

Humphries Kirk's solicitors can help ensure your business is properly protected.

- Are the shape and patterns of your products protected by Registered Design Rights?
- Do you have any inventions or innovations that should be patented?
- Have you registered your important brands as Trade Marks?
- Are you comfortable you are not infringing someone else's brand?
- Do you ensure that your ideas are protected when pitching to prospective clients?
- Do your Terms and Conditions prevent third parties from using your Intellectual Property if you are not paid?



In this short guide we set out the basic principles relating to Intellectual Property Law

Please note the UK is still in negotiations with the European Union and the impact on your Intellectual Property of the UK leaving the EU remains to be seen.

General Background

A person can have rights of ownership (Intellectual Property) in certain things, in particular:

- Original artistic/literary works
- Database/software/typeface/fonts
- Inventions and designs
- Goodwill
- Trade marks and trade names
- Confidential information and know-how

However, a person cannot own an idea. Ideas are not capable of protection. It is the expression of the idea in an invention, work of art or design which allows protection either automatically (as in Copyright and design right) or upon registration (as in patents and registered designs).

Ownership is valueless unless you can protect it. Intellectual Property Law is all about how to establish and protect your ownership rights.



Types of Protection

1. New inventions are protected by **Patents**.
2. Original artistic, literary, musical and dramatic works are protected by **Copyright/Moral Right**.
3. Databases are protected by **Database Rights**.
4. The publication of a previously unpublished Copyright work can be protected by **Publication Right**.
5. Aspects of shape or configuration of original designs of three dimensional articles may be protected by an unregistered **Design Right/EU Design Right**.
6. A new design for an article can be protected by registration as a **Registered Design**.
7. A name or brand may be protected by a **Registered Trade Mark**.
8. A trader's confidential business information including trade secrets and confidential know-how, may, in specific cases, be protected automatically, but generally will only be protected by a contract, often by a **Contract of Employment** or a **Confidentiality Agreement**.

Patent

A Patent, when granted in a country, confers the exclusive use of an invention which is capable of industrial application.

The grant is for a period of 20 years but third parties can claim a licence of the Patent after 10 years if it is not being exploited.

Patents are available for all sorts of inventions, including new processes, chemical compositions, parts of machines and for new uses or improvements of existing technology. The process of applying and obtaining the registration of a Patent is not straightforward. The critical date will be the date of filing.

An invention can only be Patented if it is new, inventive and capable of industrial application. Upon applying for a Patent,

an inventor will get interim protection (**Patent Pending**).

If an inventor discloses his invention to somebody else before applying for registration (without taking appropriate legal steps), he loses the right to a Patent. A UK Patent application can be used to save the priority date for overseas patent applications (including applications filed at the European Patents Office) under a series of international conventions.

Patents can be registered in the following jurisdictions:

- in the UK
- in Europe through the EU Patent Convention
- internationally through the Patent Co-operation Treaty.

“ Patents can help a startup defend itself against attacks by incumbent rivals and can ensure a startup’s freedom to operate. Your business’ Intellectual Property is at risk without it.” *Source: www.forbes.com*

Copyright/Database Right

Copyright is the protection of original artistic, literary, dramatic and musical works.

Copyright prevents unauthorised copying, adaption, publication, performance and broadcast. ‘Copying’ does not require the whole work to be copied and includes production of a 3D object from 2D artistic work and vice versa. However, 3D articles produced for commercial purposes are not protected. Copyright is recognised throughout the EU and in other countries.

‘Literary’ and ‘Artistic’ have been widely interpreted. Literary works include compilations and computer programmes. Artistic works include photographs, sculptures, collages, architecture or artistic and graphic works (including paintings, drawings, maps and plans).

Copyright and Database Rights arise on the creation of the work. The duration depends on the type of work ranging between 25 years from publication and 70 years from the death of the creator.

The Copyright belongs to the creator or the employer in the case of employees’ work.

Copyright can be denoted by the © symbol and would be followed by the year of creation and the identity of the owner. While not a legal requirement it can be helpful to assert the owner’s rights, eg: © 2018 Humphries Kirk LLP “all rights reserved”.

Moral Rights and False Attribution

Moral right is the right of the artist or author to be:

- identified as the author of the work (the right of which must be asserted before it can be exercised);
- to object to derogatory treatment of the work.

An author may waive their Moral Rights but cannot assign them to others.

Publication Right

This only applies if Copyright has expired.

For example, if you find a previously unpublished sonnet you may get a **Publication Right**. The right is broadly equivalent to Copyright and lasts for 25 years.



Design Right

An original design of any aspect of the shape or configuration of an article (only 3D items are covered) will carry an automatic UK Design Right which confers rights similar to Copyright but for a much shorter term of 10 - 15 years.

Generally, the Design Right in designs created by an employee belong to the employer. The commissioner of the design will receive a licence to use the work - the same as Copyright.

A similar EU right lasts for 3 years.

Trade Names and Passing Off

A trader can take out an injunction and sue for damages in the event that somebody 'passes off' his goods or services.

They do this by using or imitating his established trade name or brand or by doing some other act which appropriates his goodwill or injures his reputation, causing actual damage (i.e. the financial cost of lost sales).

Registered Designs

A UK or EU Registered Design protects the visual appearance of a product or part of a product.

This might be a pattern or the lines / contours of the design or even the shape or texture of the article. A Registered Design confers total rights of ownership over the appearance. The maximum term of registration is 25 years (you must renew the registration every 5 years).

A Registered Design will allow the owner to protect both 2D and 3D features of the design. A new design can theoretically be registered within 1 year of first publication but a person who has already copied the design before registration is entitled to carry on copying it.

Trade Marks

A brand can be protected by a registered Trade Mark (which protects goods and services). A Trade Mark must be registered in relation to specific goods or specific types of service in a particular jurisdiction.

The attractions of registering are that it establishes your 'brand' (or prospective brand), it helps to protect your business identity, it protects you against others using the same or similar Trade Marks, it provides "initial proof" of your legally protected rights and it removes the need to rely on the 'common law' remedies.

To be enforceable the Trade Mark must be registered in the appropriate registry. The registries enforce rules to prevent the registration of confusing or inappropriate Trade Marks. There is no limit on the period of registration but it has to be renewed every 10 years.

If you have a registered Trade Mark it can be denoted by the ® symbol. This is not a legal requirement but it helps distinguish the owner's mark from the large number of unregistered Trade Marks, which are often denoted with the ™ symbol.

Trade marks can be registered in the following jurisdictions:

- **UK** - Anyone from anywhere in the world, can apply to register a UK trademark.
- **World Intellectual Property Organisation (WIPO) - Geneva.**
WIPO establishes a mechanism for registering an international trademark in countries that are signatories of WIPO (including the European Union as a whole, USA and UK).
- **European Trade Marks (EUTM) European Union Intellectual Property Office (EUIPO) - Alicante.**
A trader can make a single application for a EUTM which will cover all EU member countries. However (unlike WIPO) if a similar mark exists in any EU country, the whole EUTM application may be blocked.



Confidential Information and Business Secrets

It is possible to protect information which is sensitive to the business through rights in Confidential Information (which covers know-how and trade secrets).

These are not strictly IP rights but can protect sensitive information, both technical and commercial, and do not need to be registered. The only safe way that a trader can protect his Confidential Information and know-how is by a written contract.

This is why employment contracts should protect the trade secrets of the employer, and why businesses use confidentiality agreements.

- **Bournemouth**
01202 421111
hklaw.eu/bournemouth
- **Crewkerne**
01460 279100
hklaw.eu/crewkerne
- **Dorchester**
01305 251007
hklaw.eu/dorchester
- **Parkstone**
01202 715815
hklaw.eu/parkstone
- **Poole**
01202 725400
hklaw.eu/poole
- **Swanage**
01929 423301
hklaw.eu/swanage
- **Wareham**
01929 552141
hklaw.eu/wareham
- **London**
020 7269 9020
hklaw.eu/london
By appointment only

Humphries Kirk is a limited liability partnership registered in England & Wales No. OC 352286 and is authorised and regulated by the Solicitors Regulation Authority. Registered Office: Glebe House, North Street, Wareham, Dorset BH20 4AN.

The contents of this guide is for the purposes of general awareness only. It does not purport to constitute legal or professional advice. The law may have changed since this guide was published. Readers should not act on the basis of the information included and should take appropriate professional advice upon their own particular circumstances.