

A START-UP'S GUIDE TO INTELLECTUAL PROPERTY

A quick-reference guide to
safeguarding your Intellectual
Property

RHEIA

Intellectual Property

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WELCOME



Thank you for downloading the Start-up's Guide to IP.

From the inception of your business you will start to generate IP rights, and they are valuable business assets. This guide explains how you can protect those assets and how they can work for you.

It will also explain how to avoid treading on third-party toes, so you can launch your new venture with confidence.

SECTION 1

What is IP and why protect it?

Intellectual Property, or IP, is the collective term for trade marks, copyright, registered designs and patents. It can also include other rights such as trade dress and trade secrets.

All of these are valuable intangible assets that not only need protecting but can work for businesses and generate revenue as well as build consumer recognition and loyalty.

This guide will focus on the elements of most relevance to start-ups - trade marks, copyright and designs.

IP is often a brand's most valuable asset.

Apple is the world's most valuable brand (2023) and is valued at US\$ 880 billion. Without the brand customers simply wouldn't know a product is from Apple. It's the strong, fiercely-guarded brand that enables customers to buy Apple products again and again knowing they'll receive the same quality each time.

It is vital that Apple protects its brand from infringement, misuse and unauthorised use. It registers its IP all over the world to ensure it is not devalued by copycat products, similar trade marks and counterfeits.

Your brand is no different and protecting it early allows you to both safeguard and exploit your assets for the good of your business and its reputation.

SECTION 2

Trade Marks

What is a trade mark?

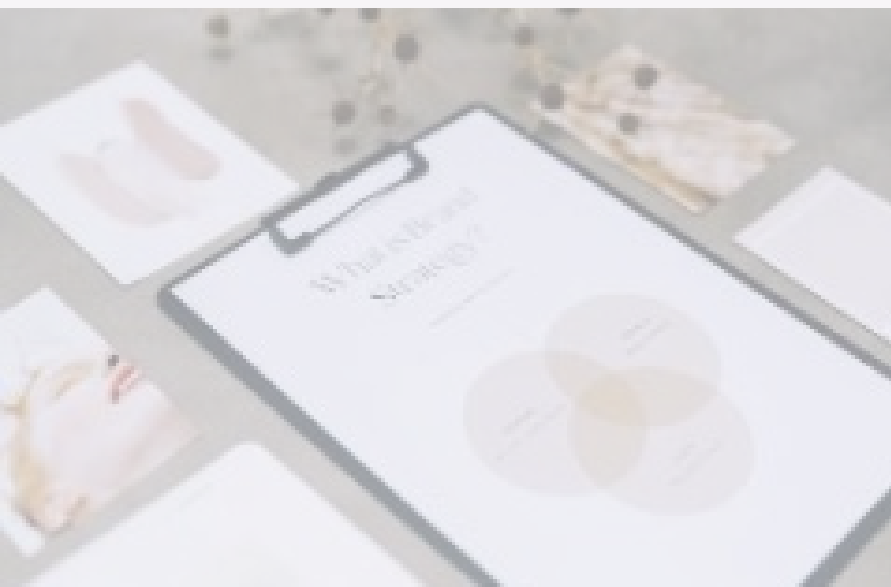
A trade mark is a sign, whether that's a word, logo, slogan or another type of sign, that allows customers to distinguish your products or services from those of other businesses.

It's an identifier that customers grow to recognise and can use to easily spot a company's products or services so they can buy them again if they enjoyed them (and can avoid them if they didn't).

Why are they relevant to me?

Your business, product or service may use one brand or several brands. Each of those brands contains a trade mark.

It's important that you are free to use the name or logo you have selected and don't tread on any toes. And it's equally important that you can protect your brands against infringement by others.



Searches

Whenever you're considering a new brand you should conduct searches to clear the name or logo (or other element) for use.

It's not enough to look on Google and decide there's no one else using that name online in that field.

It's also not enough to look at Companies House or domain names, or just 'know' that its unique and unlike anything else.

Why? Because a trade mark doesn't have to be identical to an earlier one to infringe - 'confusingly similar' is the test. And you can't find all possible confusingly similar iterations with a Google search.

The only way to assess the risk properly is to run 'full availability' searches. The data from trade marks registers, company registers and online use is provided by specialist search companies who run the searches using both technology and humans. We then analyse the data and provide a risk assessment report.

There are various ways to stagger these searches when creating brands: you don't need to run full searches for all variations you are considering. We prefer a staged approach which can involve:

- Identical-only knock-out searches for a list of possible names
- Further searches for a shortlist of names
- Full searches for one or two final options

There's no right or wrong way to do things, each situation is different and demands a tailored approach.

Registration

Once your searches are done and your brand is clear for use and registration, getting your trade mark application lodged quickly is crucial.

This secures a filing date, a 'flag in the sand', and is the date from which your registered rights begin.

But what exactly do you register?

- Plain block caps are best for word marks - they protect your mark in any form
- You'll need a separate application for your logo, if you have one
- Do you have a strapline or slogan? You can register that too
- Anything else? Think packaging design, colours or shapes of products

And are there any restrictions?

- You can only have one mark in each application (usually) so if budget is tight we'll consider the most cost-effective approach
- Trade marks can't be registered if they're descriptive or not distinctive
- You can't register a mark that is offensive or contrary to public policy

Having a strategy in place will mean you get the best protection for your trade marks at a cost manageable to your business.

As the business grows you can expand your portfolio but starting with your key brands gives you a solid base for your valuable IP assets.

Goods and services

You have to designate a list of goods and/or services in your trade mark application.

They are categorised into 45 classes, 34 for goods and 11 for services.

Getting this right is key to ensuring your registration does what you need it to.

You need to cover everything you will offer under that brand. But it's not always as obvious as it sounds.

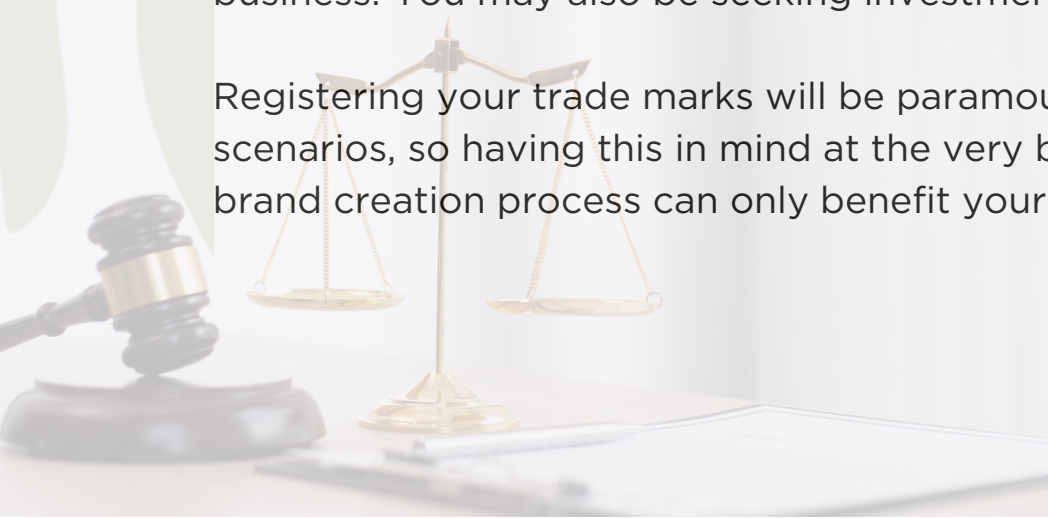
Too-broad coverage could increase the chance of disputes with third parties, but not listing all relevant products and services might mean your registration is useless and you'll have wasted your money.

Enforcement and exploitation

Trade marks are assets which you will want to protect, like any other of your business assets. Unauthorised use of trade marks, or use of confusingly similar ones, can devastate businesses if it drives sales elsewhere.

You might also want to realise the value in your trade marks, for example by licensing them to others or franchising or selling the business. You may also be seeking investment.

Registering your trade marks will be paramount in all of these scenarios, so having this in mind at the very beginning of the brand creation process can only benefit your business.



SECTION 3

Registered Designs

What is a 'design'?

In the UK it is possible to protect "the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation". This is a registered design.

Designs are great for covering other bits of a brand that trade marks don't reach, like packaging (without the names and logos), a pattern or print, or the shape of a product.

The design has to be 'new' and it has to have 'individual character', which means that it must be different to any designs that have been made public previously.

Registered designs have a shelf life of 25 years, but that is long enough in many cases as designs tend to change fairly regularly. And they're relatively cheap to register.

If your brand has design elements that sit outside the scope of trade mark protection, or if your products have a distinctive look, pattern, shape etc., consider looking at registering designs.

Enforcement and exploitation

Like trade marks, registered designs can be enforced against misuse and copying of your rights. They can also be licensed or sold to other parties, bringing options for additional revenue, collaborations, and so on.

SECTION 4

Copyright

What is copyright?

Copyright is automatically created in artistic, literary, musical or dramatic works as well as sound recordings, films or broadcasts, digital content, source code and so on.

It's also in your logo design, copy for marketing material, or anything else that could be considered a 'creative work'.

Copyright in each work is held by the creator although it can be transferred. This is particularly relevant if you are having branding designed or content created by someone else.

You should make sure that the terms of your contract with the provider transfer ownership of the copyright to you upon completion of the design or content creation project.

You must own the copyright so that you can use, enforce and exploit the design at will.

There is no point paying someone to create a design or content, only to find out later that you don't own the copyright and are not free to use the material however you choose.



Remember the copyright in your own work too. It's in the text on your website (if you wrote it), in guides you might publish, and in any creative work you produce. It doesn't even have to be that creative, just an original work that is yours.

If someone copies your work (it is rife online with content being pinched and re-used on competitor websites, for example) you can enforce your copyright and have the third party use stopped.

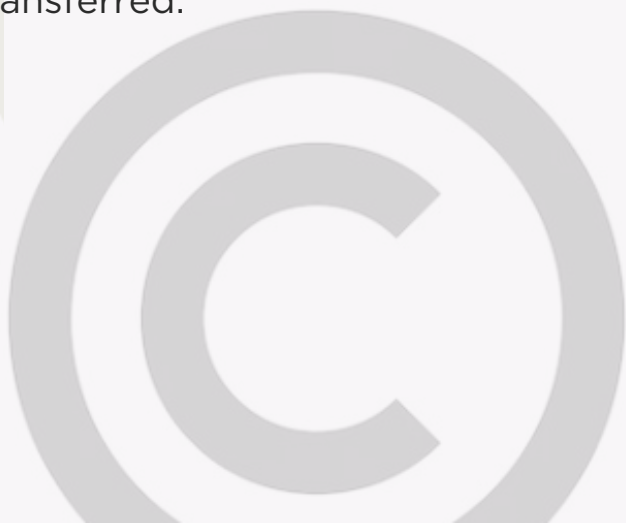
Note it has to be actually copied - two people might come up with the same or very similar content independently but copyright will not assist in this case.

To make sure you can take action against copying of your work keep records of your creation, either retaining electronic files that track the various iterations or documenting the process on paper.

Moral rights

Attached to the copyright are moral rights. They include the right to be identified as the creator of the work, the right not to be falsely attributed if you didn't create a work and the right to control the form of the work.

You have moral rights in all of your copyright creations and they will always be yours. They can be waived but they can't be transferred.



SECTION 5

Use and monitoring

Why and how should you monitor use of your IP?

Great! You've got your IP portfolio started so now you can sit back and relax.

Well, not exactly. There's little point having registrations if you let others infringe them or encroach on your rights.

Consider setting up a professional watch service.

This will notify you if conflicting applications are filed so you can challenge them.

Watch services can also monitor online use as well as company names and domain names so you can be confident your brand remains unique to you and take action if unauthorised use is made of your IP.

How you use it yourself is also important.

For example, if a trade mark is not used in the form in which it's registered over a five year period, the trade mark registration could be cancelled on grounds of 'non-use'.

Changes to the name or style or colour of your brand should be reflected in your trade mark coverage (but note you can't add to an existing registration, you'd have to start again).

Use and monitoring cont...

A trade mark can also become generic if it is used incorrectly (think 'escalator' or 'aspirin' which were both once registered trade marks).

Consider devising brand guidelines to help reinforce best practices and ensure a mark remains distinctive and can perform its function of differentiating your brand from others.

Brand guidelines can inform both internal and external parties of the correct, or preferred, way of displaying the brand on products, websites, marketing material, etc.

If you allow others to use your brand by means of a licence or collaboration, brand guidelines will be crucial to ensure uniform use of the branding.

This maintains consistency among consumers and strengthens the brand's image so that customers return again and again,

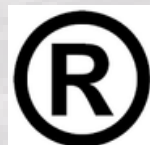
Marking

You can use the TM symbol at any time whether your trade mark is registered or not.

It simply means that you claim this word, logo, or other mark as your trade mark. Some companies prefer to use this even after a mark is registered as it is more widely recognised.

Once a mark is registered you are free to use the 'R in a circle' symbol. Use without a registration is forbidden by law (and punishable by imprisonment, although no one has ever been jailed!).

TM



NEED SOME HELP?



IF YOU NEED SOME HELP NAVIGATING YOUR IP ISSUES OR IF YOU HAVE QUESTIONS GET IN TOUCH!



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