



INTELLECTUAL PROPERTY AND ART



Scan to review worksheet

Expemo code:
19MA-E6X8-JAZZ



1 Warm up

Look at the photographs of graffiti art by an artist named Banksy. Discuss the questions in pairs.



picture 1



picture 2



picture 3



picture 4

1. How would you describe the ideas and content of Banksy's graffiti?
2. Do you think Banksy's graffiti requires a lot of creativity and talent? Why or why not?



2 Vocabulary

Match the words/phrases on the left with the definitions on the right.

- | | |
|-------------------------|--|
| 1. "Robin Hood" | a. an ordinary person or someone who represents everyone |
| 2. speak truth to power | b. take a stand or advocate for a moral position |
| 3. democratic | c. popular with all or most people |
| 4. national treasure | d. someone or something that represents a nation's culture or national identity |
| 5. everyman | e. very tempting or making you want something that is not easy to have |
| 6. tantalizing | f. a person or group compared to the historical figure who took from the rich and gave to the poor |

3 Listening 1

Banksy's art has sold for millions of pounds. An art expert is speaking shortly before a sale of Banksy's art. Check ✓ the information that you think will be mentioned. Watch the video to check your predictions.



- Reasons why people like Banksy's art
- Names of people who own Banksy's art
- Banksy's reasons for becoming an artist
- Her predictions about the market for Banksy's art





4 Listening 2

Listen to the video again. Choose the correct answer.

1. Banksy is a hero for ...
 - a. historical figures.
 - b. ordinary people.
 - c. the rich.
2. Banksy is a national treasure ...
 - a. in the UK.
 - b. all over the world.
 - c. among ordinary people.
3. Collectors find Banksy's work ...
 - a. too expensive.
 - b. very appealing.
 - c. boring for the home.
4. The expert thinks Banksy's work will sell ...
 - a. at an affordable price.
 - b. only in a very strong market.
 - c. to someone with a lot of money.





5 Legal and general vocabulary

Part A: Look at the words and phrases on the left and match them with their definitions on the right.

Group 1

- | | |
|-------------------------------|--|
| 1. <u>appropriation</u> | a. gain control, often from someone else |
| 2. <u>unauthorized</u> | b. without legal permission or approval |
| 3. <u>contest</u> (v) | c. possess or own |
| 4. <u>hold</u> (v) | d. making an official record of something |
| 5. take <u>custody</u> (v) | e. taking something from someone without the right to do so |
| 6. <u>invalidation action</u> | f. legally dispute or challenge something |
| 7. <u>registration</u> | g. a legal procedure to remove a trademark from the legal registry, as if it had never been registered |

Group 2

- | | |
|------------------------------|---|
| 1. <u>good faith</u> | a. not in agreement with |
| 2. <u>commercialize</u> (v) | b. things a company sells |
| 3. <u>circumnavigate</u> (v) | c. sell or market for sale |
| 4. <u>inconsistent</u> | d. go around or avoid |
| 5. <u>original</u> | e. saved or available in a way that can be communicated later in the exact same way |
| 6. <u>tangible</u> | f. with honest intention |
| 7. <u>commercial goods</u> | g. created by someone on their own without copying someone else's work |

Part B: Now read the legal definitions of *copyright* and *trademark* and answer the questions below.

copyright: the legal right to protect one's work. The work must be original (of your own skill, labor, and thought) and it must be tangible (exist in physical form, not just an idea).

trademark: a legal way to distinguish the commercial goods or services of one business from another. A trademark can take many forms, for example, a picture, a word, or a phrase. A trademark is registered for a specific good or service in a specific category, called a class in the US and UK.

1. Do you think Banksy's art would be protected under a copyright or a trademark? Why?
2. Do you think Banksy would care very much about protecting his work? Why/why not?



6 Scanning for information

Quickly scan the first two paragraphs of the article on Banksy's court case (page 5) and complete the passage with the correct words.

Banksy tried to protect his _____ with a _____. He did not try to use _____ because he doesn't want people to know his _____.

7 Reading comprehension

Look at the following questions and carefully read the article to find out the answers.

Which artwork did Banksy trademark?

1. _____

What did Banksy do after he trademarked his artwork?

2. _____

What did Banksy say Full Colour Black wanted to do with his art and name?

3. _____

What was Full Colour Black's position about Banksy's trademark application?

4. _____

What was Banksy's opinion about copyright?

5. _____

What did the European Intellectual Property Office think about Full Colour Black's claim?

6. _____

What are the Starbucks mermaid and the Nike swoosh examples of?

7. _____

What does a trademark protect?

8. _____



Good faith matters?

Graffiti artist Banksy loses trademark protection

Graffiti artist Banksy once said that "copyright is for losers." However, after losing a two-year legal battle over the trademarking of his artwork *The Flower Thrower*, he may want to rethink his position

Banksy's legal troubles began when a British greeting card company called Full Colour Black began using Banksy's art in their products. They then wanted to use his artwork *The Flower Thrower*, but Banksy was very unhappy with Full Colour Black and what he viewed as their appropriation of his art. Banksy did not want to copyright his works because doing so would require him to reveal his real name, which he has never done. As a result, his legal advisors recommended that he trademark the artwork to prevent any unauthorized use. Banksy did so and opened a shop called Gross Domestic Product in South London, claiming, "A greeting card company is contesting the trademark I hold to my art and attempting to take custody of my name so they can sell their fake Banksy goods legally."

Full Colour Black then started an invalidation action, which asked for the cancellation of the trademark. Their position was that Banksy's application had not been in good faith for two reasons. Firstly, the trademarking of his artwork was not possible because the artwork was already used so frequently by a number of companies that sell different products showing his art. And, secondly, the artist knew of and accepted this commercial practice in the past, which is shown by his statement about the unimportance of copyright.

The European Union Intellectual Property Office (EUIPO) agreed with Full Colour Black, stating "... his (Banksy's) intention was not to use the mark as a trademark to commercialize goods (...) but

only to circumnavigate the law. These actions are inconsistent with honest practices." As a result, Banksy's trademark was invalidated, and the decision also places Banksy's other trademark registrations at risk.

The dispute between Banksy and Full Colour Black raises an interesting question: Why did Banksy choose to trademark instead of copyright his art?

The requirements for copyright state that the work must be original. Banksy's art is his own. No one helped him with it, and it came from his own ideas. Furthermore, copyright law requires the work to be tangible. You can certainly see and touch Banksy's work. It is not just an idea in his mind. Therefore, the artwork could be protected by copyright easily.

But, what about a trademark? A picture can be a trademark. For example, the green and white mermaid for Starbucks coffee is a trademark, as is the Nike swoosh. However, these images are very closely linked to coffee or shoes and clothing, which are the commercial goods of Starbucks and Nike. The green and white mermaid tells coffee drinkers their coffee is from Starbucks, not another company. The trademark protects the company's commercial interests.

What are Banksy's commercial goods? What is he selling? Not very much. His store had only a few things, like toy trucks, clothing, and things for the home. He was also planning to give all the money to charity. This is wonderful, but what was the specific type of good or service? It's not easy to see, and the court agreed.

Sources: theconversation.com, europa.eu, theguardian.com

Glossary:

mermaid: a woman who has the tail of a fish instead of legs. The Starbucks trademark is a green and white mermaid.

swoosh: Nike uses a picture that they have trademarked as a swoosh.



8 Talking point

Work in pairs and answer the questions below.

1. Do you agree with the decision to invalidate Banksy's trademark? Why or why not?
2. How do people get copyright in your country?
3. What are some famous trademarks in your country?

9 Optional activity/homework

Choose one of the tasks.

- Writing

Choose one question and write a paragraph (150 words). Support your work with information from the reading or do your own research.

Why do you think Banksy said, "Copyright is for losers"?

- Do you agree with this? Why/why not? Explain your position.

Do you think the European Union Intellectual Property Office made its decision based on trademark law or on Banksy's statement about copyright?

- Explain your position.

- Debate it!

Conduct a debate. One group should take the position of Banksy's counsel. The other should take the position of Full Colour Black's counsel. Consider the following points in the debate:

- The right of artists to control their work.
- The nature of graffiti art and its availability to the public.
- The right of companies to use public images on their products.
- Banksy's statement and past behavior.



10

Optional vocabulary practice/homework

Look at the words from this lesson and put them in the correct gaps.

appropriation
inconsistent

circumnavigate
original

contest
take custody

good faith
tangible

hold
unauthorized

1. If you aren't happy with the decision, you should _____ it immediately.
2. Her book about the Queen is _____. No one from the royal family provided any information.
3. The police are going to _____ of all the products that were produced without permission.
4. The court has been _____. Sometimes they accept that argument, but sometimes, they do not.
5. He does not _____ the rights to those photographs, so he cannot allow you to use them.
6. They were honest about the problems with their car, so they were acting in _____ when they sold it to you for that price.
7. She tried to _____ the writer's copyright by changing just a few words.
8. They said that his use of the song without permission was an _____ of their art.
9. An idea is not _____, but paintings and drawings are.
10. I don't think your song is _____ because it sounds a lot like one we heard on the internet last week.