

Creating winning brands: Top tips for creating distinctive trademarks

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Forming an idea and developing it into a flourishing company is an all-consuming and daunting process. Registering that initial idea, or brand, can often be bottom of the to-do list, especially when signing a new contract, or negotiating with a new client, is foremost in your mind.

How do you protect the very essence of your brand so that someone else doesn't copy your hard work? Is it really worth it?

What is a trademark? What does it protect?

A trademark is a sign which is often capable of being represented graphically and which distinguishes the goods or services from those of another. Trademarks are commonly words, symbols, shapes, colours and even smells. Registering your trademark with the Intellectual Property Office:

- Deters people from using your trademark
- Makes it easier to take action against those who use your trademark without your permission (counterfeiters)
- Allows you to more easily sell and license your brand

Once registered, you can use the symbol ® after your brand to notify others that it's protected.

A trademark holder can prevent not only direct copying of their brand, but also any trade names that could be confused with their brand or lead a customer to think the two are associated. An amusing example of this, though arguably not so amusing to the plaintiff, arose when the popular restaurant chain Wagamama brought a case against Rajamama restaurant for trademark infringement. Wagamama succeeded, and Rajamama ceased to exist.

Another recent example of trademark dispute, this time of a trademarked 3D shape, is Poundland deciding that their 'Twin Peak' chocolate bar was different and distinct from the Toblerone 'mountainous' triangular shape, and thus they should have the right to manufacture and sell it. The high-profile case led to a settlement whereby Poundland has agreed to change the shape and packaging of its 'Twin Peak' bar to make it less similar, and therefore less likely to confuse consumers.

How do I know if I'm infringing on another trademark?

It's important to research what you are calling your company and the branding, logos and symbols, you might like to use before emblazoning it across your website and other business promotional items. Here are some top tips when considering the branding you might like to use:

- Ensure your brand is distinct
 - Search Google for similarly named businesses both nationally and internationally.
- Use Google reverse image search with the logo you're thinking of using to see if any similar logos turn up in the results
 - If your company will be selling physical product, you can also use this technique to do product research.
- Take the time to do a more technical free search
 - Use <https://trademarks.ipo.gov.uk/ipo-tmtext> to search the UK/EU trademark registry.
 - Use <http://euipo.europa.eu/ec2/> to understand which classification of goods or services to search under
 - Use <http://www.wipo.int/classifications/vienna/en/> to understand which category of logo to search under when looking on the UK/EU trademark registry for similar logos.
 - Check out the British Library website for more of an idea about how to conduct free searches <https://www.bl.uk/business-and-ip-centre/articles/how-to-submit-a-uk-trade-mark-search>

Common mistakes to avoid

If you're still a bit unsure whether your brand development is going to be risk-free and secure, here are some top tips on common mistakes to avoid:

- Don't do a Rajamama!
 - Slight alterations to a well-known brands through name substitution or misspelling a name is not distinct enough.
 - Not only will it likely infringe another brand, but the name will be difficult, if not impossible, to trademark.
- Urban myth
 - Changing several features of a competitor brand logo or product to make your own, may not be enough to avoid infringement
 - There is no 'magic number' of changes to make to ensure you will not be infringing. If you have taken inspiration from someone else, make sure you credit it.
- Develop a completely unique brand
 - Don't fall into the trap that your brand name must be descriptive of the product or services you sell – some of the most successful and recognizable brands aren't (consider Apple, Virgin, or Polo (the cars or mints!))
 - Consider using your name or a completely made-up word to ensure your brand is distinctive – Kodak's founder said he created the word and liked it because it was short, couldn't be mispronounced and was not associated with anything else (plus, he felt the letter 'K' was 'strong and incisive').
- Register your trademark
 - Once you have checked your trademark is distinctive, register it with the Intellectual Property Office
 - It can cost as little as £200 and be completed in four months - this may ultimately be quicker and cheaper than having to persuade a court that your unregistered brand has been exploited
 - <https://www.gov.uk/how-to-register-a-trade-mark/apply>

Most importantly, if you have any doubt as to the uniqueness of your mark, check it out!

The Enterprise Clinic can provide free commercial legal advice on how to register a trademark. Please contact us on 0330 060 3633 or blac@bpp.com to book an appointment.