

## What Kind of Online Presence Will Get You Jobs?

By Rebecca Migdal

Advice from the marketing experts:

- Design a simple, clean, consistent, professional-looking presentation.
- Make sure web site is fast loading and easy to navigate.
- Update your site frequently; remove images that appear dated.
- Include a short, friendly bio of yourself, with a photo.
- Keep a mailing list of potential clients who've inquired about your work; whenever you update your site, send a quick, polite note letting them know what you've been doing lately.
- Remember, always allow people on your mailing list a way to "opt out" in your e-mails.

# David Overcomes Goliath in Copyright Infringement Case

For those of you who have ever been intimidated by a client while trying to protect your copyright, take heart. In a recent legal battle over copyright infringement, "David" took on "Goliath" and won \$250,000! "David" is artist Alan Daniels of Moorpark, CA. He not only took on one "Goliath," but two: Chicago-based mega-ad agency Rubin Postaer & Associates and their mega-client, Honda.

**G**reg Victoroff, Esq. of Rohde & Victoroff, Los Angeles, CA, who successfully argued the case for Mr. Daniels, believes the settlement is instructive for several reasons:

1. *An individual artist was able to overcome a much larger opponent and obtain a substantial out-of-court settlement for the unauthorized re-use of a large number of separate artworks (160), few, if any, of which had been registered with the U.S. Copyright Office prior to the initial infringement.*
2. *The artist obtained payment for re-uses of licensed drawings, which counsel for the ad agency and Honda claimed could not be protected and copyrighted because they were technical drawings.*
3. *By classifying the practice as a civil RICO (racketeering) claim, the artist exposed an apparently widespread practice of unscrupulous art directors hiring artists to "overdraw" or trace the artwork of the original artists, to avoid paying license fees to the original artist, and in so doing, hopefully educated art directors, agencies, their clients and attorneys that such a practice constitutes a federal offense, deterring such abuses in the future.*
4. *Finally, the artist was able to stop and recover compensation for unlicensed Internet uses in non-U.S. territories, such as Peru, Mexico, Canada, Italy, India, and Byelorussia, not an easy feat.*

Attorney Victoroff credits "the incredibly talented artist Alan Daniels and his equally talented artist/manager/spouse Beau Daniels for their meticulous record keeping of work orders, license terms, artwork, and source material, without which the case would have been far more difficult, if not impossible, to win—another important lesson for Guild members."

Following is a Case Summary, which outlines the details of this important victory for artists:

## Case Summary

### ATTORNEYS:

#### Claimant:

Greg Victoroff, Esq., Rohde & Victoroff, Los Angeles, CA

#### Defending Parties:

Brian Heidelberger, Esq., Winston & Strawn, Chicago, IL

### PARTIES:

**Claimant:** Alan Daniels, graphic and fine artist, painter, Moorpark, CA

**Defending Parties:** America Honda Motor Co., Inc., Honda-Canada Inc., Rubin Postauer & Associates, Joseph Saputo, Honda del Peru S.A., Honda Byelorussia SSR, Honda de Mexico S.A. de CV, Honda Automobili Italy SPA, Honda Siel Cars India Ltd.

**Settlement Date:** September 9, 2004

**Case Type:** Copyright Infringement; Civil RICO

**Settlement Amount:** \$250,000

### FACTS:

#### Claimant's Contentions:

Claimant Alan Daniels is a graphic and fine artist and painter who created approximately 160 original illustrations, some based on "line art" supplied by Honda Motor Co., others based on original photographs created by Daniels. Daniels alleged that Honda Motor Co., Honda Canada, Honda Mexico, in conjunction with Honda's Chicago-based advertising agency, Ruben Postaer & Associates, engaged in a pattern and practice of copyright infringement, constituting "racketeering activity" under civil RICO statutes, (18 U.S.C. 1961, 1962). Various Honda parties allegedly re-used approximately 160 of Daniels' illustrations, some after Honda's license had expired, others which were never previously licensed, in print brochures and on various Honda web sites on the Internet. Daniels also alleged that art directors working at Ruben Postaers and Associates assisted Joseph Saputo and other copyists to infringe Daniels' copyrights by instructing them to trace and "overdraw" Daniels' illustrations, and otherwise create unauthorized derivative works.

#### Defending Parties' Contentions:

Defending Parties contended that some of the allegedly infringing artwork was independently created and not copied from Mr. Daniels' illustrations, that Mr. Daniels' illustrations were functional, utilitarian, or mechanical, and thus were not protected under copyright law, that Mr. Daniels sought to protect ideas rather than copyrights, and that Mr. Daniels' damages for any unlicensed uses of unregistered copyrights were limited to a discounted re-use fee, or a discounted foreign license fee, rather than the full fair market value of the illustration.

#### Claimed Damages

\$442,370 actual damages, plus interest and attorneys' fees.

#### Settlement Discussions

Mr. Daniels' initial copyright infringement notice was sent on July 2, 2003. Honda offered \$105,750 on December 15, 2003, \$143,650 on March 2, 2004, \$243,650 on July 7, 2004, and \$250,000 on July 8, 2004.

### SETTLEMENT

\$250,000 representing a reduced per-image license fee discounted on a one-time basis for settlement purposes only. The settlement expressly provided that the amount paid would not constitute a precedent for any future claims.

*The information for this article was supplied by Greg Victoroff, Esq. of Rohde & Victoroff. A member of the Guild's Los Angeles Chapter, Mr. Victoroff is also part of the Guild's Legal Referral Network, a service available to members. He can be reached at [greg@rohde-victoroff.com](mailto:greg@rohde-victoroff.com).*