



Virtuoso Legal

Intellectual Property Specialists

31 Harrogate Road
Leeds, LS7 3PD
England

Tel: +44 (0) 844 800 8871

Fax: (0) 844 800 8872

Web: www.virtuosolegal.com

“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

Principal: Elizabeth M Ward BSc (Hons)
Associate solicitor Kirsten Toft BSc (Hons)
Associate solicitor Deborah Niven LLB (Hons)
Practice Manager Elizabeth Lock BSc (Hons)

Regulated by the Solicitors Regulation Authority
SRA number: 466530



Branding is Everything!

by Liz Ward
16/06/09

Those of you who have watched BBC's show "The Apprentice" may remember Sir Alan Sugar telling everyone that branding is the key to business these days. He went on to congratulate the winner of the latest series for having a magnificent brand but a lousy product! Whilst his comment was clearly an exaggeration, Sir Alan does have a very valid point, in that the consumer usually buys the brand first and the product second.

Brands can be the most important asset of any business. A brand can be synonymous with particular values such as build quality, excellence in service or even low cost. A brand can be used to communicate a multitude of messages to customers. All of which makes misuse of your brand a disastrous concept. According to a survey by the Daily Mail, 65% of shoppers said similar or misleading packaging confuses them and 1 in 3 admitted buying the wrong product because of confusing packaging.

In most instances businesses look to register their brands and logos as trade marks early on in the lifecycle of a product. A trade mark is a powerful tool and helps to establish a legal right which can be defended. A trade mark may be a word mark, a logo, a picture and, in certain circumstances, can be a musical jingle, a colour or even a smell! A trade mark will give the owner a complete monopoly over the use of that mark in respect of whichever goods and services for which the mark has been registered. There are 42 different classifications of trade mark covering everything from the products themselves through to services such as selling on the internet and consultancy services.

In the absence of a registered trade mark, protection of reputation and goodwill can be much more expensive. This is because without a registered trade mark a brand owner can only take an action known as "Passing Off". Passing off is a common-law tort that has evolved over many years and one of the key problems in taking such a case to Court is the vast amount of evidence required by the Court to show that particular name or logo has acquired a reputation.

Recent legal developments now allow individuals and businesses to object to the incorporation of a company under a name that conflicts with or is similar to existing trade marks. In addition there is a lot of case law currently before the Courts in relation to the use of trade marks in domain names and on Google Ads. Specific references have been made to the European Courts so that the laws across Europe are the same. As ever, with technology, the law is struggling to keep up with commercial realities.

The start point for any business has to be to try and register your key brands as trade marks. Virtuoso Legal can help you through this process. Although we do not register trade marks ourselves we can help you in relation to your strategy for trade mark protection and also in relation to the protection of trade marks once granted.