

INTELLECTUAL PROPERTY OVERVIEW

Intellectual Property is about protecting the products of intellectual efforts. It implies that these products are owned by somebody and are worth protecting. Intellectual property will often be a valuable business asset. Intellectual property can distinguish a business and set it apart from competitors. It is capable of being sold and licensed, thereby providing income. It can be an essential part of marketing or branding.

Many aspects of a business can be protected through intellectual property law including names, logos, designs, inventions, creative work, trade marks and processors. Some rights are automatically protected by intellectual property law while other types require registration.

Provided that intellectual property is legally secured, it can be protected against infringement by others through legal means. Others can be stopped using importing or selling intellectual property without the owner's permission. This enables the intellectual property to be protected by strategic alliances, joint ventures or other appropriate means.

In certain circumstances intellectual property protection must be applied for or registered before it is first disclosed. Unless this is done, it may jeopardise a claim to originality. Even in the case of copyright, where there is automatic protection it is desirable to create evidence as to originality and date of first use.

Broadly speaking, intellectual property rights fall into artistic and commercial rights. Artistic rights protect the creative efforts of individuals so that they are not reproduced without consent.

Trade Marks and passing off rights protect brands which have been built up by virtue of good will. There is also a consumer protection element in that the public should be protected from deception as to what they are buying. Brands can have a very considerable value and Intellectual Property rights are key in protecting this.

A trade mark is a brand name or a sign associated with a particular good, product or service. It is protected by registration in a trade mark register. Generally, trade marks can be registered for ever. Famous trade marks would include Coca Cola, Levis etc. The oldest trade mark in the United Kingdom is the Bass red triangle which has been registered since the 1870s and is still valid today.

It is possible for brands to be protected which fall short of qualifying as registered trade marks. Passing off is a right of a business to protect itself from somebody who is taking advantage of an existing business goodwill and trading on its reputation by selling goods or services that are confusingly similar. Unlike trade mark registration which creates rights to use the protective mark for the particular goods or services across the board, passing off requires a court application to prove that there is an actual risk of confusion by recent use of the name, brand, logo etc.

The purpose of copyright is to prevent copying. It is generally an artistic right. It is not necessary to register, to obtain copyright. Copyright covers books, paintings, drawings, sculpture, music, films, performances and artistic endeavours generally.

Design rights give automatic protection for the appearance of objects. Designs must be registered. Design rights relate to the commercial appearance of an object and give protection for 25 years. There is a separate unregistered design right which lasts for 10 years.

Patents are commercial rights to protect inventions. The patent gives the holder a monopoly for 20 years on the technology. A patent must be registered and the relevant technology revealed in the patent specifications.

"Confidential Information" is generally secret information which has a value and which has been assembled or belongs to a person. Confidential information is governed by case law and Court application, like passing off. Registration is not necessary. Confidential information relates to situations where there are agreed or implied duties of



confidentiality to protect valuable rights which fall short of registered rights of the type mentioned above.

In addition there are other rights protecting such matters as databases, computer chips, varieties of plant etc.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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