

FSB Fortune Small Business

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Crushing Copycats
by Carter Weiss

Innovative designs make us successful, but defending our intellectual property keeps us in business.

IF YOU HAVE AN IDEA, VERY RARELY WILL someone steal it until you make money. Once you make money, everyone will think about stealing it.

For three years my company, Built NY, has been making a neoprene wine tote, our signature product, in what has become a \$16-million-a-year line of totes, cases, and accessories. Without the U.S. Patent and Trademark Office, cheap imitations would flood the market and put us out of business, so we spend roughly 4% of our annual budget obtaining and defending our patents. It's our third-largest expense, after cost of goods and payroll. We have filed more than 100 design patents, utility patents, and trademark registrations in 20 countries, and we hold two registered trademarks on our two-bottle tote.

With a pair of scissors and a sewing machine, a bag is relatively simple to copy. And because bags fall under fashion, which changes too quickly to warrant patents, companies don't associate them with heavy intellectual property. Forty-five companies, to be exact. That's how many times we've had to defend our turf from knockoffs.

Just six weeks after we shipped our first product, a large manufacturer of beer cozies began advertising an exact replica of our wine tote. We were terrified. Do we sue? Send a cease-and-desist letter? We were dreaming up grand ideas with bigger and bigger budgets, imagining the owner with his horns and tail scheming all day about how to steal from us. Then one of our advisors said, "Why don't you call them up?" Not a bad idea. The first words out of the owner's mouth were "guilty as charged." He apologized and agreed to cease production and pay some small damages.

A few months later at a trade show, a woman a couple of booths down was selling an exact replica of our product. When we confronted her, her basic reaction was "So what?" It wasn't until her attorney explained it that she abandoned the market and settled with us. Just this summer we got a national chain to pull a copycat product off its shelves in 3,500 of its stores. It was really mad at us for not letting it steal our design, but once again, when the attorneys got involved, its product was recalled promptly.

We've hired private investigators overseas, mostly in China. For between \$100 and \$500, they will go into a factory posing as a buyer. They'll show our product and ask the factory, "Can you make this?" or "Have you sold this?" We've gotten eight cash settlements from factories by being assertive like that.

We've drafted 15 lawsuits and been prepared to file them with the state. At that point we sometimes go back and negotiate. We've filed around half the suits, but until you serve the defendant with papers, there's more room to negotiate. To date, we've served only five or six, and all have been settled in our favor, with one still pending. We prepare to spend between \$150,000 and \$250,000 per suit if it goes the distance; most don't for that very reason.

A much larger business has the economic advantage, but a small company can put more energy, passion, and focus into a particular suit. If it's product No. 2,061 for them and product No. 5 for you, you're going to think about this day and night. Persistence breaks resistance.