



Are your assets protected?

In any business intellectual property rights are valuable assets and need to be protected. These can extend to your inventions, designs, logos and brand names and consideration needs to be given to protecting these by use of trade marks, patents, designs, domain names and copyright and having written contracts in place when commissioning works for your business..

Business owners often mistakenly believe that registering the name of their company at the companies' office affords them protection against another business using their name. Not true! It can prevent another organisation registering a company with an identical or similar name but doesn't prevent an organisation trading with a name similar or identical to the name of your business.

Whilst there are the laws of "passing off" enabling the wronged party to take action against the offending business, such an action is not always successful as the law is complicated and the wronged party to win the action must establish a number of fundamental elements. Where possible registration of your name as a trade mark should be given serious consideration.

Protecting your name is one matter but equal consideration needs to be afforded to protection of inventions and designs. It seems reasonable to think that if you commission someone to design something for you and if you pay them for the job that the design is yours to do with as you wish. Not so! The law provides that copyright in the work remains with the author unless this was carried out in the course of employment or there is a clear agreement to the contrary. The recent case of R Griggs Group Ltd and Others v Ross Evans and Raben Footware clearly highlighted the misunderstandings in this area and reveals how even the largest corporations can fail to get things right.

The case concerned ownership of copyright in a logo. Grigg's business was the sale of "Dr Martens" boots and other footwear. They commissioned an advertising agency to design a new logo which in turn commissioned the drawing from a freelance designer. The commission was silent as to copyright in the design of the new logo. In such circumstances normally the designer under law would be the owner of the design rights to the logo and Griggs would have an implied licence to use the logo for the stated purposes of the commission. So the designer then agreed to sell his design rights to a third party who then asserted that he owned the copyright. To make matters worse the third party was in dispute with Griggs over other unrelated matters. Fortunately for Griggs the court decided that the case of a commissioned logo was an instance in which implying the grant of a licence only to the commissioner (Griggs) would be inadequate and Griggs would "surely need some right to prevent others from reproducing the logo". Whilst common sense seemed to prevail in this decision a properly drafted contract at the outset would have prevented a court action which was no doubt protracted and expensive.

The message is clear. Don't underestimate the value of your intellectual property and ensure that same is well protected.