

COPYRIGHT CRUSADERS: Another front in the intellectual-property wars: Who gets the royalties for prayers on coffee mugs?
Fortune, May 2005

http://money.cnn.com/magazines/fortune/fortune_archive/2005/05/16/8260176/index.htm



COPYRIGHT CRUSADERS

Another front in the intellectual-property wars: Who gets the royalties for prayers on coffee mugs?

By David Gibson
May 16, 2005

(FORTUNE Magazine) – IN THE WARM AND FROTHY bubble bath that is American spirituality today, it's hard to think of anything quite as familiar and comforting as the mini-homily known as "Footprints in the Sand." For anyone who has somehow managed to avoid the gantlet of Footprints mugs, calendars, greeting cards, and mousepads--to name just a few of its incarnations--the poem is a soft-focus retrospective that imagines life as a walk on the beach with Jesus, a pilgrimage traced by two sets of footprints, the Savior's and the narrator's. The reverie is interrupted by the narrator's shock that at his lowest moments there was just a single set of footprints, indicating that Jesus had bolted when he was needed most. Catharsis comes with the Lord's soothing assurance that he did not abandon his follower during the dark night. Rather, there was only one set of prints because "it was then that I carried you." Or as Jesus put it elsewhere, "O ye of little faith."

The story can be read generously as a haiku of Christian belief vanquishing doubt, or perhaps as proof that there is more unalloyed emotion in religion than in any other field of human expression. But this being America, you can't get something for nothing, and that goes for piety as much as widgets. Hence the rather unseemly legal wrangling over this irenic tale, which is pitting three main contenders (there are apparently dozens of pretenders) for the right to claim authorship of "Footprints"--along with millions of dollars in licensing fees on all those Footprints tchotchkes.

The three claimants are the estate of Mary Stevenson, who died in 1999 at age 76 and said she wrote a version of the poem in 1936 in Chester, Pa.; Margaret Fishback Powers, a poet and co-founder of a children's ministry in Canada, who says she composed "Footprints" in 1964; and Carolyn Carty, a New Jersey woman and self-described "child prodigy" who says she wrote her version in 1963 when she was 6.

Go figure. Each author copyrighted her version (they differ in small details, most significantly in Carty's use of the third person over the first person of the other two), and each has a different tale of the story's genesis. Stevenson told her biographer she was a 14-year-old Philadelphia showgirl during the Depression when she was locked out of her house on a wintry night and was inspired by the sight of a cat leaving paw prints in the snow. Powers cites a stroll on an Ontario beach with her prospective husband during a troubled time in their lives as her inspiration. And Carty's *donnée* was the death of her grandfather; her role models, she says, were Longfellow and John F. Kennedy.

Powers has been most successful in marketing "Footprints." She has signed licensing agreements with Hallmark cards and wrote a 1993 book about the poem, along with a series of

devotionals. But Carty told Beliefnet.com, which has a lengthy and illuminating column on the competing claims, that she is planning to sue Powers for infringement while at the same time seeking redress from companies that have used her copyrighted version. "I figure they owe me at least \$500,000 in back royalties," she told Beliefnet in regard to one calendar maker. Royalties for Stevenson's version were the subject of a six-year legal battle between her son and a friend who for years had sold Footprints products and signed licensing agreements on the late claimant's behalf.

The legal maneuverings and marketing campaigns and megabucks deals are enough to make one yearn for the innocent moralism of "Footprints" itself, yet the story is depressingly familiar. In America today, God is too often turned into mammon, and it seems no good deed--or inspirational thought--goes unsold, no profit uncontested.

Even religious teachings are becoming a source of copyright infringement battles rather than universal enlightenment. In an article in *Buffalo Law Review*, a professor at Washington College of Law, Walter Effross, has detailed how many religious groups, especially New Age ones, have sought legal recourse to classify their teachings as "intellectual property" that cannot be used by others without permission. Among the justifications for spiritual secrecy that Effross identifies is the claim that people who use teachings without proper supervision could suffer psychological harm. In other words, "Don't try this at home."

Effross cites the case of the Arica Institute, which created the nine-pointed enneagram personality test based on what it says was ancient wisdom, and has sued Jesuits who often use the enneagram as an evaluation tool for novices. He also describes how a religious group known as Star's Edge has sought to prevent the unauthorized use of its Avatar courses. These groups are even using nondisclosure agreements so that students do not share what they learn.

The problem for many of these religions, Effross says, is that their "teachings" are often so profound or so mundane that they contain "near-universal elements" that cannot be copyrighted. Not surprisingly, there is nothing new under the sun (that's Ecclesiastes, not me) when it comes to spiritual insight, and so piety increasingly becomes a matter of repackaging products in different forms--old wine in new wineskins, to upend another bit of holy writ--and then zealously guarding them to maintain your brand identity and market share.

It wasn't always this way. Take the Serenity Prayer: "God, give us grace to accept with serenity the things that cannot be changed, courage to change the things that should be changed, and the wisdom to distinguish the one from the other." Quick: Who wrote it? A common answer is St. Francis, while some trace it back to Cicero or Sanskrit texts. Others attribute it to an 18th-century German pietist, Friedrich Oetinger, which might account for its regular appearance beside Dürer's "Praying Hands" engraving.

The correct answer is Reinhold Niebuhr, the great 20th-century Protestant theologian, although even he conceded his inspiration could have gone back further. Niebuhr said he wrote the prayer in 1943 as a "tag line" to a sermon. He had no interest in copyrighting anything that could be dispersed widely to provide comfort to others, so when Alcoholics Anonymous approached him about using the Serenity Prayer, he quickly agreed. AA has made the prayer a hallmark of its philosophy, while Hallmark cards, and many others, have made the prayer into cash in the form of refrigerator magnets, teddy bears, serving trays, and the like.

Likewise, the ubiquitous WWJD slogan ("What would Jesus do?") never brought any fortune to its author, Charles M. Sheldon, a minister who coined the phrase in an 1896 book, *In His Steps*, in which a fictional pastor uses the phrase to challenge complacent Christians. Sheldon couldn't find a publisher for the book, so he had it serialized in a local newspaper, and it fell into the public domain.

A century later when Janie Tinklenberg, a youth pastor in Michigan, rediscovered Sheldon's book, she hit upon the idea of making WWJD wristbands for the teens in her charge. The idea swept the nation, but like her predecessor, Tinklenberg did not think about merchandising first, and so she watched while retailers raked in millions on WWJD kitsch. Tinklenberg won a victory of sorts in 2000 when the U.S. Patent and Trademark Office awarded her the trademark for "WWJD." But she decided not to invest a small fortune trying to enforce her claim or to set up a manufacturing business because the phrase is already so popular in the marketplace.

And after all, isn't that where religious truths--even spiritual bromides--belong? Certainly Christianity is defined by its commitment to spreading the "good news," or euangelion in Greek, the root of today's regnant Evangelicalism. And offering spiritual goods at a price has only gotten Christians in trouble in the past.

But historians of religion like to say that Christianity was born in the Middle East as a religion, moved to Greece and became a philosophy, journeyed to Rome and became a legal system, spread through Europe as a culture--and when it migrated to America, Christianity became big business.

The observation is so true today that it probably belongs on a coffee mug or calendar. I just hope it's not under copyright.