

All businesses own assets called intellectual property — perhaps just the name of the business, or copyright, designs, patents and trade marks. Intellectual property can be worth money. Some types have automatic legal protection. Others can be protected by registration. You must also be aware of and respect other businesses' intellectual property

# Protecting your intellectual property

## Business names and domain names

**The name of your business is generally protected by the common-law principle of passing off**

Passing off can occur if your business name has, through use, established a reputation for trading in a particular field and a competitor starts using the same or similar name for the same or similar goods and services. You can take court action on the basis that your rival is falsely passing off their goods or services as yours.

Sometimes duplication of names is caused by genuine ignorance and may be settled by negotiation, but you're advised to seek a qualified legal opinion at an early stage.

Domain names (your web address) have to be registered for use on the Internet. Nominet UK is the registry for .uk Internet names and also provides advice on registering and maintaining your Internet name.

If you believe that somebody else has registered your business name, brand name or registered trade mark as a domain name, and that this constitutes an infringement of a trade mark or an act of passing off, you should seek a qualified legal opinion.

Nominet UK can't offer legal advice but may be able, through its Dispute Resolution Service, to

help parties in dispute over a domain name; this might avoid your going to court.

### Next steps

- *It's best to get legal advice at an early stage if you think somebody else is using your business name or trade mark, or something close to it, either generally or as an Internet domain name*
- *Nominet UK can give advice on domain names and their registration and may be able to resolve a dispute. Contact 01865 332211; [www.nic.uk](http://www.nic.uk)*
- *Check availability of domain names at Nominet at [www.nic.uk](http://www.nic.uk) or NetNames at [www.netnames.co.uk](http://www.netnames.co.uk)*
- *See *Choosing The Right Name*, page 8*

## Protecting your trade marks

**Trade marks are symbols, signs or even words, sounds or shapes which distinguish the goods and services of one trader from those of others**

Trade marks help customers and other businesses recognise a business and identify it with the quality of product or service for which it is known.

They are often the single most valuable marketing tool a business will have, whatever its

size, and can be essential in developing a brand.

Trade marks don't need to be registered. Provided sufficient trading reputation and goodwill have been built up in a mark, a degree of protection is afforded by common law.

For a court action based on an unregistered mark to succeed, you have to show that the mark embodies a reputation and that its use by somebody else is liable to confuse or deceive the public and has done actual damage to your business.

But registration of the trade mark gives an immediate right to stop someone using the same or a similar mark on the same or similar goods and services, without your having to prove reputation or demonstrate confusion.

Owners of trade marks are advised to register the trade mark with the Patent Office where this is possible. A trade mark is registered for ten years and can be renewed every ten years. Once registered it can be renewed indefinitely.

Registered trade marks can be enforced by going to court. You can get damages and an injunction to stop further infringement.

### Next steps

- *The Patent Office produces a free trade mark information pack and will answer your questions on how to protect your ideas or find out about other people's rights.*

## Check for changes in the law

Regulations, figures and sums of money may have changed since publication. Update check: 0845 600 9 006  
[www.businesslink.gov.uk/figures](http://www.businesslink.gov.uk/figures)

Contact 0845 9 500 505;  
[www.patent.gov.uk](http://www.patent.gov.uk)

- Check that any product or service you're planning to offer doesn't infringe any existing rights. Penalties can be severe, whether the breach is deliberate or not. Trade marks, registered designs and patents can be checked online at the Patent Office's website. Contact [www.patent.gov.uk](http://www.patent.gov.uk)
- The Government-backed [intellectual-property.gov.uk](http://intellectual-property.gov.uk) website can also guide you through trade marks as well as copyright, designs and patents. Contact [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)
- A trade mark attorney can provide professional paid-for advice. Contact the Institute of Trade Mark Attorneys at 020 8686 2052; [www.itma.org.uk](http://www.itma.org.uk)
- Members of the Chartered Institute of Patent Agents can also advise you. Contact 020 7405 9450; [www.cipa.org.uk](http://www.cipa.org.uk)

## Patents and their benefits

**Patents protect your inventions and prohibit others from making, using or selling an invention without the inventor's permission**

Patents, which you register at the Patent Office, are concerned with the functional and technical



*We filed a trade mark for our logo and product name. It was straightforward — you can do it yourself by going to the Patent Office website*



Afzaal Ahmed  
Fixits  
toy manufacturer  
Newcastle upon Tyne

aspects of products and processes. The invention could be a new product, a new process, a new apparatus for performing a process or possibly a new use for a known product. Patented inventions can simply be improvements on an earlier invention.

You are not obliged to apply for a patent to protect your product or processes — you could rely on keeping the information confidential. But without a patent you would lack the right to stop others from making, selling or importing the product or process you have developed.

Patents, which can protect your invention for a maximum of 20 years, can be a valuable commercial asset:

- by preventing competitors trading in products or using methods covered by the patent, patent-owners can get premium prices for their products
- the patent-owner can earn royalties by licensing products that use the patent
- patents can be bought and sold like any other asset

Patents are enforced by legal action. You can get damages and an injunction to stop further infringement.

## Next steps

- The Patent Office produces a free patent information pack and will answer your questions on how to protect your ideas or find out about other people's rights.

## How I protected my business idea

When Peter Manning came up with the winning idea of an innovative flat-pack waterbutt, he made sure he could maximize its potential by protecting the product with a combination of patents, trade marks and design registration



Inventions are my passion. When the idea for a slimmed-down waterbutt which can be flatpacked hit me I was feverish on the drawing board. Within a couple of days I had something I could use to draw up a patent application.

You must get the application right first time, so I'd always advise going to an agent. The other thing I did was get a patent search done to make sure the idea wasn't already patented. I paid somebody at the Patent Office to do this as I didn't want to miss anything. I was really pleased when they came back and said I was OK to proceed.

Patenting can be an expensive process and you don't know if you have a patent until two or three years later, but it's worth doing. You want to make sure you don't spend time and money on a project when you're infringing someone else's patent, and you want to stop anybody copying you if you do get the patent.

Once I'd sorted out all the technical problems of my product I got its aesthetic details right. Then I got an application form from the Patent Office for design registration. Being design-registered means that if someone gets round my patent the actual style of my product is protected.

When I applied for it I realised it wasn't just a waterbutt I'd designed. It could also be a hose store, a mini-greenhouse, whatever. So I registered it as a garden storage system. I kept the application as broad as possible.

I took out Aquastor, Growstor and Patiostor trade marks too. Patents can be a nightmare because of the claims and abstracts you have to put in, but trade marks are pretty straightforward.

After securing significant investment finance, I set up Esstor Ltd to market the product. As I was interviewing sales people I was approached by a large French company who wanted a licence on it. When I went to see them, having all the

*Peter: high credibility for his innovative garden product*

protection in place proved that I was treating the project very seriously and proved my belief that it was going to be big.

I also had them sign confidentiality agreements. It took two months going back and forth with the company and a specialist intellectual property solicitor, but a licensing agreement was drawn up eventually.

Esstor is now operating as a bank account-only company to receive royalties. And I've now taken out a patent, registered the design and signed a contract with a large UK company for a new concept in garden buildings.



**Manning Design Associates Ltd  
Bristol  
Tel 01454 250363**



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**You also need business advice**

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*This guide covers regulations. You should also read a guide to general business advice — from market research to writing a business plan*

Contact 0845 9 500 505;  
[www.patent.gov.uk](http://www.patent.gov.uk)

- *Check that any product you're planning to offer doesn't infringe any existing rights. Penalties can be severe, whether the breach is deliberate or not. Trade marks, registered designs and patents can be checked online at the Patent Office's website. Contact [www.patent.gov.uk](http://www.patent.gov.uk)*
- *The Government-backed [intellectual-property.gov.uk](http://intellectual-property.gov.uk) website can also guide you through patents as well as copyright, designs and trade marks. Contact [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)*
- *Patent attorneys, members of the Chartered Institute of Patent Agents, provide professional paid-for advice on patents. The institute organises clinics giving free basic advice to innovators. Contact 020 7405 9450; [www.cipa.org.uk](http://www.cipa.org.uk)*

## Understanding copyright

**Copyright gives rights to the creators of original literary, dramatic, musical and artistic works and published editions of works, sound recordings, films, videos, broadcasts, cable programmes and computer programs**

The creator of the work can use copyright to control its

exploitation for money and any copying, adapting, publishing, performing and broadcasting.

There is no registration system for copyright in the United Kingdom. It comes into operation automatically when it is 'fixed' in some manner — it physically exists as a manuscript or software program, for example. The owner has the legal responsibility to prove they own the copyright.

Generally, the owner of copyright is its first creator or author (or their employer if the material is produced in the ordinary course of their employment).

But be careful when using a contractor. Photographers and website and graphic designers, for example, retain copyright ownership in the work unless their contract says otherwise.

There is no copyright in a name, title, slogan or phrase, although you may be able to register them as trade marks.

Copyright can't protect an idea although it may protect a piece of work that expresses an idea.

You can buy, sell or transfer copyright. Or you can license others to use the work — a song or software, for instance — while paying you royalties. You retain ownership over the rights themselves.

Copyright in literary, dramatic, musical or artistic work lasts until 70 years after the death of the author. Sound recordings,

broadcasts and cable programmes are protected for 50 years.

Remember, you must not copy anything without a copyright-holder's permission: court orders for compensation can be very high. This includes photocopying, scanning and downloading from the Internet.

In certain circumstances you don't need permission to copy or use copyright material — limited use is allowed for research, study, reviewing, reporting current events, teaching in schools and court proceedings.

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**Next steps**

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- *The Government-backed [intellectual-property.gov.uk](http://intellectual-property.gov.uk) website can also guide you through copyright as well as designs, patents and trade marks. Contact [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)*



*Business Gateway in Lowlands*  
(0845 609 6611;  
[www.bgateway.com](http://www.bgateway.com));  
*Highlands & Islands Enterprise*  
(01463 234171; [www.hie.co.uk](http://www.hie.co.uk))

- Patent attorneys, members of the Chartered Institute of Patent Agents, provide professional paid-for advice on copyright. Contact 020 7405 9450; [www.cipa.org.uk](http://www.cipa.org.uk)

## Registered design and design right

**You can protect the design of the outward shape or configuration of products, and patterns and ornamentation**

Design right, an automatic right like copyright, and design registration give the owner the right to stop other people making, using or selling the same or similar designs.

The appearance of a product's outward aspect may be crucial to its market success or failure, whatever its other attributes.

A registered design is a monopoly right for the appearance of the whole or part of a product, resulting particularly from the features of lines, contours, colours, shape, texture and materials of a product or its ornamentation.

These designs could be anything from patterns on textiles or plates to the shape of a car or part of a product, such as a kettle handle.

Design right is less extensive, protecting just shape and configuration but not ornamentation.

A registered design, which requires an application to the Patent Office, also provides stronger protection than design right.

A registered design lasts for five years initially and may be extended over four five-year periods up to a maximum of 25 years. Design right lasts for ten years from first marketing up to an overall limit of 15 years from first creating the design.

An application for design registration requires just a few pictures showing different views of the design and some information about how the design might be applied. The design's creation must involve 'freedom of design' — so if a jug has a distinctive shape it can be registered because it could have a variety of shapes and still be a jug.

Remember that legally licensing your design ideas to other users can be an important source of revenue.

### Next steps

- The Patent Office produces a free design information pack and will answer your questions on how to protect your ideas or find out about other people's rights. Contact 0845 9 500 505; [www.patent.gov.uk](http://www.patent.gov.uk)
- Check that any product or service you're planning to offer doesn't infringe any existing rights. Penalties can be severe, whether the breach is deliberate or not. Trade marks, registered designs and patents can be

checked online at the Patent Office's website. Contact [www.patent.gov.uk](http://www.patent.gov.uk)

- The Government-backed [intellectual-property.gov.uk](http://intellectual-property.gov.uk) website can also guide you through design right and registration as well as copyright, patents and trade marks. Contact [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)
- Patent attorneys, members of the Chartered Institute of Patent Agents, provide professional paid-for advice on designs. Contact 020 7405 9450; [www.cipa.org.uk](http://www.cipa.org.uk)

## Intellectual property protection overseas

**Protection of trade marks, patents, copyright and designs becomes more complicated if you want your business to tap into foreign markets or you want to protect your rights abroad. The UK Patent Office can advise you**

Trade marks are territorial: a United Kingdom trade mark offers protection only within the United Kingdom. There are three routes to secure protection overseas for your trade mark:

- a series of individual trade mark applications filed in each country in which you are seeking protection
- for protection in all European Union countries, applying for

Community Trade Mark registration at OHIM, the Office for Harmonisation in the Internal Market

- an application to the World Intellectual Property Organisation (WIPO) in Geneva to obtain trade mark

registration in a number of countries across the world

Patents are similarly territorial: a United Kingdom patent offers protection only within the United Kingdom.

At present there is no such

thing as a world patent, and to get protection abroad there are three choices:

- separate national applications can be made in each country in which you are seeking protection
- the European Patent Convention, under which protection can be obtained in one or more European countries by a single application to the European Patent Office
- the Patent Cooperation Treaty, which includes most of the major industrialised countries and simplifies filing procedures if protection is required in more than one of the member states

Copyright is not widely respected in some countries, and making claims through a court in those countries can be difficult.

Through OHIM, the Office for Harmonisation in the Internal Market, a Registered Community Design provides a single registered right giving design protection in all European Union countries.

## Software copyright and licences

**When using software you must comply with the conditions of the licence and the software publisher's copyright. Don't make illegal copies or use software on more computers than the licence allows**

You mustn't breach the licence of any computer software you use in your business. The licence sets out the software publisher's conditions for your use of the software.

You also must not commit software 'piracy' by doing things such as making illegal copies.

Software offences include:

- making or selling illegal copies of software
- installing or using illegal copies, even unknowingly
- allowing a consultant to install unlicensed software on your system
- using legally acquired software on more computers than the licence allows; the licence will state the number of computers on

which you may use the software; unless it states otherwise, you may only use one copy of the software on one computer. However, many licences allow you to retain up to two copies for back-up purposes

- allowing employees to install unlicensed software on your system
- allowing employees or business contacts to make unlicensed copies of software
- using software for commercial purposes when it is provided free or at a reduced price for academic or personal use

### Next steps

- You can get more information on software piracy and licensing from the Federation Against Software Theft at 01628 622121; [www.fast.org.uk](http://www.fast.org.uk) and from the Business Software Alliance at 020 7245 0304; [www.bsa.org](http://www.bsa.org)

### Next steps

- The Patent Office can answer your queries and supply free information packs on European and international trade marks and patents. Contact 0845 9 500 505; [www.patent.gov.uk](http://www.patent.gov.uk)