

# **“With No Copyright Protection for Client, Broward Lawyers Created Own Road Map,” Daily Business Review**

**April 2, 2020**

**By: Kevin Markow, Gary C. Rosen**

---

Without copyright protection for a client with sophisticated products showcased in places like the Smithsonian Museum, two South Florida lawyers had to rely on creative legal theories.

Their efforts paid off by convincing a New York judge to shut down online counterfeits of their client’s work. It also left a road map for future intellectual property litigators.

Attorneys Gary C. Rosen and Kevin Markow, both shareholders at Becker & Poliakoff, won a default final judgment and permanent injunction on Friday for their client, lighting designer Lindsey Adelman Studio, in the U.S. District Court for the Southern District of New York.

“These lighting designs are functional art. They’re modern sculpture,” Markow said. “But because they’re lights, they’re functional. Functional goods are not subject to copyright protection because of their functionality. So we had to think about how to protect the rights of the designer.”

Among the first actions the lawyers took on behalf of their client was to obtain a federal trademark registration for one of the signature products, “Branching Bubble.”

The good news: There were unregistered trademarks that included the “Lindsey Adelman” name. Since the plaintiff owns all right, title, and interest to the Lindsey Adelman marks, they became valid, protectable and entitled to protection.

However, the plaintiff faced a problem.

The online businesses were overseas and hiding behind the anonymity of the internet. For instance, the site, [www.zoralighting.com](http://www.zoralighting.com), was promoted and marketed through various internet search engines, such as Google and social media sites like Instagram.

But the Becker & Poliakoff team had a plan.

“We were able to get an emergency temporary restraining order out of the Southern District of New York, which put a freeze on the counterfeiting sites,”

Markow said. "Once the TRO went into effect, we were authorized by the court to serve the websites electronically through email."

Serving a site over the internet is a relatively modern adaptation in the legal system. It is useful in online intellectual property cases because it is often difficult to know who is the sponsor of a domain name.

After the emergency temporary restraining order was entered, plaintiffs counsel noticed changes to one site specifically, [www.topsonlighting.com](http://www.topsonlighting.com), which they accused of infringing on plaintiff's designs and trademarks for the knockoff designs featured on that site. The lawyers suspected common control with other infringing domain names and filed supplemental papers to take down a series of websites selling these counterfeit lighting designs.

From discovery obtained from banks, the plaintiff was able to freeze the defendants' assets in PayPal.

Rosen and Markow realized that these sites were doing business directly over the Internet. Since PayPal links accounts through email addresses, they sought to freeze accounts connected with email addresses traced to the counterfeiting sites.

Now the plaintiff may request that the court enter a prospective order that any new website registered or operated by any of the defendants be disabled for the marketing and sale of infringing or counterfeit goods.

But while Markow says the plaintiff's damages could ultimately be in the millions, he says the actions they have taken on behalf of Lindsey Adelman Studio to secure the default judgment was never about the money.

"If anything, it was about the artist's rights and protecting her work," Markow said. "It was courageous in that she went out and basically enabled her lawyers to pursue creative, aggressive strategies. It is an important lesson for the intellectual property owner who feels helpless to fight infringement over the internet, particularly against overseas actors."

*Reprinted with permission from the Daily Business Review.*