

Teaching Materials Students' Notes



 **RESPECT FOR
TRADEMARKS**



Introduction

Welcome to the activity pack “Respect for Trademarks”. As you work your way through the pack you will be using your own experiences and awareness of trademarks in order to develop a deeper appreciation of why they are protected by the law.



A **Trademark** is a distinctive sign used in trade. Trademarks tell us the source of products and services. They are usually words or images - or a mixture of both. Think of the name of your favourite chocolate bar, your favourite jeans or your favourite social media network – they’re all trademarks.

A trademark may seem a simple thing - what’s in a name, after all? - but you may be surprised to learn how important trademarks are in business and how much thought and effort goes into their creation.

Trademarks are a kind of Intellectual Property or “IP” – what is that?

“A kind of *property* in the result of human thought and creativity - something which is not a physical object: a new invention, the design of a product, a trademark or a creative work – a book, a film, a song, a piece of software.”

IP cannot be seen or touched, but it is valuable, it belongs to someone, and it can be damaged or taken without permission. But how do you take care of property like that? How do we balance in a fair way the rights of the owners of trademarks or other IP rights against the needs of consumers? How does this kind of property help people around the world to create jobs and protect and promote their culture?

The **World Intellectual Property Organization** is the home of IP, a United Nations agency based in Geneva, Switzerland. Our mission is to make sure that IP works for everyone, now and in the future.

We hope you find this resource enjoyable and useful. If you find it interesting, you can learn more about building respect for IP on our web site, at www.wipo.int/enforcement/en/

Meet the Experts

To guide you through the issues and ideas that are contained in this resource we have interviewed four experts on Intellectual Property, trademarks and brands and their comments will appear in the resource. They are:



Marcus – an international IP expert from Switzerland



Mike – a consultant who researches issues around IP and brands



Sarah – a university lecturer who specializes in business law



Peter – a university lecturer who specializes in brands and consumer behaviour

Unit 1

Tricks of the Trademark



Introduction

How can a country grow its economy so that people have jobs and consumers can have the products they need and want? For most countries, part of the answer is a legal system which helps businesses to trade.

Intellectual property (IP) is a key part of the story of development around the world. The IP system aims to strike the right balance between the interests of producers of goods and services and the wider public interest.

This unit of work focuses on trademarks, including their history and their purpose.

- Why are there laws protecting the use of trademarks?
- Whom do these laws benefit?
- What happens when the law is not respected?

As you explore the activities in this section you will find the answers to some of these questions and hopefully develop some of your own opinions regarding the importance of trademarks.

Read

Before you start this activity, read the following comments from our experts which introduce you to the concept of trademarks.



Marcus - A trademark is a sign that allows us to distinguish the goods and services that we acquire in everyday life. You walk into a supermarket. You walk into a mall. You walk into a clothing shop. You look out for a given make, a given brand, a given type of product and the trademark actually helps you to identify the type of product you want to purchase. That's a trademark.

The trademark can be constituted by various types of signs. The most commonly used trademark is a name. Think of clothing brands, car brands, instant coffee – whatever - fast food. Very often, the trademark is just a simple name that allows us to distinguish our Burger King burger from our McDonald's burger, for example. It doesn't stop there. A trademark can also be constituted by other, different types of signs, such as figurative elements, a logo type, a drawing, a device, colours are also possible trademarks. So all that together, the combination of various trademarks being used for a given product, make up the brand.



Peter - Most brands when they first launch will create a logo, which will have the name of the company or the name of the brand in them. Let's take Twitter, for example. When Twitter was first launched, it was simply the name Twitter. Those letters forming the word Twitter were the logo. After a while, they decided to add a picture of a little bird, so you had the word Twitter and then the little bird next to it. Eventually, because Twitter became so well known, they could drop the name Twitter as part of the logo and just have the little bird and that's what's most recognizable now.

So brand logos can change as the brand develops and becomes more well known within the market.

Trademarks

Trademarks tell us the source of products and services. They connect products to the companies they come from. They are usually words or designs.

Think of the name of your favourite chocolate bar, your favourite jeans or your favourite social media network – they're all trademarks.

Trademarks have a long history that reaches back to ancient times and beyond. It is only in modern times that the idea of protecting such signs as IP really came into existence.

Look at the timeline on the following page which looks at the development of trademarks.



Think

- Choose one example from the timeline to find out more about. Try to find some images and extra facts in order to put together a short presentation to your class. This could be in the form of a poster, a slide show or a role play.
- With a partner, spend 5 minutes each looking through the information on the timeline then take turns to test each other on what you remember about some its key information.

The History of Trademarks



5,000 BC Ancient Europe:

Earliest forms of markings to suggest authorship include paintings of bison on the walls of the Lascaux Caves in southern France.



600 BC Ancient Egypt:

Unique signs or images were incorporated by crafts people into their work to show where a particular product originated and who made it.



221 BC Ancient China:

A seal containing Chinese characters was used in East Asia to prove identity on documents, contracts, art, or similar items where authorship was considered important.



1200s Medieval Europe:

Merchants' marks were personal marks that developed at the beginning of the 13th century until the end of 16th. Widely used by traders and merchants throughout Europe, merchants' marks are arguably early trademarks. They displayed the names of traders and offered a guarantee that the goods were of a certain quality. Particularly used by producers of bells and paper (watermarks).



1266 England:

Parliament passed its first legislation concerning trademarks. *The Bakers Marking Law* required every baker to put a unique mark on the breads produced.



1363 England:

Silversmiths were required to mark their wares.



1400s Europe:

Printers' marks were added to books to identify the printer.



1500s Europe:

Emblems decorated palaces, noblemen's castles, inns and taverns, and were widely used in trade.



1618 England:

First legal case in England to mention the use of a trademark as a badge of origin (for cloth) – though the case itself concerned the sale of counterfeit jewels: *Southern v How* (1617) Popham's Reports 143.



1751 France:

Furniture makers in Paris were required to sign their work with a mark.



1791 United States:

Secretary of State Thomas Jefferson, on the petition of Samuel Breck, manufacturer of sail-cloth at Boston, Massachusetts, recommended to Congress that it enable the registration of trademarks. The proposal is not implemented.



1857 France:

The first comprehensive trademark system established by the Law on Marks of Manufacture and Trade (*Loi du 23 juin 1857 sur les marques de fabrique et de commerce*).



1870 USA:

First U.S. Federal Trademark Act passed. *Averill Paints* received the first trademark registered under the Act.



1874 Germany:

The Trademark Protection Law (Gesetz über Markenschutz) enacted (coming into force on 1 May 1875) - considered to be the first German trademark law



1875 Great Britain:

Parliament enacted the Trade Marks Registration Act, creating a national register of trademarks.



1876 Great Britain:

The Trademarks Registration Office opened in London. The first registered trademark in the UK was that of the beer company *Bass & Co*. Applied for on 1 January 1876, it is still valid.



1881 USA:

The 1870 Federal law on registration of trademarks, having been held in 1879 to be unconstitutional, was repealed and replaced with a new Act.



1883 France:

The Paris Convention for the Protection of Industrial Property was agreed, an international convention relating to trademarks and other industrial property rights under the national legislation of its 11 member countries. As at 2019 the Convention had 196 member countries.



1884 Japan:

First Japanese trademark law was established.



1893 USA:

Coca Cola trademark registered. Since then, the mark has been revised several times.

Why Trademarks?

Trademarks protect traders against unfair competition, by indicating the source of goods and services. This protection also benefits consumers, as it helps them to buy the quality of goods and services they want. When trademarked products are copied by counterfeiters, however, they may look the same, but they won't necessarily be of the same quality.

Why does that matter?

Task

Write a list of your favourite:



chocolate bar	
gym shoes	
jeans	
deodorant	
mobile device	
computer game	
social media network	
breakfast cereal	

It is likely that your answers are all trademarked products or services. The symbol™ (meaning Trademark) or ® (meaning Registered Trademark) can probably be found by the name somewhere on the product.

- Now go through your list again. What could go wrong if you bought a fake (counterfeit) version of this product or service without realising it? How would you feel?

Task

Look at the images in the left-hand column below. They are taken from well-known trademarks. Try to match up them up with the generic products which are listed below. Write the product in the right hand column to identify the brand.

Football club Jeans and fashion manufacturer
Sportswear manufacturer Car manufacturer Bank
Social media Communications and information technology company
Fast food burger restaurant Fizzy drinks manufacturer

Trademarked brand	Product
	
	
	
	
	
	
	
	
	

Reflections

- After you have matched them up discuss how you were able to identify the trademarks. Describe their distinctive features.
- For each of these trademarks, list where you have seen them used in advertising or elsewhere.
- What other famous brand names can you think of? From memory, try to draw their logos. When you are ready, share your ideas with others in your class and with a show of hands ask them to indicate how many they recognise. Afterwards, discuss what makes these trademarks so easy to spot and the extent to which the logos you have drawn are accurate copies of the original.
- Which of the products above are most easily counterfeited? Which ones are harder to counterfeit and why? Why do you think some branded products are more likely than others to be copied?
- Look at the statements below and discuss with your partner which ones you think are true and false. In the right hand column write down whether you think the statements are true, false or that you don't know. After you have completed the task, compare your responses with others.
 - Did you all agree? As a result of your discussions, did anyone change their minds and if so, what persuaded them?

Why are some branded Products copied?	True, false or don't know?
Branded products are usually expensive and the people who produce copies are trying to offer consumers cheaper alternatives.	
People who copy branded products are trying to make a profit by tricking people into buying an inferior quality product.	
Some branded products are very expensive and people who don't have very much money can only afford to buy cheaper, forged versions which are poorer quality but superficially look the same.	
Branded products usually have a loyal customer base so people who copy the product packaging are trying to appeal to that target group without having to create any new advertising for their products.	
It's very hard to create a new idea for a brand, so it's easier to copy a well-established, successful brand.	

Registering Trademarks

- Read the comments below which explain how trademarks are registered and whom they protect.
- Underline what you think are the key points made by in the interviews about trademarks and what they do to protect consumers. You will use these comments later on in the resource.



Marcus - *In order to be protected, the trademark has to be registered so you go to the trademark office, and you register your trademark, and what you then get is a certificate that says, "This is my trademark." This could be the name, it could be the colour, it could be certain shapes, or a drawing.*



Sarah - *You also need to think about where you want your trademark to be protected. You could do it just in your own country. You might want to do a regional protection, or international protection is now possible, as well. You have to decide what classes of products you want your trademark to apply to. There are currently 45 different classes of products including food, clothing, cars, drinks and you have to pay a little bit extra for each classification you use.*

Whom do trademarks protect?



Marcus - The main justification for protecting trademarks is to protect consumers from confusion and deception. You want to be sure that you buy and get the product you want and not a competitor's product. This is why the registered trademark confers the exclusive right on the trademark itself, and that also is a very, very important point. By registering a name for example, the registered holder of the trademark doesn't acquire the right across the board and globally on that name. It is only protected with relation to the goods and services concerned for which it is being used.

Take McDonald's. It's a very common family name, so obviously McDonald's the fast food people, have the right to exclusively use McDonald's on their fast food services, on their hamburgers and french fries, et cetera, which means someone else doesn't have the right to do that. However, they would not be able to prevent Mr. McDonald from using their family name for their business (say, a bookshop) providing that they do not create a confusion with the fast food business. As long as the customers who go to Mr. McDonald's bookshop don't believe they enter a McDonald's fast food restaurant, that should be okay.



Sarah - Obviously breach of trademark has an impact on the brands. It can cause them loss of exclusivity. It can cause them loss of revenue, huge amounts of loss of revenue. It can cause them loss of reputation if they've got inferior quality products masquerading as their product.

If we can prevent fake products from flooding the market, that is a protection for consumers because it guarantees that they are buying the quality that they expect. They're also getting after-sales service - so repairs, replacements, and so on - which they don't get if they're buying a fake brand. But more importantly than that, it really impacts on safety because we are now seeing on the market counterfeit perfumes, cosmetics, even drugs.





Marcus - In the area of health, fake goods are much more dangerous and can have much more drastic and serious consequences. For example, if you order from the internet certain pharmaceutical prescriptions, or drugs, and what is delivered is not genuine, you take these medicines and they do not have at all the desired effect, or even worse have a very negative effect - you may actually die because they are not genuine. So here you have confusion and deception that might have lethal consequences. This is why trademarks and brands need to be protected, and that protection needs to be enforced.



Reflect and create

- Choose three statements from the comments that you underlined which you think are the strongest reasons for respecting trademark.
- Using these reasons as a starting point, create an information leaflet aimed at young people of your age to raise awareness about the importance of respecting trademark law. Its content should include:
 - A dynamic title for your leaflet;
 - An explanation of what a trademark is;
 - Punchy information about why it's important to respect trademarks;
 - The dangers of purchasing counterfeit goods and services;
 - How businesses have suffered from counterfeiting;
 - Guidance as to where people can find out more about the dangers of counterfeits.

Unit 1

Tricks of the Trademark



Introduction

The trademark system is a key tool of economic development, helping to make sure that traders can keep the benefit of their hard work to satisfy customers and enabling them to keep investing in their businesses. Because trademarks are so important, a great deal of time and creativity goes into their creation.

In this unit, you will find new ways into thinking about the relationship between trademarks and branding and the reasons why trademarks are protected by the law.

- What's the difference between a trademark and a brand?
- How do trademarks and brands appeal to different audiences?
- What is involved in marketing a new brand?

Read

Before you start this activity, read the following which will help to introduce you to concepts related to branding.



Marcus - Brands are a promise on the product and brands are made up by trademarks. But a brand can also contain other ingredients, such as the overall look and feel of a product. From an intellectual property point of view you have a variety of legal rights that apply to various aspects of a product.

On one hand you have the trademark, which is the legally protected sign on the official register, which could be a name, it could be a logo, it could be a colour, could be a combination of many of those things. On the other hand, you have the brand, which is the sum of all those signs. In a very concrete example, Daimler AG, the German car manufacturer, has 11 brands, one of which is Mercedes, the car. So Daimler AG has 11 brands, but they have several thousands of registered trademarks. So that's the difference between a brand and a trademark.



Mike - A brand isn't just a look or a shape or a design. It's more than that. There's design went into it. There's thought went into it. There's time went into creating that property. And a brand does everything it can to make itself desirable, to make consumers want to pay a premium, by saying: this product is better than all those other products. The brand differentiates the product from others. It's how it makes itself stand out in the market as a different thing.



Peter - One of the things that's happening at the moment is we live in a very crowded marketplace, so actually we're suffering from this idea of 'tyranny of choice'. You know, if we want a mobile phone or if we want a television, there's so much choice so what is going to distinguish one from the other? So brand becomes quite important at that particular point. What does the brand stand for?

A related point is that the way brands communicate with us has changed. It used to be that brands stood on a pedestal and said, "Buy me because I'm the best," but actually what brands do now is ask the question, "How can we help make your lives better?"



Peter - The idea of brand is becoming far more important. We want to have a relationship with a brand that we like, that we can trust. And often it's about a brand that's doing good in the world, so some brands are now trying to have this purpose beyond simply producing a product or

a service. They're trying to engage in corporate social responsibility by giving money back to local communities, national communities, even global communities. It could be that this corporate social responsibility is becoming far more important in terms of developing a brand image which is positive in the world.



Think

- Now that you have read this introduction to brands and trademarks, can you sum up what you think is the difference between the two?

The Psychology of Trademarks

Introduction

The shapes and colours used in well-known trademarked logos can create different associations in the minds of consumers. Designers are aware of the psychological impact of certain shapes and colours, and use this knowledge to make their designs appeal to particular audiences.



Read

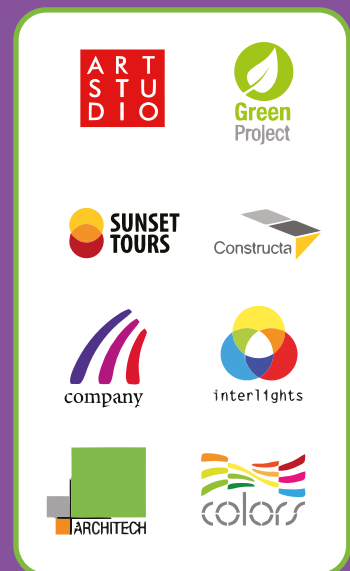
Identify three key points about the psychology of brands from the text below.



Peter - *When developing a brand, one of the important things to consider is psychology. Psychology affects the way we behave, the way we think, and obviously what we want if we're going to be a successful brand is for that engagement with the customer to be genuine. Thinking about psychology, for example with colour, colour has many different meanings. In this country [UK], the colour black is often associated with death but if you look into the far east, the colour of death is white.*

If you think about other colours as well, something like blue is often associated with authority or calmness. Green is associated with growth and vitality, and white is associated with cleanliness and purity. So put those colours together and you find they're often used in pharmaceutical packaging. The when you look at pharmaceutical packaging, they often are green, white or blue because of those characteristics I've talked about. Colour is one important aspect of psychology which is used in developing brand.

Another one is shape, for example. If you have a rounded shape, it's often quite seen as a soft shape. So certain perhaps feminine type products might have a rounder shape in terms of the logo or the typeface used than a masculine product. Psychology is really important in trying to understand how a brand is going to engage with consumers.



Task

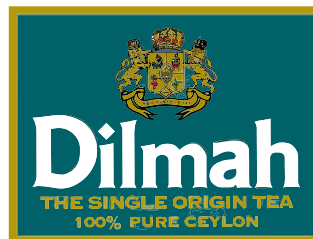
Look at the chart below and based on the information in this text and your general knowledge, try to finish the sentences using the phrases below.

- ... are connected with masculinity, strength and aggression.*
- ... are connected with community, tranquility and calm.*
- ... are often connected to power, science, religion and law.*
- ... tend to create a positive emotional message.*
- ... can suggest community, friendship, love, relationships and unity.*
- ...can imply marriage or partnership, suggesting stability and durability.*
- ... can feel more youthful*
- ... appeal more to women.*
- ...can imply stability in more practical terms and can also imply balance.*
- ... can imply strength, professionalism and efficiency.*
- ... can feel aggressive or dynamic.*
- ... has a more masculine feel.*

Shape	Associations
Circles, ovals and ellipses...	
Using a circle in a logo...	
Rings...	
Straight edged logo shapes such as squares and triangles...	
Straight lines and precise logo shapes...	
Vertical lines...	
Horizontal lines...	
Triangles...	
Jagged, angular typefaces...	
Soft, rounded letters...	
Curved typefaces and cursive scripts...	
Strong, bold lettering...	

Reflections

Look closely at the shapes, colours and typeface used in each of these five logos. From what you've learned about the associations of certain logo designs, discuss the questions below giving reasons for your answers.

The Coca-Cola logo is written in a red, cursive script typeface. The letters are connected and have a classic, flowing appearance.The Honda logo features a stylized red wing emblem above the word "HONDA" in a bold, red, sans-serif typeface.The Azam logo consists of a blue, curved swoosh above the word "azam" in a red, lowercase, sans-serif typeface.The Dilmah logo is a square with a teal background and a gold border. It features a gold crest at the top, the word "Dilmah" in white, and the text "THE SINGLE ORIGIN TEA" and "100% PURE CEYLON" in gold below.The Geox logo features the word "GEOX" in white, bold, sans-serif typeface inside a black rectangle, with the word "BREATHES" in a smaller, white, sans-serif typeface below it.

- Who do you think is the intended target of each of these trademarked logos?
- How does colour and shape work in these logos to appeal to their target audiences?
- Have you seen any of these logos any where ? Where have you seen them? How does where you have seen them link to the target audiences that you have identified?

Marketing a Brand

Introduction

A considerable amount of creative work goes into producing a new brand. Competition in market places is tough and any new product needs to create and maintain its place in the marketplace. A new brand of, say, cars or guitars or foodstuff is fighting to get a place in a very crowded market. It needs to stand out straight away and say “Look, I’m here, buy me”. It needs to make the product feel special and identify the ways in which it is different from similar products.

Now you will start thinking about the process of creating a new brand by designing your own trademarked product and planning a marketing campaign to get it noticed.

Before you start this task, read the following introductions to brand creation which we hope will help you when it comes to creating your own brand!



Defining the brand



Peter - A lot of young people are starting up their own businesses and what they normally get first is an idea for a product or service. Then that becomes an idea for a company, and then after that it becomes an idea for the brand. So, the process is really finding a product or service, then the company, and then the brand.

When it actually comes to trying to define what the brand is going to be, at that particular point, you’ve got to try to think about what it is you want to stand for, because a brand is really what a company, a product stands for, what its place is in the world. At this stage you also need to think about the visual identity - using the right colours, the right typefaces and so on.

Once you know what the brand stands for you need to think about a brand experience that the customers are going to engage in. So for example, at the moment, the world of banking is going through a whole transformation, we’re losing the physical face to face contact that we get on the high street, and we’re replacing that with online banking. So what is that online banking experience going to be like? What’s the website going to be like? What’s the interface like? What’s the tone of voice going to be like? Because quite often the tone of voice of a brand actually talks about the brand personality, and that’s really important in delivering a good customer experience that consumers can engage with.

Targeting your brand



Peter - When thinking about designing a brand or typeface or logo, it's quite often important to think about the target consumers. Let's take an example of Coca-Cola. Coca-Cola started as a single brand entity and then it developed into sub-brands such as Diet Cola. Now Diet Cola was very successful with a certain audience but that audience was mainly female because men don't actually like the word 'diet.' They want something which seems a bit more masculine so Coca-Cola developed this other product called Coke Zero. When we think about the word 'zero', the letter Z is actually quite a masculine letter so that appealed more to men, and when you look at the packaging of Coke Zero, it's black and that's a colour which men also like.

Similarly if you look at Pepsi, Pepsi had the Diet Pepsi but again that didn't appeal to men, so what they developed was Pepsi Max and you got the letter X there which is a very masculine letter. So thinking about the target audience is really important.

Task

Your challenge now is to create a new brand and a marketing campaign. Read these three briefs about different products aimed at different target audiences and choose one to work on.

Creative Briefs

These products need a name, a logo and a marketing campaign. Each product has a unique selling point (USP) that you should highlight in your campaign and that should be a key element of your messaging. When thinking about your brand, try to decide what you want people to say about your product and how your logo and advertising will encourage the desired responses.



Brand #1

Product: Chocolate bar

USP: This brand is low cost and high value. It offers you a huge energy boost and is good for you.

Target audience: Children ages 8-13.



Brand #2

Product: New social media platform

USP: This brand gives you the opportunity to make lots of friends, is innovative and exciting.

Target audience: Teenagers 14-18.



Brand #3

Product: Men's shirts

USP: This brand will make you look cool and offers you a luxurious lifestyle.

Target audience: Professional men ages 25-40.

- You are now going to create your own logo and marketing campaign for one of the creative briefs above. Think carefully about the message you want to communicate, the audience you want to target and decide how best to use shape and colour in order to reach this audience most effectively.

You will need to think about the following when designing your logo:

- **Shapes** – circles, ovals, triangles, squares, horizontal and vertical lines
- **Colours** – range of colours including black and white
- **What is the name of the product?** – Here are some names but you might want to think of your own.

Panther, Rhino, Gazelle, Falcon, Coyote, Abjad, Glyph, Kanji, Jupiter, Neptune, Mercury, Ceres, Saturn, Chunk, Divine, Supreme, Heaven, Zing, Dash, Moxie, Zak Verner, Max Mapper, Claude Gide.

Now you need to think about your campaign. Consider the following questions:

- Where will you advertise your product so it reaches your target audience?
- In what formats will your adverts appear? For example, posters, promoted posts on social media? What else?
- What will you have as a strap line or slogan? For example, Nike's is Just Do It. Cosmetics company L'Oréal's is Because you're worth it. What other ones are you familiar with?
- What message will you give consumers about your product?
- What images will you include in the adverts to communicate an impression of your brand?
- What ideas do you have to get your product noticed? Be as original as you can here.
- How will you get consumers to remember your brand?

Reflections

- Share your brand logos with your class. Try to guess who each design is aimed at.
- Discuss how you would feel if someone had copied your logo and produced and sold similar, fake products. What problems could this cause and what would you do to respond?
- What could be the consequences for your business if the fake products were of poor quality or dangerous to health?

Case Study

- Read the following comments about specific brand marketing:

Approaches to Brand Architecture



Peter - One of the things to think about if you're developing a new brand is the type of brand architecture you've got. Let's think of an example. The Virgin group is known not only nationally but also internationally, and just about every sub-brand within the Virgin group has got the name Virgin and it's got the colour red as part of its logo. That's really what we call a 'branded house'. So what that means is, that everything that lives in that house, all the little sub-brands that live in that house, have got the same name. Now, I equate a branded house to a family, a family house. Everyone living in that house has the same surname.

There's an alternative approach to brand architecture, which is called the 'house of brands'. The equivalence there is a group of students living in the same house. They all belong together, but they've all got different names. A good example of that would be Unilever. Now, Unilever, a big international brand, have got a lot of sub-brands but none of them say the name Unilever as part of their main name. They might have things like Ben and Jerry's, or Knorr, or Axe, or Cif or Persil, but none of them actually really highlight the name Unilever. That is a part of a house of brands as opposed to Virgin, which is a branded house.

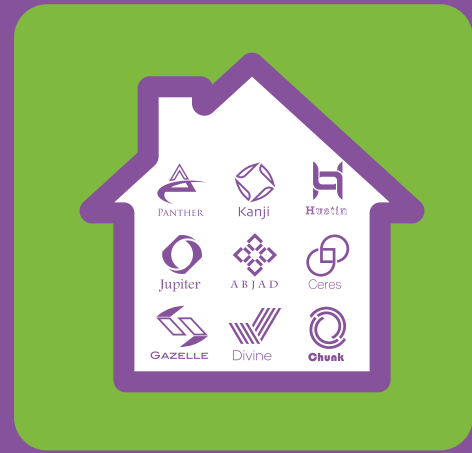


The advantage of having a branded house is that people are familiar with the name Virgin and what it stands for. It stands for something which is quite youthful, which is quite innovative, which is quite good value. As soon as you bring out a new Virgin product, the associations that you have about Virgin, these positive associations, are put onto this new product or new service and it allows it to get awareness in the market very quickly and to grow very quickly. So, the marketing costs involved in promoting that new Virgin brand are much smaller, because everyone's familiar with it at once.

The disadvantage of course with having a lot of different products or services with one name, such as Virgin, is that if something goes wrong with one of those, it can badly impact the others. Let's take an example that something goes wrong with one of the Virgin businesses. Once that happens it could have a knock-on effect and damage all the others as well. So, there are advantages and disadvantages for both of those approaches.

If we took something like Unilever which has separate brands for each of its sub-products and sub-categories, it allows a far more personalized brand to be put forward to a particular market. You have to spend more on the initial start-up costs and marketing costs, but if something goes wrong later there isn't that negative impact.

The other advantage of having a house of brands is that you can cover a bigger part of the market, because what you can do is have two products which are in the same category, which are slightly different, but which potentially compete slightly against each other. So, you could have let's say a hair care product, which appeals to teenagers, and another hair care product which might appeal to people in their 20s or 30s. So you can cover much more of the market with the house of brands approach than the branded house.



What would you say were the key points being made by Peter in his comments? Underline what you think are the most important things that he says.

Now think about the effects of fake goods, especially those that are of poor quality or affect health and safety. How might brand architecture affect the consequences of counterfeit goods? How might a manufacturer respond to the presence of such goods in the market?



Choose one or more of the key points that you have identified as the topic for a research activity into brand marketing. Cover the following points in your research.

- Find evidence of a branded product that exemplifies the statement(s) you have chosen.
- Create a questionnaire to garner opinions from friends and colleagues about their perception of the brand you have chosen.
- Describe the “brand architecture”.
- Consider how the branded product is advertised, where it is sold and who buys it.
- Explain the extent to which the brand reflects the culture of the society in which it is marketed.
- Evaluate the brand’s marketing strengths and weaknesses.
- How easy or difficult would it be to make and sell counterfeit versions of the branded products?
- Does the brand you have chosen have an anti-counterfeiting strategy?

Once you’ve completed your research, summarise your findings in a presentation to your class.

Unit 1

Tricks of the Trademark



Inside the lines

The various kinds of intellectual property (IP) work in different ways to help countries develop and maintain their economies, while maintaining a balance between the interests of innovators and those of society as a whole.

In this final section, you will find ways of learning about the importance of respecting IP rights, in particular industrial designs, patents and trademarks, and how in practice IP rights are enforced.

- What is the difference between a trademark, an industrial design and a patent?
- Why does the law protect intellectual property rights?
- What happens when intellectual property is not respected?

Explore the activities in this section and find the answers to some of these questions.

Introduction

IP allows inventors and creators to finance their work and to build businesses to bring their innovations to the public. While trademarks are important, they are not the only IP right. Different rights protect different aspects of a business.

Case study

Tomotaka Takahashi is a creator of humanoid robots and the founder of Robo Garage. His creations move as if they are alive.

Mr. Takahashi's business name is protected by a trademark.

ROBO GARAGE

Registered Trademark No. 4841627, Japan Patent Office

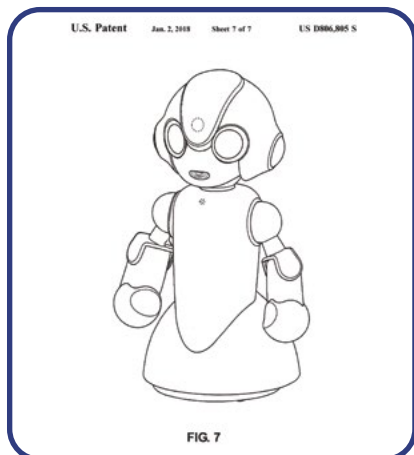


(Photo: WIPO)

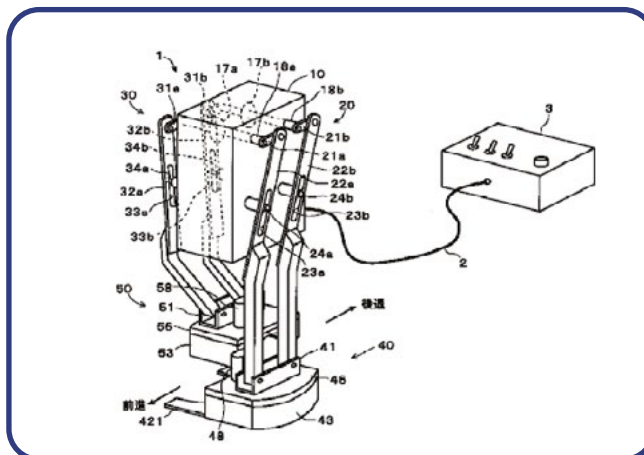


(Photo: WIPO)

His technical inventions are protected by patents and their attractive look by registered designs. Each IP right protects a different aspect of his products.



US Design Patent No. 806,805 S



Patent No. JP02219673, Japan Patent Office

Viewpoint

We have already talked about trademarks and brands. We are now going to look in greater detail at patents and industrial design, what we could call the “nuts and bolts” of a product.



Marcus - Brands are a promise on the product and brands are made up by registered trademarks but a brand can also contain other ingredients such as the overall look and feel of a product.

Let's take a watch as an example of this. You will probably find a brand name on the watch. However, the watch also has a certain look, the aesthetic appearance of the watch.

The way the watch looks is usually being protected not by a trademark, but by an industrial design right - so that's a different process. You again go to your patent or trademark office that usually also keeps a register for industrial designs and you submit a reproduction of the look of your object.

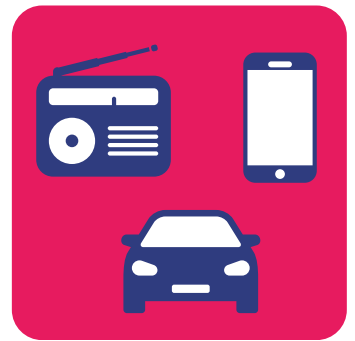
It could be a watch, it could be a car, it could be a coffee machine, an electric shaver, it could be anything. You submit a reproduction of what it looks like and if certain conditions are met, protection is given to your design and no other company can use it.

If you look inside the watch you have the movement, what makes the watch work. The movement may be very complicated, may be very sophisticated, shows you the seconds, the date, even the time in other time zones. And if that movement uses a new technical method which is not used in any other watch, then you may be able to obtain a patent, a patent for invention which is yet another kind of industrial property right.

So, we have the trademark, the design and the patent, but all of that combines into the brand experience.

Task

Choose an everyday mechanical object, for example a car, a mobile phone, a radio. What is the brand name? What parts of the object might need to have a patent?



Think

Based on your understanding of the key terms set out in this interview, match the aspects of the new products listed below with the intellectual property rights protecting them.

Which is a **trademark**?

Which might be protected by a **patent**?

Which requires **industrial design rights**?

Aspects of the new product	How is this intellectual property protected?
A clothes brand called 'Fireball'	
A dynamic human powered flying suit that is modelled on a bat's style of aviation	
A piece of jewellery.	
A mobile phone brand called 'Zkal'	
A stylish sports car	
A drug to cure a disease	

Task – protecting creativity

If you come up with a new product design, you can register it to get protection against copying by other businesses. There are different ways to apply, depending on the scope of the protection needed. Although the specific registration process varies in different countries, the basic principles are common.

To help businesses understand the differences between the different roles of trademarks, patents and designs, create a leaflet which acts as a guide to these terms.

Here are some useful definitions that you might want to use or adapt:



What is a patent?

A **patent** is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. The protection is granted for a limited period, generally 20 years from the filing date of the application.



What is an industrial design?

An **industrial design** is a legal right protecting the look or shape of a product. You have to register the design in order to obtain the right. An industrial design may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or colour. The right lasts for at least 10 years, in some countries as long as 25 years, if renewed.



What is a trademark?

A **trademark** is a sign capable of distinguishing the goods or services of one business from those of other businesses. It identifies the source of goods for people who may wish to buy them. Once a mark has been registered for certain products, other people cannot use the trademark on their own similar products, as this could confuse consumers as to their origin. A valid trademark can remain registered indefinitely, so long as the owner continues to pay a registration fee every few years to the registry.

Follow up

- What can you find out about the process to register IP rights in your region? Who is responsible for looking after the registers of patents, designs and trademarks?
- It costs money to register a trademark, design or patent? Why would a creator or inventor take the trouble to register IP rights?
- Why do you think Governments want to protect IP rights by law? Who benefits apart from the right owner?
- Find out more about your rights as the registered owner of an IP right. What can you do if someone infringes your rights?

Protecting the public

introduction

For a range of reasons, some people knowingly trade in counterfeit goods – that is, goods which use a registered trademark without the permission of the registered owner of the trademark and which are hard to tell apart from the real goods. By making or selling counterfeits, they not only risk being sued or, in some cases, prosecuted under a number of different laws, but they can also place members of the public at serious risk.

This activity will develop your knowledge and understanding of the social and legal consequences of breaching intellectual property (IP) law.



There are many reasons for the use of the legal system to protect the interests of creators and inventors. Which of these do you find the most credible? Rank the list in order of importance.

- IP infringement is morally wrong
- Businesses lose revenue
- Employment is reduced as businesses close or downsize
- Investment (domestic and foreign) is reduced
- There is less funding for research & development
- Consumers are not protected from bad products
- Organised Crime is made stronger
- The rule of law is undermined
- Governments lose tax revenue



Think

Imagine you have successfully registered the design for a new consumer product that you and your company have engineered. You now hold the design rights for this new product. Imagine also that you have registered the product name as a trademark and have received your certificate of registration. What would you do if you discovered someone had copied the design of your product or sold their own products under your trademark? Look at this list of actions and write what you believe is the correct sequence below:

Go to court – make an application to the civil courts to stop the unauthorized use of the design or trademark and recover damages to compensate for any losses to your business.

Claim – through your lawyers, send a letter to the alleged infringer demanding appropriate remedies (for example, an agreement to stop the infringing behaviour or to pay damages).

Complain – send a letter to the people who are copying your product, drawing attention to your rights so that the infringer cannot subsequently argue ignorance

Collect evidence – Find out what the alleged infringer has been doing and try to establish how it has affected your business. For example, are customers confused about the source of the product? Have you lost (or do you expect to lose) business as a result of the infringement? Make sure you can prove your case.

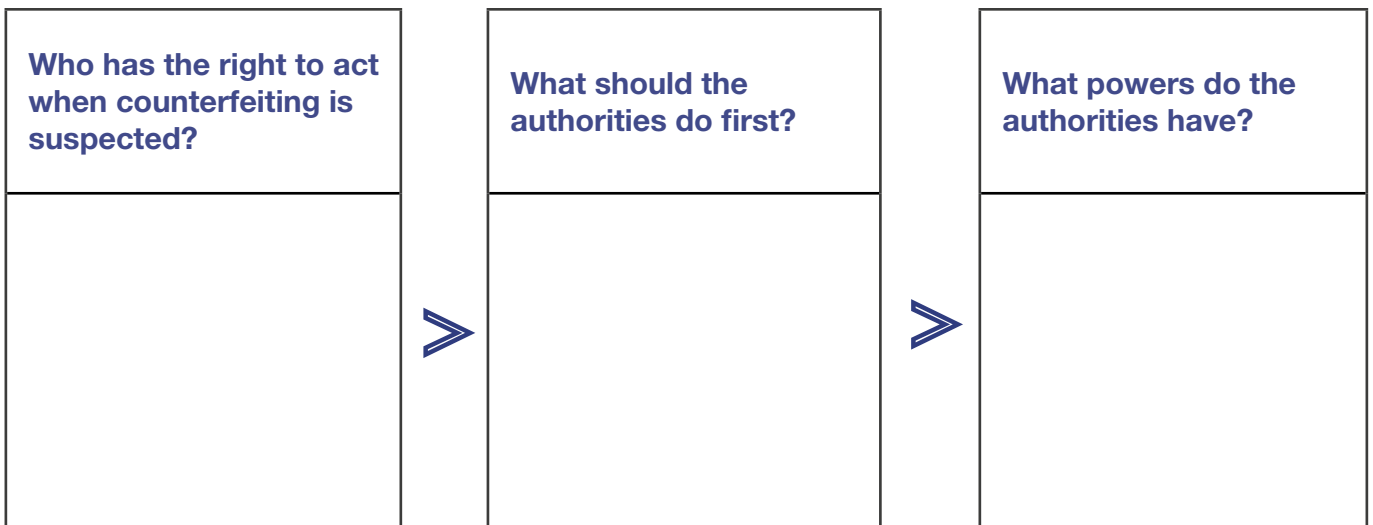
Sequence	Action
Step One:	
Step Two:	
Step Three:	
Step Four:	

Task - Enforcing the law

The enforcement of IP rights does not just happen through lawsuits brought by right holders. Customs authorities can intervene to prevent imported goods from entering the market, when there is reason to think they are counterfeit. And when counterfeits are made or traded on a commercial scale, often the police or other law enforcement agencies become involved.

Once counterfeit products come to the attention of the authorities, action is taken with consequences for the counterfeiters. Using the phrases stacked in the word-bank, complete the flow chart below.

Make checks
Trading standards agencies
Seize goods
Rights holders
Secure search warrants
Fines
Customs & Excise officers
Impound imported goods
Police



Find out more

Counterfeiting is an international problem. Organisations such as the international police organization Interpol and the World Customs Organization work with right holders to organise cross-border law enforcement operations against counterfeiters.

Discuss your response to the following case. To what extent does this story impact on your attitudes towards counterfeiting?

Why do you think that organized crime gangs produce counterfeit copies of goods?

Why do you think that people buy counterfeit goods – either knowingly or unknowingly?

Interpol-led operation dismantles criminal networks behind fake goods

Lyon, France – An Interpol-led operation has resulted in police across the Americas dismantling 34 criminal networks involved in the production and distribution of fake and illicit goods worth tens of millions of dollars. More than 650 interventions were made by police and customs officials across eight countries during the two-week (1 – 15 October) Operation Jupiter 2016, with nearly 240 individuals arrested or placed under investigation. With millions of dollars in profits being made through smuggling and counterfeiting operations, the criminal groups do not hesitate to use force in defending their networks and operational bases, meaning many of the interventions had to be conducted with support from specialized armed riot forces.

Food, mobile phones, toys, alcohol and electronic components were among the more than three million fake items worth an estimated USD 93 million seized alongside drugs, guns and ammunition. Information shared via I-24/7, Interpol's secure police communications network, during the operation is now being analysed against the Organization's databases to identify potential links with other criminal networks.

In Argentina officers intercepted two containers marked as a charitable donation of hospital equipment and supplies, but which also held USD 1 million worth of illegally imported computers, professional film making equipment and drones. Checks of the hospital supplies showed them to be either expired or in poor condition and some containing clinical waste substances posing a serious risk of infection.



(Interpol © 2016)

Officers in Brazil seized more than 10,000 illegally imported used car batteries, many of which were improperly stored and leaking sulphuric acid and lead – both carcinogenic substances – into the soil, risking contamination of the local water supply.

In Chile, police dismantled two illegal workshops, one broadcasting paid TV channels without authorisation and the other counterfeiting music. In Colombia, intelligence gathered during the operation led to the identification of five criminal groups involved in the production and smuggling of fuel, clothes, alcohol and food.

Officials in Paraguay identified and shut down an illicit tobacco factory and Peruvian National Police dismantled a total of 25 workshops producing a range of illicit goods including clothing, soft drinks, alcohol as well as fake designer labels and tags.

“Operation Jupiter provides an opportunity to harmonize our efforts in combating the criminal networks behind counterfeiting and smuggling operations across the region,” said Vicente Romero Fernandez, Director General of the Peruvian National Police.

“Peru is committed to tackling this form of criminality and also engaging the public to make them aware that buying fake or illicitly traded goods are not bargains, but potentially life-threatening products which fund organized crime networks,” added Director General Fernandez.

Extension

Counterfeiting of pharmaceutical products arguably has the most dangerous consequences of all for members of the public. Look at these statistics as a starting point for thinking about this aspect of IP infringement:



- A recent review by the Worldwide Antimalarial Resistance Network found that 30% of malaria drugs tested globally failed either chemical or packaging quality tests.
- Of these, 39% were fake. They contain none of the stated active ingredient.
- The World Health Organisation (WHO) estimated that 30% of countries have effectively no drug regulation, and many of these have endemic malaria.

New Scientist – October 2014

Why might someone want to use a trademark on a fake drug? Why not just use the chemical name of the real medicine?

Who enforces the laws against fake medicines? Why might trademark owners have a role to play?

Viewpoint

Below, our experts explain the consequences of trademark laws being breached.



Marcus - *It's very important to remember that the very moment you acquire a counterfeit product, you may save some money but you get yourself into a very difficult situation because you don't have any idea of the product's safety. You don't know where it's coming from. You don't anything about the toxicity of the product and how it's made - you put yourself at risk in many respects.*



Mike - *I think consumer attitudes to different types of counterfeit product are quite different. So, making a copy of a CD or of a DVD or downloading a movie from the internet feels like quite a different proposition to buying a copied Ralph Lauren polo shirt or a fake phone. It certainly feels very different to the idea of actually, physically stealing an object.*



Sarah - *The counterfeit trade also have a much larger impact on society generally because if these brands are losing trade, then they're also not paying the taxes that they would be paying and also employment is going to be affected. There's quite strong evidence nowadays to suggest that the proceeds of counterfeit activity are going to fund organized crime. It's not really a small thing that doesn't affect individuals. It actually is quite a serious problem for the whole of society.*



Mike - Counterfeit clothing, there's a fair chance it will fall apart, that it won't be as good, that the materials won't be as comfortable. The other issue is safety. An example is children's dressing up clothing, which is widely sold on the internet. If it is counterfeit then it is unlikely to be flameproof and so will go up in flames if it gets near a candle. Genuine products have to pass stringent safety tests.



Marcus - The internet definitely had and still has a huge impact on counterfeiting, on product infringement, falsification because there is no physical marketplace anymore. Thus, the infringers, the counterfeiters, which are very often criminal organizations, run a much lower risk of being caught or being stopped. With the new generation growing up in very much an online environment, and shopping by the internet, the possibilities for illicit trading in counterfeit goods unfortunately have become absolutely massive.

What do you think are the key points being made by our experts? Write a list of what you think are the most important and then share these with a partner. Do you both agree on your choices?

Reflections

It is not necessarily possible for the consumer to know whether they are buying genuine or counterfeited goods. What might look like a bargain may in fact be a shoddy counterfeit product.

From the point of view of traders who are selling genuine articles, cheap imitations (being sold as the genuine article) might attract buyers, reducing the sales of honest traders and reducing the perceived value of the brand concerned.



- Look again at some of the following statements taken from these interviews:
 - *The very moment you acquire a counterfeit product, you may save some money but you get yourself into a very difficult situation because you don't have any idea of the product's safety.*
 - *There's quite strong evidence nowadays to suggest that the proceeds of counterfeit activity is going to fund organized crime.*
 - *Because [with online trading] there is no physical market place the counterfeiters run a lower risk of being caught and stopped.*

- Using the previous statements as a starting point, compose an article for a magazine about the protection of intellectual property rights in relation to online traders. Cover the following points in your article.



- Be clear as to which type of traders and products you are writing about.
- Explain which intellectual property rights may protect the products concerned and how the rights might be infringed and by whom.
- Highlight the impact infringement can have on a right holder's company.
- Explain how the public authorities may get involved in enforcing IP rights.
- Offer some ideas of how right holders can protect themselves, showing why this is significant to society as a whole.

If these materials have interested you and you are able to access the internet, you will find a huge amount of further information on the web site of the World Intellectual Property Organization (WIPO), including WIPO's publications (www.wipo.int/publications/en/) and the courses offered by the WIPO Academy (www.wipo.int/academy/en/).

These materials are based on the web site www.respectfortrademarks.org which was created with the support of the Japan Patent Office.

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