

# CASE STUDY 5

## Locket by Gillian Davies and Polarity

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Polarity has registered a US copyright for lockets which she makes from recycled steel car parts, soldering on an eyehook through which she threads a simple ball chain. A button badge-type lid is held in place by a strong magnet. The lids are decorated with all sorts of designs from different artists. It is a funky industrial design; not very 'high end' but arguably unique in its own way. It is sold to a younger, trend-conscious market.

We both sell the same locket through the online shop Etsy: Gillian Davies on Carousel Monkey, Polarity on Polarity (see Information Bank). I use my own photographs of the lockets on the online shop.

Polarity makes her own arrangement for photography so separate copyright exists in relation to her photographs.

I have sold the real property rights in the actual artwork (here a handmade artist's-proof one-off screenprint, entitled *Carousel*), but

I still retain copyright in the photographic image

Trying to analyse the locket as an example under UK, rather than US, law, I spoke to Andrew Lee of McDaniel & Co. Lee confirmed that since I had no input into the design of the locket itself but only the artwork which was applied to it, I was not the 'designer' for the purposes of assessing whether a design right arose in the locket.

However, if I were the designer - or the locket itself had been dealt with under technical legal provisions called the 'first marketing' provisions under the design right legislation - then Lee's instinct was that the locket is not a copyright work in the sense of not an artistic work such as a sculpture or work of 'artistic craftsmanship' unlike, say, a handcrafted piece of furniture, which could potentially have both copyright and design protection depending on how it was made and the intention of the maker. However, Lee was not in any doubt that my artwork itself is of the type that would attract copyright protection, and as the creator would be the first owner of any copyrights.

In terms of UK design rights, we might think that the locket in itself could be protected for its shape and configuration. However, Lee felt that as the shape of the locket seemed relatively standard and similar to lockets that have been around for many years, the locket itself might fail to get an unregistered design right, because it might be considered to be 'commonplace' in its shape and configuration.

The artwork which is applied to the locket has copyright in itself, but as an element of the locket design it would be excluded in terms of