

## IP - protecting your assets

Intellectual Property (IP) is the lifeblood of many businesses, especially for small and medium-sized enterprises (SMEs). It includes trademarks, patents, copyright, and trade secrets, design rights, as well as goodwill in the business, which are crucial for innovation and maintaining a competitive edge. Unfortunately, many businesses fail to adequately protect their IP, leaving them vulnerable to costly disputes and potential losses.

This article highlights common mistakes businesses make in not protecting their IP and offers advice for SMEs on avoiding these pitfalls. It also provides real-life examples of UK businesses that have faced issues due to inadequate IP protection.

### Lack of awareness of intellectual property rights

Many SMEs are not fully aware of the different types of IP rights and their significance. This lack of knowledge can lead to the unintentional infringement of other businesses' IP or the failure to protect one's own IP. To avoid this, SMEs should invest in educating themselves and their employees about IP rights and their importance. Consulting with an IP solicitor or specialist or attending workshops and seminars on IP protection can be a valuable first step. To help, we've created a useful list below of the different types of IP rights you might want to consider protecting.

### Failing to secure IP rights early

It is essential for businesses to secure their IP rights as early as possible to prevent competitors from stealing their ideas or creating similar products. A well-known example in the UK is the case of Trunki, a children's ride-on suitcase company. Trunki's creator, Rob Law, failed to secure the design rights for his product, leading to a competitor creating a similar product called Kiddee Case. Trunki sued for infringement, but the UK Supreme Court ultimately ruled against Trunki, stating that the design rights were not infringed.

To avoid such issues, SMEs should register their trademarks, patents, and designs as soon as possible and be proactive in monitoring the market for potential infringements. Also, the recognised symbols of ® (trademarks); © (Copyright); ℗ (Sound recordings), should be used where appropriate.

## **Inadequate documentation**

Maintaining comprehensive records of IP assets is crucial for businesses. This includes documenting the creation process, development milestones, and proof of first use, as these records can serve as evidence in the event of an IP dispute. In the UK, the case of Dyson vs. Vax highlighted the importance of proper documentation. Dyson sued Vax for design infringement of their vacuum cleaner, but due to insufficient documentation, they failed to prove that Vax had copied their design.

SMEs should maintain detailed records and ensure that they are securely stored, preferably with the help of a professional IP management service.

## **Overlooking the importance of non-disclosure agreements (NDAs)**

Sharing confidential information without proper protection is a common mistake among SMEs. Before disclosing sensitive information, businesses should use NDAs to protect their IP. For instance, UK-based company Aquaterra Energy faced problems when their former employee joined a competitor and allegedly used Aquaterra's trade secrets. Aquaterra sued the former employee and the competitor for breach of confidence, but the outcome could have been different if an NDA had been in place.

SMEs should make it a standard practice to sign NDAs with employees, contractors, and partners to protect their IP.

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## Using contractors or third-party developers

Unless the person developing the product or materials on your behalf is an employee, the IP rights created will automatically vest with them and not your business. Therefore, it is essential to ensure an appropriate contract or development agreement is in place which sweeps all IP rights into your business and requires the person to take any actions in support of this.

## In summary

Safeguarding intellectual property is crucial for the success and longevity of your business. By increasing awareness of IP rights, securing IP rights early, maintaining comprehensive documentation, and using non-disclosure agreements, SMEs can significantly reduce the risk of IP disputes and safeguard their valuable assets. Learning from the mistakes of other businesses, such as Trunki, Dyson, and Aquaterra Energy, businesses can take proactive steps to ensure their IP is well-protected and avoid costly disputes in the future.

If you've got any queries about protecting your IP, **drop us a line** and we'll be happy to help.



## Intellectual Property (IP) Rights.

A business might own a variety of Intellectual Property (IP) rights, including:

**Patents:** These protect inventions, processes, or designs that are novel, non-obvious, and useful. They give the patent holder exclusive rights to the invention for a certain period of time (usually 20 years), after which the patent enters the public domain.

**Trademarks:** These protect brand names, logos, slogans, and other distinctive brand identifiers. Trademarks prevent others from using a similar mark that could confuse consumers.

**Copyrights:** These protect original works of authorship, including literature, music, dramatic works, architecture, and software. Copyright provides the owner with exclusive rights to reproduce, distribute, perform, display, or license their work.

**Trade Secrets:** These are confidential pieces of information that give a business a competitive edge. They can include formulas, practices, designs, patterns, or compilations of information. Trade secrets are protected as long as they remain secret and provide economic benefit to the holder.

**Geographical Indications:** These are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that origin, like Champagne or Parmigiano-Reggiano.

**Plant Variety Rights or Plant Patents:** These protect new varieties of plants by giving breeders exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a number of years.

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**Database Rights:** In some jurisdictions, makers of databases can be given rights akin to copyright over the contents of the databases.

**Domain Names:** While not traditionally considered an intellectual property right, domain names can be important assets for a business, especially in the digital age. Disputes over domain names can often intersect with trademark law.

**Registered Design Rights:** Registered Design Rights protect how a product looks. You need to apply to register your design. If approved, you're the only one who can use it. These rights can last up to 25 years in the UK and EU, but you need to renew them every 5 years.

**Unregistered Design Rights:** Unregistered Design Rights protect your design without needing to register it. They automatically protect your design for 10 years after it's first sold or 15 years after it's created, whichever comes first. In the UK, they protect the shape of objects, not decorations. In the EU, they protect the design against copying for three years from when it was first made public.

Remember that the specifics of these rights can vary by country, so it's important to consult with an IP solicitor or expert to understand the full extent of protections available in a given jurisdiction.

