

# A BRAND DESIGNER'S GUIDE TO INTELLECTUAL PROPERTY

A quick-reference guide to  
safeguarding your and your  
clients' Intellectual Property

**RHEIA**

*Intellectual Property*

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# WELCOME



Thank you for downloading the Brand Designer's Guide to IP.

There are IP rights in every design you create, and they are valuable business assets. This guide explains how you can help your clients protect those assets, offering added value to your service.

It will also explain what those rights mean to you and how to ensure you and your clients treat them correctly.

## 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 brand designers - 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 clients' brands are no different and protecting them early allows your clients to both protect and exploit their assets for the good of their business and its reputation.

## SECTION 2

# Trade Marks

### What is a trade mark?

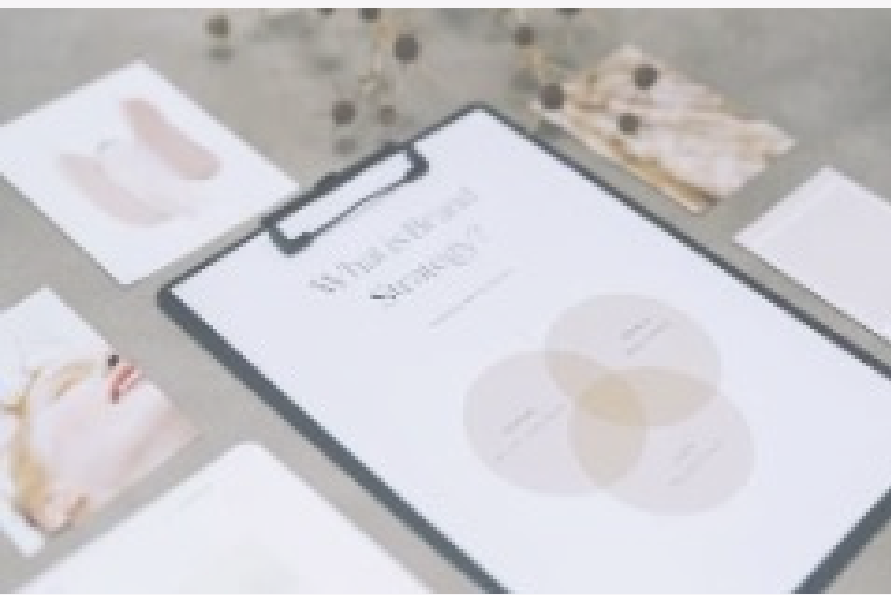
A trade mark is a sign, whether that's a word, logo, slogan or another type of sign, that allows customers to distinguish your products or services from those of other businesses.

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?

**Brand designers create and refresh brands. Each of those brands contains a trade mark.**

It's important that your clients are free to use the name and design you have created for them and don't tread on any toes. And it's equally important that they can protect them against infringement by others.



## Searches

Whenever you're creating a new brand your client 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.

## Registrability

A trade mark has to be distinctive to be registered, and cannot be descriptive. So if your clients are looking to protect their names and designs keep this in mind.

**Good trade marks are often the most descriptive but there's a fine line according to the law.**

There are various strategies for protecting marks that fall below the descriptive/distinctive thresholds and we can advise you or your client how best to approach this.

## Enforcement and exploitation

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

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

Registering their 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 clients.



The <sup>TM</sup> symbol can be used at any time. Once a mark is registered the ® symbol can be used.



## 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 you've created design elements that sit outside the scope of trade mark protection, consider advising your clients to look at registering designs.

### **Enforcement and exploitation**

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



## SECTION 5

# Copyright

### **What is copyright?**

Copyright is automatically created in all the work you create, whether that's logo design, copy for marketing material, or anything else that could be considered a 'creative work'.

And unless you provide otherwise, you will retain the copyright in your designs or creations forever.

It is crucial that you and your clients are aware of this. In most cases they will need you to assign ownership of the copyright to your client upon completion of the design project.

They may not know to ask, and this is why you should be clear in your T&Cs. If for some reason you will not be transferring the copyright you must let them know.

**Ultimately, your client must own the copyright so that they can use, enforce and exploit the design at will.**

There is no point your client paying you to create a design, only to find out later that you own the copyright and can, if you were so minded, prevent them from doing any of these things.



For most designers this is a no-brainer, but we've come across a few who believe it's their right to keep hold of the copyright. It is, by law, but why on earth would a client pay for something they can't use?

Decide whether you include a paragraph in your T&Cs to cover this or have a stand-alone document transferring the rights. Inclusion in your T&Cs is probably sufficient in most cases, but for a particularly extensive project, for example, you may want to provide a copyright assignment setting out the rights you are transferring to avoid any ambiguity.

### **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

# IP in brand guidelines

### **Why mention IP in brand guidelines?**

You probably create brand guidelines for your clients demonstrating how the branding should (or can) be used and displayed, providing fonts, colour references, templates and the like.

**It is great practice to include a section on IP within brand guidelines.**

This will remind your clients and their wider business of the additional considerations when using their brand.

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'.

Your clients may not be aware of requirements like this and could change the name or style or colour to suit but not realise they must update their trade mark registration to reflect this.

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

Brand guidelines help to reinforce best practices to ensure a mark remains distinctive and can perform its function.

# NEED SOME HELP?



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



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