

Banksy's Battle: The Dispute over the Artist's Intellectual Property Rights

The pseudonymous street artist Banksy has a decision to make. Either Banksy will have to fundamentally change the way they practice art or risk saying goodbye to their intellectual property rights.

The European Union Intellectual Property Office (EUIPO) has invalidated Banksy's trademark for [Rage, the Flower Thrower](#), which questions the validity of all of the artist's intellectual property rights. This trademark was drawn into question when Banksy attempted to stop a small greeting-card company, Full Colour Black, from using their image of a man throwing a bomb of flowers. Full Colour Black [questioned the validity of the trademark](#). Banksy must intend to use the design as a trademark to have a valid trademark claim in the European Union. In response to Full Colour Black, [Banksy opened a pop-up store](#) called Gross Domestic Product to legitimize their trademark and strengthen their case. Before Full Color Black's argument, it did not appear Banksy had any plans to use their trademark for anything besides limiting others' use.

Gross Domestic Product did not have the effect Banksy hoped for. [The EUIPO ruled](#) Banksy's trademark was invalid due to bad faith and declared, "it is clear that Banksy did not have any intention to use the EUTM [European Union Trademark] in relation to the contested goods and services at the time of filing of the EUTM." [Gross Domestic Product](#) was determined to be a innovative way to circumvent trademark law. The EUIPO declared Banksy was not actually trying to sell their artwork on commercial products; they don't want anyone else to use their art. All [of Banksy's trademarks in the European Union](#) have the same issue as *Rage, the Flower Thrower*, and are now in danger of being declared invalid. Banksy's US trademark registration for *Rage, the Flower Thrower*, was [filed based on the EUTM](#), meaning their US trademark also requires an intention to actually use the mark as a trademark. It is unclear what the US Patent and Trademark Office will do in response to the EUIPO's decision.

But why is Banksy not using copyright? To many, this seems like an easier path for the artist to take. Instead, Banksy chooses to create pop-up stores to legitimize an intellectual property right that is ill-fitting to the situation. Firstly, [Banksy famously declared](#) their distaste for copyright. Banksy might just be avoiding copyright due to their personal values as an artist. Secondly, Banksy has [used other people's copyrighted material](#) in their own art. Banksy's art would have to be determined to fall under fair use, at least in the US, and if it did not, Banksy would be opened up to other legal issues. Lastly, any of Banksy's claims to copyright would be [further complicated](#) by the very nature of their work [as a pseudonymous graffiti artist](#).

Regardless of why Banksy has chosen to trademark instead of copyright their work, they may have to change their intellectual property strategy in the future.

--Olivia Arboneaux

Olivia is a 2L originally from Baton Rouge, Louisiana, but spent third grade in London, England. She likes to paint and practice yoga in her free time.

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Banksy is a famous pseudonymous street artist who has chosen to trademark their unique art instead of copyright. The European Union Intellectual Property Office has recently invalidated one of Banksy's trademarks, which calls into question any other trademarks the artist may hold.