

## GUIDANCE NOTE

### Intellectual Property Rights

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This guidance note highlights the different types of intellectual property (IP) rights of which you need to be aware to ensure that you:

- Protect what you create.
- Maximise your competitive position.
- Avoid infringing the IP rights of other people and businesses.

#### **1. What is intellectual property?**

Intellectual property (IP) is an umbrella term used to describe a range of legal rights that attach to certain types of information and ideas and to their particular forms of expression.

#### **2. Types of intellectual property rights**

IP rights fall into two general categories:

- **Registered rights.** These rights are granted on application to an official body, such as the UK Intellectual Property Office. Registered rights are monopoly rights. This 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; and
  - confidential information.

### **3. 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 be specifically excluded from protection (for example, methods of doing business).
- To obtain a patent, it is necessary to file an application for one, normally with the Patent Office of the country where the inventor works.
- Patents can provide a high level of protection and are essential for some industries (for example, 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.

### **4. 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. For example:
  - a brand name;
  - a company logo; 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 law.
- Goodwill in an unregistered trade mark can be protected in an action for passing off. However, an action for passing off can be both difficult to prove and expensive. It 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).

## **5. Copyright**

- Copyright protects original artistic, musical, dramatic and literary works, including computer programs, sound recordings, films, broadcasts and typographical arrangements of published works.
- It 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 (this is set to rise to 70 years within the next two years).
- Copyright 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
  - placement of the work on the internet.

## **6. Design rights**

Design rights protect the appearance of the whole or part of a product.

## **7. 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.
- Not excluded by law.

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 where design is instrumental in selling the product (for example, fashion).

## **8. Unregistered designs**

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

## **9. Confidential information**

It is possible to protect sensitive business information through rights in confidential information (which covers know-how and trade secrets). Although not strictly IP rights, they 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.
- Its unauthorised use would be to the detriment of the person imparting it.

*The comments in this guidance note are of a general nature only. Full advice should be sought on any specific problems or issues*

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