

## CHAPTER 19 INTELLECTUAL PROPERTY LAW

*After studying this chapter students should be able to:*

### DEFINE THE TERM 'INTELLECTUAL PROPERTY' AND UNDERSTAND THE DIFFERENCE BETWEEN COPYRIGHT, PATENTS, TRADE MARKS, AND DESIGN RIGHTS

- Intellectual property is something that is a creation of the mind. It covers a range of different creations and includes inventions, literary and artistic works, symbols, designs, and images.
- Copyright protects rights in original musical, literary, and artistic works.
- Patents which protect inventions and technical processes.
- Trade marks which protect the use of a particular mark or sign used in business.
- Design rights protect the physical appearance and visual appearance of products.

### DEMONSTRATE AN UNDERSTANDING OF THE LAW RELATING TO COPYRIGHT

- Copyright is the area of intellectual property law that governs the creation and use of goods such as songs, books, films, and computer programs.
- The law of copyright is governed by the Copyright, Designs and Patents Act 1988.
- The types of works protected by copyright are original literary, dramatic, musical, or artistic works; sound recordings, films, or broadcasts; the typographical arrangement of published editions.
- To acquire copyright the work must be in permanent form by being recorded in some way.
- The creator of the work is usually the owner of the copyright. An employer is the owner of work created by an employee, in the course of his employment.
- The duration of copyright protection differs depending on the nature of the work. For the majority of original literary, dramatic, musical, and artistic works the protection is the life of the author plus 70 years.
- Primary infringement of copyright is concerned with the people who are directly involved with copying the material. Secondary infringement is concerned with people in a commercial context who deal with infringing copies or facilitating the copying of materials.
- The creator of a work has certain moral rights in his work, even if he sells or transfers the copyright.
- Where copyright has been infringed the owner can take civil action, usually applying to a court for an injunction to prevent further breaches and damages.

### SHOW AN INSIGHT INTO THE LAW RELATING TO PATENTS

- A patent is an exclusive right given to an owner of an invention to make use of and exploit their invention for a limited period of time.
- A patent must be registered with the UK IPO.
- A patent can only be granted for an invention if: the invention is new, it involves an inventive step, and it is capable of industrial application.
- A patent lasts for up to 20 years.
- The inventor is usually the person entitled to take out a patent but an employer may be entitled to ownership of an invention made by his employee in certain circumstances.

- Where an employer has patented an invention of his employee, the employee may be entitled to be compensated.

#### EXPLAIN WHAT A TRADE MARK IS AND HOW IT CAN BE PROTECTED

- A trade mark is, 'any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of another' (TMA 1994).
- A registered trade mark protects a brand owner against a competitor making improper use of its mark.
- Certain signs are excluded from being registered.
- Once registered, an owner of a trade mark will be entitled to put the ® symbol next to the brand.
- An infringement will occur if someone uses the trade mark or a similar mark in the course of business.
- Trade marks are registered initially for a period of ten years and can be renewed indefinitely.
- Civil and criminal action may be taken where a trade mark is infringed.

#### SHOW AN UNDERSTANDING OF DESIGN RIGHTS

- A design right is a type of intellectual property which protects the visual look of products.
- There are two types of design rights in the UK, unregistered and registered.
- Unregistered design rights are automatic and are treated in a similar way to copyright. The design must be original and not commonplace in the industry.
- Unregistered design rights automatically protect a design for 15 years from creation or ten years from first marketing, whichever is earlier.
- A design which is new and has individual character may be registered under the Registered Designs Act 1949.
- Once registered, a design right lasts for five years but it can be renewed every five years up to a maximum term of 25 years.
- Civil and criminal action may be taken where a design right is infringed.

#### OUTLINE THE TORT OF PASSING OFF

- Passing off is a tort which is committed where a business markets its goods or services in such a way so that they appear to be the goods or services of another business.
- The claimant must show he has goodwill in the goods or services, a misrepresentation has been made by the defendant, and the claimant has suffered or may suffer damage as a result.

#### DEMONSTRATE AN AWARENESS OF THE POSSIBILITIES OF PROTECTING INTELLECTUAL PROPERTY RIGHTS OUTSIDE THE UK

- Through a series of treaties, copyright is generally protected outside the UK.
- An application can be made for a European patent or an international patent.
- To protect a design or trade mark in the EU an application may be made for a Registered Community Design or a Community Trade Mark. An application may be made to the WIPO to protect a trade mark or a design internationally.