your work — somewhat**

Naples designer-artist Jane Vallejo concedes that she had not copyrighted several of her designs that began to show up on rolls of fabric in China this year.

The lack of formal copyright doesn't negate an artist's rights, said her attorney, Bryan Loeffler, with the Naples office of [Livingston Loeffler](#), who handles cases of intellectual property rights.

"From the time you create something you have copyrights in that work. So you do have rights in the work from the point of creation," Loeffler said.

Even when artists sell their work, they have limited rights, added Aimee Schlerr, CEO/ executive director of [Naples Art Association](#): "When I buy that painting I cannot put it on a mug or a calendar as an owner. That artist still has legal rights as the creator."

The owner of the piece needs to obtain permission from the artist, she said.

"It's a really fascinating area. it gets off into (things such as) you hire a website designer to create your website, and if you don't have a contract in place for them, they own the copyright because they created your website," said Jeanne Seewald, partner in the Naples law office of [Hahn-Loeser](#). "That's very counterintuitive to most people."

"There are a lot of nuances in the law that catch people offguard."

Here are few questions about creative protection for artists and other creators of original material:

### **How does a copyright help?**

To file a federal lawsuit over the unapproved use of your work, you're required to have a registration with the Library of Congress, Loeffler said. It's an investment that may cost as little as \$35.

**More:** [Get the basics on copyrighting your work](#)

"It does provide a good level of recovery as far as images," he said. That includes recovery when the images were duplicated and used in another country, as Vallejo's were.

"Normally, there's someone here in the U.S. who's importing it or selling it, so you can go after that local company that's distributing the products — even if they're made in another country."

What financial damages the person is entitled to depends on "when you file it, whether you file it before you put it out in the public or after or whether you file it right before you go to court," Seewald said. "It's always wise to file sooner rather than later."

"You also have to be careful in allowing others to use your work," she continued.

In Southwest Florida, where nonprofit organizations often feature artists or photographers in their fundraiser publicity, that's a large consideration.

"It should be pursuant to a formal license agreement, because if you give them permission you may lose control over what they do with it," she said.

"It doesn't mean you're charging them," she said. "It means you're saying 'I'm allowing you the right to use it one time for this one event,' so it's very clear what the controls are."

### **Will a copyright protect against "near" duplications?**

Often, artists or designers or authors find that near-copies of their work will materialize, with a few details in the work removed or changed.

"In courts there's no kind of bright-line rule about how much a thing has to be changed for it to be a copyright violation. That's for a court to decide," Seewald said.

### **Is a copyright mark required?**

"Years ago the law required you to put the copyright marking on it, but not anymore. The law has changed on that," Seewald said. "But it is a very good idea to use the copyright mark. It's giving people notice."

Schlerr suggested that also having the artist's signature visible on the work isn't foolproof, but it is a help in determining original rights.

### **What else can creators do to protect their work?**

- Be proactive with your copyright. "The main thing I tell owners is police your copyright. Attempt to enforce it by sending a cease-and-desist letter to someone you think is infringing or by suing them," Seewald said.
- Publicize your images carefully. Most artists interviewed say they use low-resolution photographs on their websites. Some still use watermarks at the same time, to make copying them harder.
- Be aware of where your work is in public, especially at art fairs. "Some artists are putting up 'No photos allowed' signs," said Bonita Springs artist Julie Carlson said. "When I see someone standing around close to my works, I make it very uncomfortable for them."

"Almost any artist who does not want photographs taken of their work will put a sign in their booth," said Schlerr, whose organization offers three art outdoor art shows annually.

Schlerr patrols the festivals for quality control, and she said she always lets the artist know who she is and why she's taking photos. She said the association also limits photography at its 585 Park St. galleries.

The Naples Art Association also offers an occasional workshop on artists' legal protection, but it has not set a date for one yet. Its website offers updates.