

Protect the value of your brand

A strong brand or trade mark can help to distinguish business' products from competitors. A brand can take many forms – it can be a word (eg Kodak), a logo (eg the multi-coloured wording of eBay) or even a name (eg James Bond).

If you are developing a brand for your business, you should consider the following:

- Get legal advice at an early stage so that you can ensure that whatever you create can be protected and that it does not infringe another person's trade mark or other rights.
- Carry out searches on the internet and relevant trade press to check that the brand is not already being used by another entity.
- Instruct a lawyer or trade mark attorney to conduct a search of your proposed trade mark, if necessary.
- Take great care when third parties are involved in creating a brand, eg advertising agencies, brand consultants etc.
- Make sure that they transfer all intellectual property rights in their work to your business.
- Keep accurate records of the development process and date these documents. This will provide evidence if any infringement claim is ever brought against your company.

You can commercially exploit your brand in a number of ways. The main methods are by licence or assignment:

- **Licence** - is an agreement that gives another business the right to use your brand for a specified period of time, usually in a defined territory eg the UK. Once that period of time has expired the ownership and control of the brand returns to you as the brand owner.
- **Assignment** - is an agreement that sells a brand to another business. You lose control of the brand but you receive an up-front monetary payment in return.

Always take legal advice before allowing a third party to use your business' brand. You should ensure that:

- you sign a written agreement governing use of your brand if you are considering entering into any arrangements with a third party; and
- you put brand guidelines in place to govern the use of your brand by other parties (eg franchisees, distributors etc) and strictly enforce these guidelines.

About the author

Theresa Grech is a partner in our company commercial department and has a specialism in intellectual property. She advises on all issues relating to trade mark, copyright and patent protection, in particular drafting and negotiating patent, copyright and trade mark assignments and licences.

Theresa also advises on data protection, e-commerce and internet related issues. She is praised by clients for delivering an "excellent service" and providing "good solid advice", and is recommended by leading national legal guides.

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