

Intellectual Property for UK and EU Start-up Founders

What should you be thinking about?

Trade marks

What it protects and registration requirements

- Trade marks are a badge of origin that allow a business to distinguish (i) itself and (ii) its products and services from those of its competitors. A company's brand may sometimes be one of its more valuable assets. For example, the total value of Interbrand's Top 10 Best Global Brands is estimated at over \$400bn.
- Usually, trade marks are words (such as "Microsoft") or logos (such as the McDonald's "golden arches"). Shapes (such as the shape of a Coca Cola bottle), colours (easyJet's colour orange) and even sounds (MGM's lion's roar) can also be protected as registered trade marks, among other things.
- **Registration is not required (but recommended):** if you use a trade mark in relation to your business, you should apply to register it. Registration makes it easier to enforce your rights in your trade mark. A registered EU trade mark gives the owner an exclusive right in all 27 EU member states.

How long does a registration last?

- 10 years initially (in most countries), but if renewed (every 10 years), a registration can potentially last forever.

Issues to look out for

- If you are planning on using a trade mark in connection with your business, it is often advisable to have a preliminary "clearance search" carried out. This will reveal any third party earlier registrations/applications (and possibly uses) for trade marks that are identical/similar to your proposed trade mark and which may be an issue. It is better to find this out before launching your product, which will avoid expensive re-branding at a later date.
- Trade mark watch services will flag any identical or similar marks that a third party files in a selected territory and which may be an issue. We recommend you set up a watch service, at least for your more important trade marks, in order to monitor any potential conflicting trade marks filed by third parties.

Copyright

What it protects and registration requirements

- Copyright covers a wide variety of things. All of the following may be protected by copyright: the layout and content of a website, computer software, databases, books, song lyrics, sound and music recordings, film and television recordings, broadcasts, photos, paintings and technical drawings.
- The threshold for copyright subsistence is typically low, with works needing to be “original”.
- **Registration is not required/possible:** copyright arises automatically in the UK and EU.

How long does a registration last?

- 70 years from the end of the calendar year in which the author dies (although exceptions apply).
- For computer-generated works, the protection expires 50 years from the end of the calendar year in which the work was made.

Issues to look out for

- Copyright works created by an employee as part of their job are automatically owned by the employer. If you use a contractor to help create a copyright work (for example, your website), the contractor will own the copyright to that work, unless you enter into an agreement which provides that you own it.
- The question of whether AI-generated works can be protected in the UK is still up in the air, and there are lots of issues that need to be determined. Please ask one of our experts for advice.

Registered designs

What it protects and registration requirements

- A registered design protects the visual appearance of a product and/or its ornamentation. It can protect a broad range of things, including patterns on clothing.
- A design must be new (it must not be made public) and the overall impression given by the design must be different from that given by earlier designs.
- **Registration is not required:** although unregistered design rights can arise automatically, they last for a shorter term, and are more limited and difficult to enforce. Design registration provides additional protection for important and longer-term product designs.

How long does a registration last?

- Up to 25 years with renewals required every 5 years for registered rights (both within the UK and EU).

Issues to look out for

- There is a 12-month grace period for registered designs. This means that if you launch the design before filing an application, the design would still be considered new if an application is filed within 12 months of launch. It is best to register a design as soon as possible to avoid invalidating the design.
- New unregistered design rights can only arise in the territory in which the design is “first” disclosed. Due to uncertainties around first disclosure, we recommend seeking registration in multiple territories.

For more information please contact us at equip@cms-cmno.com and we will put you in touch with the relevant team