

BUSINESS WORKS

Celebrating Success

Intellectual Property Awareness for Small & Start-up Businesses – How to Exploit your IPRs?

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Introduction

- Create, Evaluate, Protect, Exploit and Enforce IPRs
- Key Components for Launching a Successful Business
- Setting Your Goals
- Who We Are
- Conclusion



**Create Evaluate
Protect Exploit and
Enforce IPRs**

Overview of IPRs

REGISTERED RIGHTS

- ♦ **Patents** = protect inventions, processes & products e.g. Dyson vacuum cleaner
- ♦ **Trade Marks** = badge of business protecting logos, names, smells, sounds e.g. Tesco, RT Coopers
- ♦ **Registered designs = functional designs** including the **appearance** of whole or parts of products e.g. graphic symbols or packaging + **features** of lines, contour, shape, materials or textures of the product itself or its ornamentation e.g. logos and packaging

www.patent.gov.uk

UNREGISTERED RIGHTS

- ♦ **Copyright** = protects literary works, including digital works, music, software, artistic works, logos, dance, photographs
- ♦ **Know-how** = protects trade secrets
- ♦ **Design rights** = protect original, non-commonplace designs of the shape and configuration of a marketable (or potentially marketable) product
- ♦ **Database rights** = protect rights in databases
- ♦ **Brands** – protects goodwill and reputation



Patents

- **Protection** –the right to stop others from making, using, or importing or selling your invention
- **Apply to Patent Office for a patent** – application contains:
 - Description of the invention;
 - Drawings; and
 - Claims to define the scope of protection i.e. what you are claiming you have invented
- **Before you can obtain a patent it has to be Patentable** – test for patentability:
 - Invention must be **Novel** (not made used or disclosed anywhere in the world **before filing date**)
 - Involves **an inventive step** (non-obvious); and
 - **Capable of industrial application** (ability to be made or used in any kind of industry)

NB If you disclose your invention before you file your patent application the invention will not be patentable except if under confidentiality – use confidentiality agreements before disclosing inventions!!!

- **Ownership** - creator of the invention is the owner except if invention created by an employee **in the course of employment**, then invention belongs to employer
- **Duration** - 20 years from date of filing



Trade Marks

- **What are trade marks?** – Any **sign** which can distinguish the goods and/or services of one trader from another e.g. names, slogans

- **What Protection?**
 - Exclusive right to use trade mark
 - Right to prevent unauthorised use of your trade mark by third parties

- **Obtain Registration** – by applying to the Patent office

- **Ownership** – the proprietor owns the trade mark

- **Duration** - 10 years renewable thereafter every 10 years



Registered Designs

- **Protection** - to qualify it must be a **new** design and **the overall impression to the public should be different from any existing design**
- **Ownership** – the creator of the design owns the rights, except where the work was commissioned or created during the course of employment, in which case the rights belong to the **employer** or party that **commissioned the work**.
- **Obtain Registration** – by applying to Patent Office
- **Benefits of Registration**
 - Stop others from making, using or selling a product incorporating the design or a product to which the design is applied
 - The exclusive right to make, offer, put on the market, import, export, use or stock any product to which the design has been applied

Duration - 5 years from the date of registration of design. Max 25 years

NB If you are the owner of the design have 12 months to market design before filing for registered design



Unregistered Design

- **Protection** - unregistered design rights protect the shape or configuration of a marketable (or potentially marketable) **product**, and are used to prevent unauthorised copying of an original design
- **Design Rights** – requires no registration. Arises automatically.
- **Ownership** – owner of design rights
- **Duration** - 15 years from creation of design



Copyright

- **Protection** – right to reproduce, rent, broadcast or to stop parties exploiting **original** works e.g. books, music, photographs, logos
 - **Test for Originality** - degree of skill, labour and judgement expended by the author or creator. Quality not quantity
 - **No system of registration in UK**- work protected as soon as created and recorded
 - **Recorded in Writing - for copyright to subsists** in literary, dramatic or musical works they have to be recorded in writing
- **Ownership**
 - **Author** - creator of the work is generally the author except if copyright work created by an employee **in the course of employment** copyright work belongs to **employer**
- **Duration** - life of author plus 70 years
- **Copyright Infringement**
 - right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public
 - Not infringement of earlier work if identical work created independently



Recap

- Intangible **commercially valuable** assets
- Want to get the best value for your IPRs
- ‘Registered’ and ‘Unregistered’ rights
- IP protects an ‘expression of an idea’ - not the actual idea
- Must be ‘recorded in tangible form’
- Various IPRs in one piece of work
- Territorial Protection



Evaluate IPR's

- Does your business have adequate protection?
- How can you protect your products?
- **Do you have an IP Strategy** to determine how you are going to protect your business and/or product?
- Evaluate market potential - if new business what are the barriers to entry?
- Do you know your competitors?



Any IPR's in your business?

- **Trade Mark** – e.g. Name of your Business
- **Goodwill** – e.g. Brand
- **Know-How** - e.g. Your method of doing certain things within your business
- **Patent, Copyright, Trade Mark for the name of the product-** e.g. New software
- **Copyright** - e.g. Forms, Handbooks, Promotional Materials, Website, Pamphlets, Books and Logo
- **Registered Design** – e.g. Shape of your Logo
- **All Valuable Assets!!!**



Risk Management Measures

- **Own your IPR's** e.g. rights in website
- **New Packaging** (shape, texture) – apply to register as a registered design
- **Searches** - conduct preliminary searches (databases, patent/trade mark registers, Internet, directories) before adopting new names etc to minimise infringement risks
- **Names and logos**
 - Register as trade marks
 - Register logos as registered designs
 - Assignment of copyright in logo from designer to your business
- **Patents** – file patent applications before disclosing your invention
- **Use Symbols** - ®, ™
- **Websites**
 - Terms and Conditions
 - Privacy policy
 - Copyright notices, © [Name of Creator], [Year of Creation]
 - Assignment of copyright from designer to your business as designer owns the copyright in website until it is transferred to you
- **Insurance** – insure your business
- **Insurance of IPRs** – insure your IPRs



How to Exploit your IPR's?

- IPR's can be treated as any other asset:
 - Sell (or Assignment)
 - Purchase
 - Mortgage
 - Licence

- It is important to handle your IPR's correctly because they can earn you money!



Licensing

- Retain your IPRs and authorise a third party to license your IPRs/Products:
 - Market
 - Sell
 - Distribute
- Royalties
 - How much royalties are you going to receive?
 - Negotiate levels of royalties
 - No fixed royalty rates
- Licence Agreement
 - Includes all terms and conditions of licence
 - Quality provisions in Licence – e.g how to reproduce a product
 - Must be signed

- Find distributors or agents in the UK and other countries



Assignment?

Assignment – sale or **outright transfer** of your IPRs in return for a fee

- Valuation of IPRs
- Use an assignment (agreement) to transfer your IPRs
- Register assignment with Patent Office



Enforce IPRs

- Want to avoid infringement – e.g. copying third party's trade marks, websites, inventions
- You can stop a third party infringing your IPRs
- IP insurance to cover legal costs



Key Components for Launching a Successful Business



Commercial Issues

- Business Plan
- Factor in IP protection costs into Business Plan
- Cash Flow
- Funding
- Knowing your market e.g. competitors, market trends and/or target market
- Marketing & PR – Route to market
- E-marketing - Be aware of the laws
- Marketing Strategy – Finding the right Partners, Forming Joint Ventures, Collaborations?
- Outsourcing Services - What are your strengths/weaknesses?
- Using the right lawyer for your business
- Management Team – Do you have the right team in place to grow your business?
- Business Coaching



Legal Issues

- Using well Drafted Agreements e.g.
 - Confidentiality Agreements
 - Contracts of Employment
 - Terms of Business
 - Shareholders Agreement
- Head of Agreements
- Protection of IPRs e.g. Register IPR's
- Protecting your business online
- Avoiding infringement of IPRs
- Data Protection

Setting Your Goals



Setting your Goal

- Always set your **Goals** for Yourself & Your business
- Create Your Outcome e.g.
 - **You are in charge of your mind**
 - **There is no failure, simply feedback**
 - **Take responsibility for your actions**
 - **Get rid of limiting beliefs**
- Put your Goals into the Future
- You will achieve your Goals!!!!

Who We Are



Who We Are

- **Managing Partner**
- **Full Service Law Firm in the City of London**
- **Expanding into other jurisdictions**
- **Work with Start-ups and Small to Medium Sized Enterprises (SME's)**
- **Specialist areas:**
 - Commercial & Corporate Law
 - Media and Entertainment Law
 - Intellectual Property
 - Data Protection
 - Internet Law
 - Pharmaceutical & Biotech Law
 - Sports Law
- **Business Consultancy**
 - Business Coaching
 - Business Marketing Strategies
 - Facilitating Funding and Finance
 - General Business Consultancy
 - IT Consultancy
 - Project Management
 - Marketing and Promotions
 - Training

Conclusion



Conclusion

- IPR's are a **very serious** consideration for Start-ups and SME's
- Ensure you know the consequences for non protection of IPRs!
- Protect your IPR's as you would any other business asset – don't let yourself be caught out!
- Seek Professional legal advice



Further Information:

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THANK YOU