

INTELLECTUAL PROPERTY

The law of intellectual property (IP) protects creations of the mind.

It is important for businesses to be aware of the different IP rights that exist in order for them to protect what they create, be able to use them to help their business and avoid infringing the IP rights of others.

Lawyers can help with **identifying, managing, protecting, and exploiting IP** in a commercial setting and dealing with any disputes in relation to IP.

What types of intellectual property rights are there?

IP rights can generally be categorised as registered or unregistered rights.

Registered rights are granted by bodies such as the UK Intellectual Property Office and once granted, the owner has a monopoly over that right within a certain jurisdiction. This means that the owner can prevent others from using the right in the jurisdiction without permission. Examples of registered rights include patents, registered designs and trade marks.

Copyright is an example of an unregistered right that arises automatically, as soon as a work is produced. Unregistered rights subsist across a wide range of jurisdictions in parallel. Other unregistered rights include unregistered design rights and rights in unregistered trade marks.

Copyright

Copyright protects original literary (for example, the source code in computer programs), dramatic, musical and artistic works from being copied.

It should be noted that sound recordings, films, broadcasts and arrangements of published works are also protected by copyright.

Protection arises automatically and lasts for 70 years after the death of the author for artistic, musical, dramatic and literary works. Sound recordings are protected for 70 years from the date of publication and broadcasts for 50 years from when they are shown.

It is important to note that copyright protects the expression of an idea and not the idea itself. For example, the lyrics and music of a love song are protected by copyright, however the idea of a love song on its own cannot be protected by copyright.

Design rights

As mentioned earlier, design rights can be either registered or unregistered. Broadly speaking, they protect the appearance of objects (although two-dimensional designs can also qualify for protection as a registered design).

Registered design rights provide the owner a monopoly over the use of the design. Designs may be registered as a "UK registered design" or a "Community Registered Design" (EU wide).

Registered designs can be protected for up to 25 years. Unregistered designs are protected for 10 years from first marketing in the UK (in relation to articles made available for sale) whereas, in the EU, unregistered protection only lasts three years.

Trade marks

A trade mark can be used by a business to help distinguish its products or services from those of its competitors through the use of signs and symbols. These can include brand names (such as BEATS for headphones and AUDI for cars), company logos, trading styles, slogans, and even smells and sound (although these can be harder to register compared to logos and brand names).

Shapes of products or their packaging, for example the Coca Cola bottle, and colours associated with certain brands, such as the Heinz turquoise colour used on tins of baked beans, can all be registered as trade marks.

Trade mark owners can apply for a UK or an EU trade mark (EUTM). Protection under both lasts for ten years and is renewable for further ten-year periods.

In order to register a trade mark, it must be (i) capable of being represented graphically (the mark has to be clearly identifiable to the average person), (ii) distinctive (the mark should not merely be describing the product or service, e.g. registering the word "Treat" for an ice cream topping), (iii) capable of distinguishing goods or services (the mark should distinguish the product from its competitors); and not fall within a category excluded by statute (e.g. flags and other State emblems).

Unregistered trade marks can be protected against unauthorised use in the UK through an action for 'passing off'. For a successful 'passing off' claim, you must prove that (i) the mark is yours, (ii) you've built up 'goodwill' (a reputation that attracts customers to the mark) and, (iii) the unauthorised use has caused or is likely to cause damage. Protecting a new unregistered trade mark by a 'passing off' claim is especially difficult as the mark has not had time to build up goodwill.

Patents

Patents give protection to new inventions, inventive technical features of products and processes. In the UK, patents have a duration of 20 years.

In order to qualify for patent protection, the invention must be new, involve an inventive step, be capable of industrial application and not be specifically excluded from protection.

IP Rights in Action

Many everyday products can be protected by a number of different IP rights. Let's take the example of a breakfast cereal. The packaging for cereals can be protected by a number of IP rights including trade marks and copyright. If we start with the manufacturer's logo and the brand of the cereal, these will likely be protected as registered trade marks. The artwork on the packaging and any descriptive or promotional wordage would be protected by copyright. If the shape or design of the cereal 'box' is novel and particularly distinctive (so that it is considered to have originality), it could also be protected by the unregistered design right. The recipe for the cereal itself may be a trade secret (unavailable to competitors) and any factory machinery or particular processes used to produce the cereal are, at least hypothetically, capable of patent protection.