

Types of Intellectual Property

- Patents
- Trade Marks
- Passing Off
- Designs
- Copyright
- Domain Names
- Confidential Information

The information provided in this section is a simplified summary of intellectual property matters and is not intended to be, nor should be used as, a substitute for Professional advice from a suitably qualified person

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Patents

- Patents protect inventions, which must be;
 - New
 - Inventive/ not obvious
 - Not directed to excluded subject matter
- Patentable inventions can be;
 - A new product
 - A new process, and the product of that process
 - An improved method for making a known product
 - A new use for a known product
- Patents provide an absolute monopoly in the invention
- Patents require applications which are usually examined for novelty and inventiveness
- Patents last for a maximum of 20 years from the date on which the application was filed, in most territories
 - Must be renewed (for which renewal fees will become payable)
- Rights within an invention usually belong to the inventor, unless the invention was made during the course of employment

Trade Marks

- Trade Marks act as an indication of the trade origin of goods/ services covered by the registrations.
- Trade Marks can be in the form of;
 - Words (e.g. Hill-IP)
 - 3-D shapes (e.g. a Coca-Cola bottle)
 - Devices (e.g. a logo or stylised word)
 - Colours (e.g. orange for telecommunications)
 - Sounds (e.g. Intel, Direct Line TV commercials)
- Trade Marks must be distinctive and serve to distinguish the goods and/ or services of the applicant from those of other traders.

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Passing Off

- The action for passing off protects the goodwill associated with a “get-up” – i.e. colour schemes and enables a trader to prevent a competitor from passing their goods off as if they were the trader’s
- The action for passing off is a common law right – no registration is required
- A limited monopoly may be available and it is only possible to take action where there is a “misrepresentation” by another party using the same or similar get-up

Design Rights

- Protect the appearance and/or shape/ configuration of an item.
- Can be registered or unregistered
 - In general, registered design rights provide absolute monopoly protection, whereas unregistered rights will only protect against *copyright* of the design (so cannot be used to stop an independent creator)

Registered Designs

- Available as both national rights in each E.C. state and as an E.C.-wide Community Design right
- Provides an absolute monopoly to stop any other person using that design within the territory of the registration
- Lasts for a maximum of 25 years from application
 - Must be renewed every 5 years

Unregistered Design Right

- Unregistered Design Rights are available as both a UK and E.U. Design Right
- Unregistered Design Rights provide a limited monopoly to stop any other person copying the design
- The UK national right lasts 15 years from the end of the year in which the designs were originated, or 10 years from marketing; whichever expires first
- The E.U. right lasts for 3 years from marketing

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Copyright

- An unregistered right which arises automatically on the creation of a work
- May protect musical, artistic and literary works
 - E.g. computer code, instruction manuals, reports
- Can be used to prevent unauthorised copying of part of all of the work
- Can last for up to 70 years from the death of the author

Domain Names

- Not really classified as intellectual property, but encounters similar issues
- Registration of a company name usually gives NO RIGHTS to a corresponding domain name!
- However, there are procedures available to right registrations made in bad faith (e.g. where a domain name is registered purely to sell on at a profit)
- Domain names should be an important consideration when choosing a trading or brand name.

Confidential Information

- A body of information not in the public domain
 - E.g. trade secrets; recipes, client details, pricing, manufacturing processes
- Legal action may be taken against a person who discloses the information without permission
- May also form the basis for a contractual arrangement e.g. a franchise or licence agreement