

Does Artificial Intelligence Threaten Intellectual Property Rights?

In a 2014 U.K. case called *Amazon v. Lush*, the High Court found that Amazon infringed on Lush's trademark. When the term 'Lush' was searched for on Amazon's website, the results featured competitor products similar to those made by Lush, which could potentially confuse consumers. While the case was in the U.K., this kind of behavior does happen in the U.S. as well, as Amazon is a global company.

Amazon uses formulas to make suggestions of related items a person may buy on their online website. It is difficult to apply standards for establishing trademark infringement if a consumer is an artificial intelligence system (rather than a human being), **for it is unclear whether an artificial intelligence system consumer can be expected to reasonably confuse or mistake one registered trademark for another in the way that a human consumer would.**

Trademarks

Intellectual property policies need to evolve in response to artificial intelligence technology. Artificial intelligence can affect trademark law if it is used as artificial intelligence personal shopping assistants, which can take on the role of consumer when making purchases.

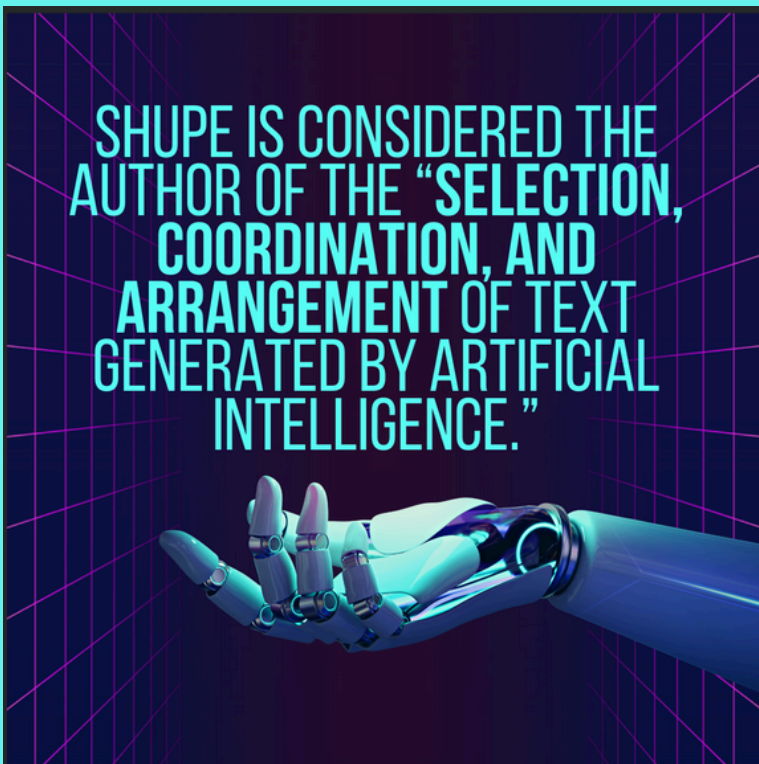
"IT IS UNCLEAR WHETHER AN ARTIFICIAL INTELLIGENCE SYSTEM CONSUMER CAN BE EXPECTED TO REASONABLY CONFUSE OR MISTAKE ONE REGISTERED TRADEMARK FOR ANOTHER IN THE WAY THAT A HUMAN CONSUMER WOULD"



Patents


In February 2024, the U.S. Patent and Trademark Office stated that a **“significant contribution”** by a natural, real person is necessary to obtain a patent. While artificial intelligence can be used to help create an invention, a human must significantly contribute to the invention. The law is evolving as to **what extent a human needs to contribute to an invention to satisfy the requirement.**

Copyrights



The U.S. Copyright Office found that a person who uses artificial intelligence (AI) can acquire copyright protection for their work to an extent. Last month, Elisa Shupe was granted copyright registration for an AI-generated book with the following stipulation: Shupe is considered the author of the **“selection, coordination, and arrangement** of text generated by artificial intelligence.” Shupe is not the author of the text as a whole and has no protection over the content of the book itself. While the book cannot point blank be copied without infringing on Shupe’s copyright, the sentences and paragraphs themselves could be rearranged into a different book without infringing on Shupe’s copyright.

Yet a human must still contribute to an AI-generated work in order to acquire copyright protection. Last year, Stephen Thaler was denied his motion for summary judgment in *Thaler v. Perlmutter*, in which Thaler had applied to register for copyright protection for a piece of AI-generated artwork. The artwork was created by a computer system Thaler owned. Thaler argued that the computer system that created the artwork was the author. **Since Thaler was the owner of the computer system, he wanted the copyright to transfer to him.**



**SINCE THALER
WAS THE OWNER
OF THE
COMPUTER
SYSTEM, HE
WANTED THE
COPYRIGHT TO
TRANSFER TO
HIM.**

The U.S. District Court for the District of Columbia affirmed the U.S. Copyright Office's position that **human authorship is a necessary part of a valid copyright claim**. After Thaler's summary judgment was denied, Thaler filed a notice of appeal to the U.S. Court of Appeals to the District of Columbia Circuit in October 2023.

This is the artwork Stephen Thaler created using a computer system. The artwork is titled "*A Recent Entrance to Paradise.*"

(We can freely print this picture from Thaler without permission because it has no copyright protection!)



Hopefully the recent commentary from the U.S. Copyright Office and Patent and Trademark Office that allows AI-generated works/inventions to acquire copyright/patent protection *if* a human has significantly contributed to some aspect of the work/invention is enough to offset the trend of AI-generated works/inventions being denied copyright/patent protection. Otherwise, the patent and copyright systems will cover less and less of what's new. Maybe the only remaining protection will be through trademarks. But even then, protection will be limited because an AI shopping assistant is not likely to be reasonably confused by trademarks in the way that a human being would be.

[LinkedIn](#) | [Facebook](#)

Hess.ip@gmail.com | 984-326-2807

<https://hesspatent.com>