

Signed, sealed, delivered



Do you know your rights and responsibilities when it comes to contract law? Intellectual property lawyer Sharon Givoni outlines five different types of contracts packaging professionals need to know about.

CONTRACT law. Not exactly the two most exciting words in the English language, especially when side by side. But you'd be surprised. Contract law involves more than just boring jargon and signing on dotted lines.

For example, a binding contract can come into existence by a casual conversation over a beer, through a series of emails, or even through how you conduct yourself. It doesn't necessarily have to be formally written and signed.

Whether you're a freelancer, an employee, or run your own business, it's essential to ensure you have a clear understanding of your role in contract law.

1. DO I REALLY NEED A CONTRACT?

It may be tempting to cut corners when it comes to legal documentation. To some degree, this is understandable. Creating a

contract takes time, and legal jargon can often be overwhelming and confusing.

In small creative businesses, relationships are often informal, based on trust, and certain dealings are commonly understood without the need to put them in writing.

Nonetheless, in many instances, the importance of having written contracts cannot be underestimated. They enable all parties to have a shared understanding of what has been agreed to and can assist in the event that things don't go as planned.

Even if you are doing a small job for friends or family like creating a package for their family-farmed eggs, it's usually best to have something in writing that both you and your 'client' agree to.

Okay fine – I get it. Contracts are important. So, what's a contract?

In basic terms, a contract is a legally binding agreement between two or more parties.

Some people are surprised to learn that contracts may be enforceable even if they are not in writing.

In order for a contract (written or oral) to be enforceable, some essential elements must be present:

- **Agreement (offer and acceptance):** Basically, an agreement needs to be reached between the parties, and there must be an 'offer' by someone and an 'acceptance' by the other. For example, you may make an offer to design the packaging and labeling for someone's beer by providing them with a quote, and the brewer would then agree by orally accepting the quote for work by telling you to go ahead.
- **Consideration:** A valid contract requires that the parties to a contract each provide something of value. This is known as consideration under the law. This does not necessarily have to be a monetary value. For example, your quote may be to receive 10 slabs of the beer in consideration for designing the packaging.
- **Additional elements** such as "intention to create legal relations", "certainty of terms" and "capacity" are also required, but we can leave those for another day.

2. COMMON TYPES OF CONTRACTS AND AGREEMENTS

Now that you know the basic elements of a contract, a few examples of the different types of contracts that may be relevant to packaging professionals include:

A) EMPLOYMENT CONTRACTS

Employment contracts generally cover the following terms:

- an employer's obligations and an employee's duties;
- details such as hours worked, probation period, salary, superannuation benefits, performance reviews, leave, and termination; and
- ownership of intellectual property.

B) CONTRACTOR AGREEMENTS

Creative businesses often hire packaging professionals for various jobs such as engineering, designing, or testing, and usually as freelancers or sub-contractors rather

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than as employees. Agreements are important in this situation and they should include a description of the contractor's specific rights and responsibilities, such as:

- ownership of intellectual property (generally owned by the contractor, and not the hired employee);
- confidentiality;
- fees and payment terms; and
- any special conditions.

C) COLLABORATION AGREEMENTS

The concept of collaboration, or working with someone to produce something, is gaining popularity in the fashion and design industries. This sort of arrangement can be mutually beneficial, but the parties must agree on certain terms. Collaboration agreements should cover things like:

- who is responsible for certain tasks;
- who owns the IP in works jointly created;
- on what terms the joint works will be licensed;
- whether a right to sublicense exists;
- whose responsibility it is to take legal action against someone who copies the work; and
- how profits will be shared.

D) LICENCES AND ASSIGNMENTS

Copyright licences and assignments are other forms of contracts that become relevant when someone wants to use your work for certain purposes.

As the copyright owner, you can grant a 'license' for the right to use your work, which means giving somebody else permission to use some or all of your work on certain terms, while at the same time retaining copyright and ownership over the work.

Alternatively, you can 'assign' your rights in a work, which can mean transferring the complete ownership of the work and all

FIVE QUICK CONTRACT TIPS

1 Using template contracts can be dangerous, as they may not address your specific needs. If you draft a contract yourself (not always advisable), ensure your terms are clear and unambiguous, or they may not be enforceable.

2 Communications do not have to be written down to give rise to contractual obligations. They can arise out of oral agreements or even through one's conduct.

3 Never sign documents you don't understand or haven't fully read. You cannot go backwards and erase your



signature in the eyes of the law. Contracts are used as proof of what was agreed to.

4 All designers who work independently should have a good set of terms and conditions in place to submit to clients. Sharon Givoni's book, *Owning It: A Creative's Guide to Copyright, Contracts and the Law*, can help with this.

rights in it to someone else. An assignment of copyright is only effected if it is in writing by or on behalf of the copyright owner.

Essentially, licensing is a bit like 'renting' out your work to someone, and assigning it is 'selling' it.

E) CONFIDENTIALITY AGREEMENTS

As the words suggest, confidentiality agreements aim to protect information that is confidential. This information may include ideas and sketches for new package designs, such as written content, textile designs, and more.

In order to secure your designs and ensure full disclosure it's always best to have a written confidentiality agreement in place, at least for some peace of mind. Also, make sure it's signed before you show the design or pitch an idea to others, and not after.

Whether the contract is an employment contract, a contractor agreement, a licence

or otherwise, it's beneficial to seek legal advice to ensure the contract reflects your needs, especially if a contract submitted to you for signing contains terms that you do not understand.

Always be aware of signing any contracts you don't understand, so as not to give away your intellectual property too easily. It's important to ensure the terms and conditions to clients are well thought out and clear.

Although contract law may not be exciting, it's important.

Don't learn these lessons the hard way. ■



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