

Intellectual Property Rights

Intellectual property is a term which refers to a number of individual rights, some of which are addressed below. A basic awareness of each of the main rights serves to assist in effectively protecting and maintaining an effective intellectual property portfolio, and to prevent infringement of other's rights.

It is notable that further valuable rights do exist. Some of these other rights are more important to specific activities (for example plant variety rights, geographical indications of origin, and semiconductor topography rights) and will not be dealt with here.

Trade marks

A trade mark is a sign capable of identifying the origin of goods or services from those of another. Most people are aware that words (such as Nike) and pictures (such as the "swoosh" symbol) can be trade marks. However, it is sometimes possible to protect other indicators of origin such as sounds and the shape of goods.

Provided that there is significant recognition in the minds of the public, unregistered trade marks may be protected. The letters [™] can be used to identify unregistered trade marks.

For broader protection trade marks can also be registered in different countries. A Community Trade Mark ("CTM") can be registered in Europe and is effective in all member states of the EU. Registered rights can be identified through the use of the ® symbol. However, it is a criminal offence to use the ® symbol sign improperly.

Registered trade marks provide an identifiable monopoly right to use the mark for the relevant goods or services in the applicable territory. Generally trade marks are renewable every 10 years.

A trade mark owner may enforce their rights against those using the same mark for the same goods or services or against those using similar but confusing marks in respect of identical or similar goods and services.

Infringement may result in reputational damage for an unwitting infringer, and may force rebranding on short notice and at great expense. In addition,

the trade mark owner may seek damages or the profits made from use of the infringing mark, amongst other remedies. Trade mark infringement can also be a criminal offence.

A "brand" is an important asset, key to maintaining and expanding market share in an increasingly competitive environment. However, it is important to "pre-clear" intended use of any marks to ensure that such use does not infringe the rights of others.

Design rights

Designs rights can protect new and individual features of the design of a product (or part of a product) arising from its shape, lines and contours, texture, colour or its ornamentation, provided that the relevant feature(s) is not dictated solely by how the product works.

As with trade marks, designs can be both registered or unregistered. Both registered and unregistered rights can be gained in the UK and in the European Community.

A designer will obtain unregistered design rights automatically on the creation and recording of any original design, which can last for up to 15 years in the case of UK unregistered designs and 3 years in the case of Community unregistered designs. Unregistered protection only protects against the copying of the design, and so does not prevent others using designs which they have created independently - no matter how similar they seem.

Registration of a design gives the owner the exclusive right to use the design, and so can protect against independent creation of a design which creates the same overall impression. Registered designs also last longer, for a period of up to 25 years. There are however important restrictions which prevent registered rights being granted if the design has been disclosed to the public more than one year before any application, and so advice should be sought early.

The owner of designs may seek damages or the profits made by use of an infringing design, and obtain an injunction preventing future use of any such design. Products and literature should be marked with registered design numbers to assist in the recovery of damages where they are due.

It is important to be careful not to infringe the rights of others who may have created designs. Further, processes should be implemented to

ensure that registrable designs are not publicly disclosed, that design records are retained, and ownership is assigned or licensed where necessary.

Copyright

Copyright protects original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts, cable programmes, and the typographical arrangement of published editions.

Importantly, as software can not always be patented in the UK, copyright protection is of fundamental importance to the IT sector as well as the creative industries.

Copyright protection arises automatically without any need for registration in the UK, although (as with design rights) keeping accurate records of works created will assist in proving entitlement to protection. Marking a copyright works with the © symbol, year of creation, and name of the copyright owner can be useful to draw copyright to the attention of others and to assist with any claim to damages on infringement.

Copyright in literary, dramatic, musical and artistic works normally lasts for the life of the author of the work plus 70 years. Copyright generally lasts for 50 years for software, sound recordings, broadcasts and cable programmes.

During this period, the owner of the copyright in a work has the right to prevent others dealing in the work (including copying, but also other acts such as broadcasting, distributing copies, or adapting the work).

The owner of copyright (and in some cases collecting societies working on their behalf) can enforce copyright by obtaining damages or an account of profits made. They may ask for copies of the infringing work to be destroyed. As with trade marks, copyright infringement can also be a criminal offence.

In addition, even if permission has been sought from the copyright owner there may be moral rights to consider (such as an author's right to be named or to object to derogatory treatment of a work). There may also be other rights to consider such as performers' rights.

It is therefore important that steps are taken to audit rights in original works that are created, and

to increase awareness of copyright and the rights of others.

Patents

A patent protects the right to exploit an invention. To gain patent protection, the invention must be novel in that it must not have been disclosed anywhere in the world. Also, it must be inventive and so not obvious to those working in the relevant specialist field; and it must be capable of industrial application.

As with trade marks and designs, patents are territorial rights and so provide a monopoly to work and exploit the invention only in the relevant country. A patent protects against copyists and it is irrelevant whether someone else arrives at the invention independently. Patent rights generally last for 20 years from the date of the patent application, so long as renewal fees are paid. Patents which are not novel will not be valid and may not be granted in the first place. Therefore it is important to protect against early disclosure.

A patent owner can take action against anyone using the invention without consent, it can claim an injunction restraining infringement and can claim damages or the profits made by an infringer, amongst other remedies.

It is therefore critical to obtain any licence for technology utilised, and to avoid infringement of the patent rights of others by carefully considering the scope of earlier relevant patent rights. Although it can be lengthy and costly to obtain patent protection such protection is critical in to harness the value in inventions. Therefore protection of an invention should be considered early and steps should be taken to ensure the invention is not disclosed before protection is in place. In the UK non-disclosure agreements are likely to be required to prevent early disclosure but these should not be relied upon for all jurisdictions. Therefore early advice is recommended.

Martineau have a wealth of intellectual property and technology expertise making Martineau ideally placed to advise upon the maintenance, protection and litigation of the full range of intellectual property rights.

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