

Information

Intellectual Property

Intellectual property rights are valuable business assets and in recent years have become even more important, as branding plays an increasing role in business. In many cases the intangible assets of a business will in fact account for the most valuable assets of that business.

Trade marks in particular are important marketing tools and are often the public's first and lasting impression of a business. They are vital in distinguishing one organisation from another in the public's mind. This year in particular will see a number of changes to the way in which trade marks are registered. Traditionally the UK Trade Marks Registry has granted or refused applications after considering whether the proposed trade mark is sufficiently unique to merit registered status.

However, under the new regime, the Registry will take a lesser role in considering trade mark applications. While the Registry will continue to notify parties who own similar, already registered trade marks of any new applications which may affect them, it will no longer automatically refuse an application on the basis that there is a substantial similarity between a proposed trade mark and an existing trade mark. Instead the proprietor of the registered trade mark will have the responsibility of opposing an application, if they wish to prevent the registration of a similar trade mark.

This change in approach by the Registry makes it even more important for businesses and charities alike to be aware of their intellectual property rights and the steps which they can take to protect those rights.

While in some cases it is necessary to register rights in intellectual property such as registered trade marks, patents and registered designs, many intellectual property rights arise on creation of a particular type of work, for example unregistered trade marks, database rights and copyright.

Of the many intellectual property rights which exist, trade marks and copyright arise most frequently, affecting many businesses and individuals, particularly in the arts world and the service industry. However, as organisations hold ever more information on their customers and target market, database rights are also increasing in importance.

Trade Marks

The term “trade mark” can be applied to a wide range of advertising tools such as slogans, logos and catchphrases and are used by businesses to build and market their brand. Many larger companies register their trade marks, and in doing so benefit from the protection that a registered trade mark offers. However, many businesses are often unaware that it is possible to establish a proprietary right in a trade mark through use of that trade mark alone. This is generally known as the common law trade mark. A trade mark under common law can be established where there is a certain element of public knowledge of that trade mark and where the public would associate that trade mark with the goods or services provided by the business which owns it. If that trade mark is subsequently infringed by a competitor, then a court action can be raised against that competitor to prevent further infringement.

Copyright

Copyright arises automatically on the creation of a number of works such as books, articles, plans, films and sound recordings. It is often thought that before the author of any of such pieces of work will have a right to protection of that work, it is necessary to register copyright, however, that is not the case. Copyright arises automatically and presently subsists for the life of the creator of that work and, in most cases, for a further 70 years after the author’s death. Copyright prevents third parties from copying or reproducing work without the owner’s consent and extends protection to private commissioners of photographs who find that the photograph has been reproduced without their consent. While there are statutory provisions which regulate the scope of copyright, it is important to note that no rights to copyright require to be registered.

Database Rights

As with copyright there is no registration process for database rights. This right is distinct from any information contained in the database which may also be protected by copyright or trade mark. Instead, the database right protects the database itself and prevents unauthorised use of information contained in the database. There must, however, be a “substantial investment in obtaining, verifying or presentation of the contents of the database”.

That means that all client details, product lists and employee information held in the form of a database is potentially protected by database rights. In some cases the database itself will be protected in addition to the information it contains which may also be protected.

It is also worth bearing in mind that organisations which hold a large quantity of personal information on customers, clients and even employees are likely to be subject to the Data Protection Act and care should be taken to ensure that the provisions of the Act are complied with and that all members of staff who are involved in the processing of data are registered with the Information Commissioner as appropriate.

From logos to letterheads, trade marks to databases, websites, jingles, literary works or works of art, it is inevitable that all businesses and organisations will be affected by intellectual property rights at some stage. It is therefore essential that those bodies are aware of the steps they can take to protect those rights. Goodwill and reputation are more important than ever in the commercial world, and when they are such fundamental elements, it is essential that those elements are protected.

Lynn Richmond
Solicitor

This note is intended as a brief summary of Intellectual Property Rights. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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