I pay someone to create marketing or advertising mate-
rinals for you, you probably assume that you own what has been created. Unfortunately, this is often not the case. Even if you have paid for and received the creative work, you still may not own the work's copyright, which may be the most valuable part. Therefore, it is important to take steps to ensure that you own the copyrights in all your creative materials—preferably before the materials are developed.

Works that someone is paid to create for your company are called works made for hire. This term is often used and often misunderstood. In fact, there are two types of works made for hire.

The first type is when an employee of your company creates something within the scope of his or her job. Part (a) of Section 101 of the Copyright Act provides that it is a work made for hire if it is created by an employee working within the scope of his or her job, both the author and the employer are employees of the same employer, and the employer is the worker's regular employer. Your company can file copyright applications for these materials with the copyright office identifying your company as the author of the materials. In this case, your company owns all rights to the works created.

The second type of work made for hire is when your company hires someone who is not an employee to create something that can be copyrighted. Part (b) of Section 101 of the Copyright Act provides that if your company may own the copyright on a work created by an independent contractor, the work falls in one of nine categories: a contribution to a collective work, a part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, an audiovisual version of a line, or a translation. In this case, your company and the author have the rights to exploit the work without the consent or knowledge of the other. Obtaining all the rights to creative materials in the beginning pays off in the end. If you have done everything correctly, your company will have the absolute right to do anything with the materials created for you, and you will not have to negotiate for permission to use the materials when and if you decide to use them for an unanticipated purpose.

If you negotiate these rights early in the creative process, the cost will be less than if you try to acquire the rights after the materials have been created.

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Model numbers meant to confuse shoppers

You're shopping for holiday gifts, and you're amply armed with brand names and model numbers. Should be a breeze, right? Brand names indisputably help shoppers find products with high-end and most consistent quality. And when a product is more complicated than, say, canned peas, brand names and model numbers can help shoppers find the best price for the product with their preferred mix of features. But in the case of misplaced marketing practices, brand names and model numbers sometimes confuse rather than help consumers.

As Christmas approached a couple of years ago, relatives asked what gifts I wanted. As the top of my list was an electric razor. Being a careful and knowledgeable shopper, I spent time checking with friends and reading catalogs. A new issue of Consumer Reports had run an evaluation of electric razors. Armed with this information, I wrote down my first choice of brand and its model number, and also listed a couple of alternatives. But come Christmas morn, there was no razor under the tree. By the time my relatives got to the stores, my chosen brand had grossly altered its model numbers, and failed to indicate the new models' relationship to earlier models. The product testing and rating magazines had not delivered any subsequent information about new razor models.

In this case, the model numbers served only to confuse shoppers. Basic marketing practice dictates that new models should have some ties to the old ones. In the case of my razor, clearly after a respected consumer information source gave the brand top ratings, the company should have kept the same product numbers, or at least told buyers how the new model numbers were related to the old ones. Doing so would have allowed the company to maximize sales from satisfied users as well as readers of the publication. But actual marketing practice is sometimes not logical. A hundred years ago, activists protested the power of corporate monopolies, so laws were passed to prevent any firm from gaining such power. These laws are enforced today.

In his book, Dubler Future: Thriv-