

YOUR BRAND IS KEY TO YOUR BUSINESS GROWTH - ENSURE YOU PROTECT IT

Your brand is fundamental to your business's value. It's what sets you apart from your competitors. The success of businesses like Amazon, Apple and Samsung demonstrate the importance of a distinctive brand in a crowded marketplace. We regularly advise early-stage companies and one common issue they have is that they are unsure how to safeguard their newly-conceived brand. So, here's a few tips to help with that at the outset.

My new brand name / logo: am I safe to use it?

This is the first thing you should ask when you've created a new brand name or logo for your business. We frequently see businesses who find themselves in trouble after launching a product or service under a brand that is already being used by someone else. You don't want to invest time and money launching a new brand, only to find out someone else is already using it and that you're infringing their trade mark rights – that's a costly law suit waiting to happen! To minimise this risk, we recommend seeking advice on your newly-conceived brand before you take it to market. The best step you can take is to undertake a "clearance search"; a search for existing trademarks that are identical or similar to your newly proposed brand. The costs of a clearance search are small when compared with the costs of being sued for trade mark infringement, not to mention the perception that you have a more credible brand if your starting point is that you're not copying someone else.

You've been cleared: so why not get registered?

So, the clearance search shows that you're free to use your new brand. What should you do then?

Get it registered. Almost every brand (whether a word, an image, or a combination of both) is theoretically capable of being registered as a trade mark. Although the law around passing off does give some protection to an unregistered brand, it's more difficult and costly to pursue a competitor for passing off an unregistered trade mark than to pursue them for infringing your registered trade mark.

The benefits of having a registered trade mark are numerous and include:

- owning an intellectual property right can, provided you renew it every 10 years, last forever meaning your brand is always protected;
- giving you an option to grow and expand your business by licensing use of your trade mark to others (including abroad), which can be an additional fruitful income stream;
- allowing you to preserve the reputation of your brand by stopping copy-cats more easily; and
- increasing the value of your business to make your company a more attractive proposition for any potential buyers or investors.

If you fail to register your trademark you may find you are legally prevented from expanding your business.

Provided nobody opposes your trade mark application, you can get a trade mark within a few months. The costs of a straightforward application are relatively small, especially considering the value that it can add to your business. So, if your clearance search is clear, you should apply for a registered trade mark as soon as possible!

Enforcing your brand: stopping copycats and avoiding threats

Your brand is now a registered trade mark, and you're carving out a niche for your business in the marketplace. This is when copycats often try to pounce on the reputation you've spent time, money and sheer hard work building. Copycats can cause potentially serious damage to your brand. For example, if a copycat uses a name that's identical to your trade mark to sell inferior products, there is a real threat that this not only diverts sales away from you but also tarnishes your reputation which can be difficult to come back from.

If this happens, you'll want to take action as soon as possible. If you have the benefit of a registered trade mark, then in many cases a copycat will stop if you send them a "cease and desist" letter. BUT...you shouldn't do this yourself. If a cease-and-desist letter is not written properly, it can result in the copycat suing you for making an "unlawful threat". So, if you discover that someone is copying your trade mark we suggest you get in touch with us to discuss. We can ensure swift initial action is taken to protect your brand and resolve the situation as quickly and economically as possible.

If that first step doesn't work, we have a strong track record in securing injunctions and compensation for our clients when their trademarks have been infringed. Whatever the situation, we can advise you on the best action to take.

Get in touch

If you have any queries concerning anything to do with brands or trade marks, drop me a line, I'd be happy to help and have an initial telephone discussion with you.



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