

Dealers Need to Ensure They Are Complying with Copyright Law



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A recent copyright infringement claim made against a Texas Chevrolet dealership serves as an important reminder that dealers must make efforts to ensure that they are complying with federal copyright law.

In a lawsuit brought in the U.S. District Court for the Northern District of Texas, the owner of a copyright for a viral video sued a Texas dealership after it reposted the video to its Facebook page. The video showed a tornado hitting a Chevy truck, the truck flipping over on its side, spinning around, and then righting itself, allowing the driver to drive away. When the dealership reposted the video, it added background audio from the Chevrolet “Like a Rock” truck commercial and captioned the post “Like a Rock! Watch the red Silverado drive out of this Tornado earlier this week in Elgin, Texas.”

In its complaint, the owner of the video’s copyright alleged that the dealership violated the Copyright Act as it posted the video to “promote traffic to the car dealership” and intended to profit from the use of the video without “paying the customary price” for such commercial use. The Copyright Act gives exclusive rights to an owner of a copyrighted work, including the right to reproduce the work and the right to distribute copies of the work to the public.

In its Motion to Dismiss, the dealership alleged that the claim is precluded by the doctrine of “fair use.” Courts look at four

factors to determine whether fair use precludes a copyright infringement action: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential for or value of the copyrighted work.

In weighing these factors, the Court ruled against the dealership because it found that it stood to profit from the exploitation of the copyrighted video due to the commercial nature of the Facebook post and found that the dealership’s use of the video would undermine the copyright holder’s licensing scheme and harm the market for the video.

Many other Chevy dealers also faced lawsuits from the same company when they shared the video to their social media pages. The dealers all posted the video with captions such as, “Survive whatever life throws at you with a Chevy” and “Always Remember: Chevy’s fight tornadoes – Never seen a Ford do that. BUY A CHEVY[.]” Although the dealers merely reposted the video which had already gone viral, they were subject to copyright claims because they failed to get licenses to use the video. Many of these cases settled, likely forcing the dealers to pay significant costs to avoid further litigation.

These cases serve as an important reminder that dealers must be careful to avoid copyright infringements in connection with their social media and marketing efforts. Although Massachusetts dealers are bound by advertising regulations such as those promulgated under 940 C.M.R. 5.02, they must also comply with federal copyright law to prevent copyright infringement claims from private actors.

In terms of social media, dealers would likely not be subject to a copyright infringement claim if they merely “like” or “retweet” content that is subject to a

copyright. However, reproducing a copyrighted image or video to a social media account, even with attribution, would likely be considered infringement. Therefore, dealers should be sure to purchase licenses or obtain permission from the owner prior to posting, to prevent any possible copyright claims. As social media is increasingly being used as a tool for dealers to bring in customers, it is crucial that dealerships develop a plan to prevent copyright infringement and that they incorporate training for staff members who are in charge of marketing and social media.

Copyright issues also commonly arise with showroom entertainment such as music and movies. Under copyright laws, dealers are not able to show copyrighted movies or play copyrighted music without a license from the copyright owner. However, dealers are permitted to play television broadcasts if the interior of the store is less than 2,000 square feet. If it is greater than 2,000 square feet, the broadcast can be shown as long as it is not from more than four screens. They also are allowed to play music from the radio if the store is less than 2,000 gross square feet of interior space. If it is greater than 2,000 square feet, the radio can still be played but cannot be done by more than six speakers.

Copyright infringement can bring significant penalties such as damages, injunctions, and fees such as attorney’s fees and court costs. To prevent such penalties, dealers should make sure that their staff is provided training on copyright law and that they obtain licenses prior to using or distributing copyrighted work. ♦

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