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intellectual property rights

This briefing provides an overview of intellectual property rights.



What are intellectual property rights

Intellectual property (IP) is an umbrella term that is used to describe a range of legal rights that attach to certain types of information and ideas and to their particular forms of expression. Your business needs to be aware of different IP rights to ensure that you protect what you create and avoid infringing the IP rights of other people and businesses.

Types of intellectual property rights

IP rights fall into two general categories:

Registered rights: These are granted on application to an official body such as the UK Intellectual Property Office. However, even if granted, their validity can be challenged. Registered rights are monopoly rights, which means that, once registered, the owner can stop others from using the right without permission. They include patents, trade marks and registered designs.

Unregistered rights: These arise automatically, give protection against copying or using the right, and include copyright, unregistered design rights, rights in unregistered trade marks and confidential information.

Patents

Patents provide inventors with a legally protectable monopoly over their inventions and protect new and inventive technical features of products and processes. They last for a limited period (20 years in most countries).

To qualify for patent protection, an invention must be new, involve an inventive step, be capable of industrial application and not specifically excluded from protection.

Exclusions include computer programs, methods of doing business and methods of medical treatment.

To obtain a patent, it is necessary to file an application for a patent, normally with the Patent Office of the country where the inventor works.

More information

If you have any queries about the content of this checklist, please contact Amanda Doyle on amanda@doylelaw.co.uk.

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Patents can provide a high level of protection and are essential for some industries such as pharmaceuticals, where years of research and development are necessary to commercialise a new product.

However, patents are expensive to obtain and maintain. They also involve public disclosure of technology, which could enable a competitor to develop a competing product without infringing the patent.

Trade marks and passing off

A trade mark is a sign or symbol used by a trader to distinguish its products or services from those of other traders.

A trade mark can be a brand name (such as NIKON for cameras), a house mark (APPLE for electronic goods), a company logo, a trading style or packaging.

A trade mark can also consist of the shapes of products or their packaging (for example the Coca Cola bottle), and colours associated with a trading style (such as the BP green petrol stations), as well as sounds, smells and slogans. However, it is more difficult to register these marks.

Trade mark owners can apply for a UK or a Community trade mark (CTM). A UK-registered trade mark is only enforceable in the UK, while a CTM is enforceable throughout the EU. Both registrations last for ten years, but are renewable for further ten-year periods.

To be registrable, a trade mark must be:

- capable of being represented graphically;
- distinctive;
- capable of distinguishing goods or services; and
- not excluded by statute.

An unregistered trade mark can be protected by an action for passing off. This requires proof of a reputation in the mark, a misrepresentation that could mislead the public and proof of damage, for example financial loss or damage to goodwill. However, an action for passing off can be both difficult to prove and expensive.

Copyright

Copyright protects original artistic, musical, dramatic and literary works, including computer programs, sound recordings, films, broadcasts and typographical arrangements of published works.

Copyright arises automatically on the creation of the work and lasts for 70 years after the death of the author for artistic, musical, dramatic and literary works. Sound recordings and broadcasts are protected for 50 years from the date of publication.

Copyright protects the expression of an idea, not the idea itself. It does not protect against independent development of the same idea(s), only against the actual copying of another's work.

Ownership of copyright in a work will allow the owner to prevent unauthorised use of the work, such as the making of copies or placing the work on the internet.

Design rights

Design rights protect the appearance of the whole or part of a product. They can be registered or unregistered:

Registered designs: A registered design provides a legal monopoly. As with trade marks, design owners can apply for a UK registered design or a Community Registered Design. A registered design must be:

- novel;
- of individual character; and
- not excluded by statute.

Protection lasts a maximum of 25 years, with registrations renewed every five years. Design registration is relatively low-cost and is particularly appropriate for industries such as fashion where design is instrumental in selling the product.

Unregistered designs: An unregistered design gives a right against copying. Protection is given at both the UK and EC level. The EC right is broader in scope but only lasts for three years. Under the UK right, protection lasts for ten years from first marketing.

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Protection of rights in confidential information

It can be possible to protect information which is sensitive to the business through rights in confidential information (which covers know-how and trade secrets). These are not strictly IP rights but can protect sensitive information, both technical and commercial and do not need to be registered.

To be enforceable, the information must satisfy three tests:

- it must be confidential in nature;
- it must have been imparted in circumstances in which an obligation of confidence arises; and
- its unauthorised use would be to the detriment of the person imparting it.

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