

Intellectual property disputes

We help client businesses to protect their intellectual property, advising in disputes involving infringement of trade marks, design rights, patents and copyright as well as passing off actions.

Almost always, cases of this nature demand a rapid response. If those responsible for the infringement will not co-operate, for example, it may be necessary to seek an interim injunction or take other steps to prevent infringing products being put on the market.

Our experience ensures that we provide informed and practical advice, with an eye to the commercial considerations of the case.

The next section provides a simple overview of patents, design rights, copyright, trade marks and passing off. It is not intended to be a definitive list of all intellectual property rights and principles.

A basic guide to intellectual property rights

This guide relates to the protection of intellectual property rights in the UK. Where required, we can advise on options that will allow wider protection in the EU and/or further afield.

Patents

Patents protect 'inventions'. The invention must be new, involve an inventive step and be capable of industrial application. You need to apply to the UK Intellectual Property Office (IPO) to gain protection in the UK. If granted, the patent will last for 20 years. Certain ideas cannot be patented.

It is vital that patent applications are made as soon as possible. If they are in the public domain before the application is filed – even by a day – the inventor will be unable to gain patent protection.

Design rights

The term 'design' relates to a product's appearance: its shape, texture, colour, materials used, contours and ornamentation. To qualify as a new design, the overall impression should be different from any existing design. There are three types of protection for designs, explained below.

Unregistered design rights

This is an automatic right, which protects aspects of shape and configuration of a three-dimensional article. The right exists from the point the design is recorded in a design document or an article is made to the design.

Contact

Please contact either of the partners in our intellectual property team:

Paul Gordon paul.gordon@willans.co.uk

Theresa Grech theresa.grech@willans.co.uk

The right generally lasts for 15 years. Actions for breach of these rights are often difficult to establish as you have to prove that you hold the right and that deliberate copying has taken place.

Registered design rights

This provides further protection for the appearance of all or part of a product in terms of features such as lines, contours, colours, shape, texture and materials. It covers two- and three-dimensional items and lasts up to 25 years if registered with the IPO (subject to periodic renewal).

More likely to act as a deterrent than unregistered design protection, the right also makes it easier for you to exploit the item eg by selling the rights or by licence. You do not have to prove copying in any infringement action.

Copyright

Copyright protects original literary, dramatic, musical or artistic works; sound recordings, films or broadcasts and the typographical arrangements of published editions. The right arises automatically on creation of the work and allows you to protect your material and stop others from reproducing it without your permission. The period of protection varies, depending on the nature of the work.

Trade marks

Many businesses represent their name in a particular style eg with words, logos or a combination of both. This 'trade mark' or brand distinguishes the business from its competitors and it is wise to consider registering it as a trade mark at the IPO.

Registration gives you the exclusive right to use your mark for goods and services provided in the UK; it may dissuade competitors from using your mark, or a similar mark, without your permission and it allows you to sell or license the use of the mark. If your mark is not registered and a dispute arises, you would have to rely on a claim for passing off which tends to be more complex and costly.

Passing off

This can offer protection when someone else is seeking to benefit from the goodwill of your business. Broadly, you would have to show that you have goodwill in the reputation of your goods and services; that the other party has made a misrepresentation in the course of trade, which has led (or may lead) people to believe that the goods or services offered by the other party are yours and that your business has suffered (or is likely to suffer) consequential damage.

Willans LLP | solicitors
28 Imperial Square, Cheltenham
Gloucestershire GL50 1RH

01242 514000
www.willans.co.uk
Twitter @WillansLLP
LinkedIn WillansLLP

© Willans May 2016