

# ENFORCING YOUR INTELLECTUAL PROPERTY RIGHTS

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In the increasingly competitive and global market in which businesses operate businesses should be looking to build and pro-actively protect valuable intellectual assets. With that in mind, it is essential from the outset of setting up your business to consider the need to continuously protect your brand, products and reputation.

Every business will, at some point, need to consider intellectual property rights. The first stage of that process will be to identify those rights and to ensure that they are protected. As a business develops and becomes more successful however, the second stage of that process will be to protect those rights through a pro-active enforcement policy. This will be necessary to prevent competitors from gaining an unfair advantage from the use of your intellectual property rights or from causing damage to your brand. This will apply regardless of the industry that your business operates within or what your business actually does. The enforcement of intellectual property rights will be just as important to a business that specialises in the design, manufacture or distribution of a product as it will be to a business that provides professional services.

As your business will have a wide range of intellectual property rights, it can often be difficult to pre-empt the risk of those rights being infringed. There are, however, a couple of key legal areas to consider.

## Trade Mark Infringement

It is likely that your business will have a trade mark. This may be the name of your business, the name of a particular product that is associated with your business or even the name of a service that your business provides. Whilst the first step to protect that trade mark will be registration, the next step will be to ensure that it is properly monitored and enforced. In most instances, infringement will occur when a competitor business uses a name or logo that is identical or confusingly similar to your registered trade mark.

## Passing Off

If you have not registered your trade mark, you may still be able to protect your position through a claim for passing off. In simple terms, this will happen where a business has generated goodwill to the extent that members of the public associate its name or logo with the goods/services that it provides and where customers have been confused into dealing with a third party company in the mistaken belief that they are dealing with the original company. Whilst this allows a business to enforce an unregistered trade mark, passing off claims can be difficult and expensive as they are heavily evidenced based. It is therefore important for trade marks to be registered.

## Copyright Infringement

Copyright protection arises automatically on the creation of an original work and does not require registration. To qualify as an original work, it must have been created as a result of skill, judgment and individual effort and must not have been copied from other works. Importantly, where copyright works are created in the course of employment, the owner of the copyright will usually be the company.

Whilst copyright protection arises automatically, businesses should always mark appropriate documents with a copyright notice. A typical example of copyright infringement will be where a competitor company uses information that has been published by another company, often on a website or as part of marketing/advertising literature. Importantly, copyright infringement will also occur where a competitor company uses an image in which it does not itself own the copyright, or where it does not have the consent of the copyright owner to use the image.

## Registered/Unregistered Design Rights

Design rights will usually arise where your company designs and/ or manufactures a product and broadly speaking, protect the appearance of objects. In order for an object to be protected as a design right, it will need to be novel and of individual character.

Design rights can be can enforced as a registered or unregistered right and depending on the circumstances, as UK design right or as a Community design right. However, whilst a registered design creates a legal monopoly, unregistered design rights confer a right against copying only.

As design rights (both registered and unregistered) can be a valuable asset to a business, it is important to be able to identify the circumstances in which they will exist and how they may be enforced against competitors to protect your business.

## Patents

Patents provide inventors with a legally protectable monopoly over their inventions and are designed to protect new and innovative technical features of products and processes. A patent is a registered right and to obtain protection, it is necessary for an application to be filed, usually with the Patent Office.

As patents are expensive to obtain and maintain, it is essential to have a pro-active monitoring and enforcement policy so that a business can identify instances of infringement and protect its position.

## Ensuring Effective Protection

When addressing a potential infringement of your intellectual property rights it is essential to consider minimising loss and damage in the quickest possible time to protect your business brand, products and/or reputation. It is not just about bringing proceedings, businesses should be devising and implementing strategies for the protection and enforcement of intellectual property rights.

## Collaboration in Action

We recently advised a client who had become aware that one of its highly stylised logos, which it had protected as a registered trade mark, was being used on a third party website. By acting quickly and by making it clear to the third party that this amounted to both copyright and trade mark infringement, our client was able to ensure that the logo was removed by the third party in a cost effective manner and without the need for Court proceedings.

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