

An Introduction to Intellectual Property Law – Pt2

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IPRs – A Summary – Registered Rights

Formal application process – payment of fees

Once registered, the inventor has exclusive rights

Type of Registered Right	Scope	Duration
Patents	Technical Innovations	20 years
Registered Designs	Appearance	25 years
Trade Marks	Names, logos, etc.	Indefinite

IPRs – A Summary – Unregistered Rights

No formal application process or fees required

No exclusive rights

Existence, ownership and copying must be proved

Type of Unregistered Right	Scope	Duration
Copyright	Original artistic, dramatic, literary and musical work	Life + 70 years
Design Rights	Appearance	UK 10-15 years; EU 3 years
Common Law Trade Marks	Names, logos, etc.	Indefinite
Trade secrets	Confidential materials	Indefinite

MicroPets – Subsistence of IPRs



MicroPets – Subsistence of IPRs

IP Right	Present
Patent	✓ 2 x Applications – voice recognition, internal movement
Registered Design	✓ Shape of creature
Trade Marks	✓ Tomy, MicroPets – Name & logo
Copyright	✓ Insert – words & pictures; software; sounds
Design Rights	EU ✓ UK ✗
Passing off	Possibly if reputation established
Trade secrets	unknown

LittlePals – Infringement of IPRs



LittlePals – Infringement of IPRs

IP Right	Infringement?
Patent	notice only
Registered Design	✓
Trade Marks	Tomy, MicroPets – Name ✗ Logo ✓?
Copyright	✓ (subject to ownership)
Design Rights	✓
Passing off	✓?
Trade secrets	n/a

Trunki



Trunki – The Registered Designs

- Case concerned alleged infringement of Community Registered Design (CRD)
- CRD consisted of six CAD representations of the exterior of the case:
 - monochrome
 - shading
 - distinct tonal contrasts
- Appearance of a horned animal



Trunki – The competition (Kiddee Case)

- In late 2012, PMS began to import and sell "*Kiddee Case*"
- PMS admitted inspired by the *Trunki*
- Kiddee Cases sold in two basic versions: an 'animal version' and; an 'insect version'



- In February 2013, Magmatic sued PMS for design infringement.

Trunki – The Law

- A "design" is defined as:
"the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation"
- Must be:
 - "new "
 - "individual character" (i.e. different overall impression)
- Test for infringement = does the design objected to produce the same overall impression on the informed user?
- Note: compare allegedly infringing product with the registered design

Trunki – Infringement?



Trunki – Comparison



Trunki - Supreme Court decision (9 March 2016)

- Kiddee Case created different overall impression to Trunki CRD
 - Overall impression of the CRD = horned animal
 - Overall impression of Kiddee Case = insect with antennae or animal with ears
- Lack of surface decoration on CRD (reinforced overall impression of horned animal)
- CRD claimed not merely shape, but shape in two contrasting colours
- Conclusion - PMS did not infringe Trunki CRD

Trunki – Key Point

“The Court has sympathy for Magmatic and Mr Law, as the idea of the Trunki case was a clever one, but Design Right is intended to protect designs not ideas.”

- Capable of patent protection?

Trunki – patentable features?

- New / inventive features could include:
 - Suitcase wheels configured to enable scooting;
 - Depression in the top surface to form a saddle for riding
 - Reinforced side panels / wheels / axels to support case, contents and rider
 - Grips at front near the top for comfort and stability in riding
 - Etc.
- (In this case, likely to have been prior disclosure of new / inventive features by earlier prototype / model)

Trunki – The branding safety net

TRUNKI



Thank you



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