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A while ago I asked a company to produce some photographs for my website. I paid for them and have used them ever since. I now find that the company is trying to sell the photographs to a competitor. I have complained, but the company tells me it is within its rights. What can I do?

The writer is unlikely to be the first or last person who believes that paying for photographs means that he owns them. However, copyright law states that the first owner of a copyright work (such as a photograph) is the person who created the work (or his employer). Therefore, without a transfer of rights, the writer is not the owner of the photographs.

Nevertheless, there are some important factors which need to be considered when giving advice in a situation such as this. First, it is vital to ascertain whether the money that the writer paid to the company was actually a commission or included some settlement to transfer the ownership in the copyright in the photographs. Thus, the writer will need to determine whether there was a formal contract between him and the photographer. If the writer has such a contract, then he should seek advice to determine the provisions of the relevant clauses.

If the writer has no such contract (or the contract he has is less than helpful), then it might be of assistance to know the subject matter of the photographs. If the photographs are of the writer's products, trade marks, livery, get-up and so on, then he may well be able to prevent others from exploiting them. In these circumstances it could very well be that an exclusive licence would be implied between the photographer and the writer because the photographer would have understood the photographs to be of the kind which the writer intended to use in relation to his undertaking. There may also be other strands of intellectual property law which could be used to prevent others using the photographs in the course of trade.

The corollary of this is that if the subject matter of the photographs was more generic and there was no formal transfer of rights, then the photographer would likely be free to exploit the photographs as it saw fit, for example by selling them to multiple parties.

Of course, in that scenario how the photographs were used may be objectionable by the writer under different strands of intellectual property law.

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