Harper James Solicitors video transcript: Copyright Infringement

I’m Lindsay Gledhill and I’m an intellectual property solicitor at Harper James.

What should you do if you receive a letter alleging that you have infringed someone’s copyrights? Our clients often come to us having received a letter and having sent a reply that they’ve marked ‘without prejudice’. That’s absolutely fine. A ‘without prejudice’ letter does a certain job when somebody is alleging copyright infringement. However, we often end up advising our clients to take away the words ‘without prejudice’ and to instead write a letter that is called an open letter, and I explain the difference. A ‘without prejudice’ letter in this context has quite a technical meaning. It’s a letter with an offer to settle that no Judge is allowed to see until there has actually been a court case and a Judgment made about whether the copyright was infringed in the first place. There are advantages to ‘without prejudice’ letters but in this situation there can be more advantages to writing an open letter and making an open offer. An open letter is one that anyone can draw to the court’s attention at any stage of court proceedings. There are three elements to doing a good open letter making an open offer.

Firstly, it is important to spell out that you’re not admitting liability. Copyright law is complex. Very few cases are open and shut so why admit liability unless you are absolutely sure that you are liable and you have infringed?

Secondly, an offer without any admission to pay a reasonable sensible sum, so for a photograph that could range from £300 to £3,000. It is very unlikely to be in those very high level amounts that might be mentioned in the letter that you’ve received.

Thirdly, make an open offer to settle. You’re not admitting anything. There’s nothing to lose. I’ll often say to clients what if the person complaining hadn’t gone to a lawyer? What if they’d phoned you up and said, ‘Look, I’m upset. You’ve used my photograph. You’ve used this material from my website. You should have compensated me.’ What would you have done? The client will usually say, ‘I would have made a sensible payment to him.’ You still have that option in an open letter. Assess what you would have done if somebody had called you and, if you would have paid them £300, offer them £300 now in an open letter. Writing an open letter without admission with undertakings and with a sensible business-like offer is the key tool to stopping a potential copyright case in its tracks.