

# Ultimate Guide to Patenting



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# Table of contents



3 - 5	ABOUT THE AUTHORS
6	INTRODUCTION
7 - 12	CONFIDENTIALITY AND SUBMISSION
13 - 17	THE COST OF IP
18 - 20	STARTING A COMPANY
21 - 30	INTELLECTUAL PROPERTY
30 - 33	CASE STUDY
34 - 35	SUMMARY

# About the Authors



## About the Authors

### **Phil Staunton** MD of D2M Innovation

**“I’ve been involved with turning ideas into reality for 20 years and worked on over a thousand products.** I even developed and launched my own pushchair with John Lewis.

This e-book seeks to bring together the knowledge I have gained, and that of other experts in the field, to help you turn your idea into a successful product. If you want some professional help, or even a free initial consultation or opinion on the viability of your idea, don’t hesitate to get in touch with my company, D2M Innovation.

In the meantime, enjoy this e-book, and I wish you every success on the exciting journey of commercialising a product – there’s nothing else like it!”





## About the Authors

### Vicki Strachan CEO of Strachan IP

**“I have over 20 years’ experience helping SMEs and Start-Ups identify, capture preserve and protect the valuable IP they create.** I have worked in partnership with Phil and his team at D2M Innovation for a number of years, and watched them turn many ideas and dreams into reality.

Intellectual property (IP) is often a critical factor between success and failure, and it should be considered at almost every stage of the product development cycle. That is why Strachan IP has joined together with D2M to bring you this e-book and we hope you find it useful.

If you have any questions or need any help with your IP, please do book a free initial consultation via our website.”



# Introduction



**Developing a new idea will involve significant time, energy, effort and money. You want to ensure that your efforts are rewarded and so protecting your new ideas is absolutely critical.**

Intellectual Property protection (patents, trademark, registered designs, copyright) can feel like a complete minefield. That's why we put together this straight-talking guide to help give you the foundations you need before talking to an attorney about how to protect your idea.

We hope you find it useful, don't hesitate to get in touch with my team or our partner patent attorney, Vicki Strachan to discuss your specific requirements further.

# Confidentiality & Submission





# Confidentiality & Submission

## KEY MESSAGE

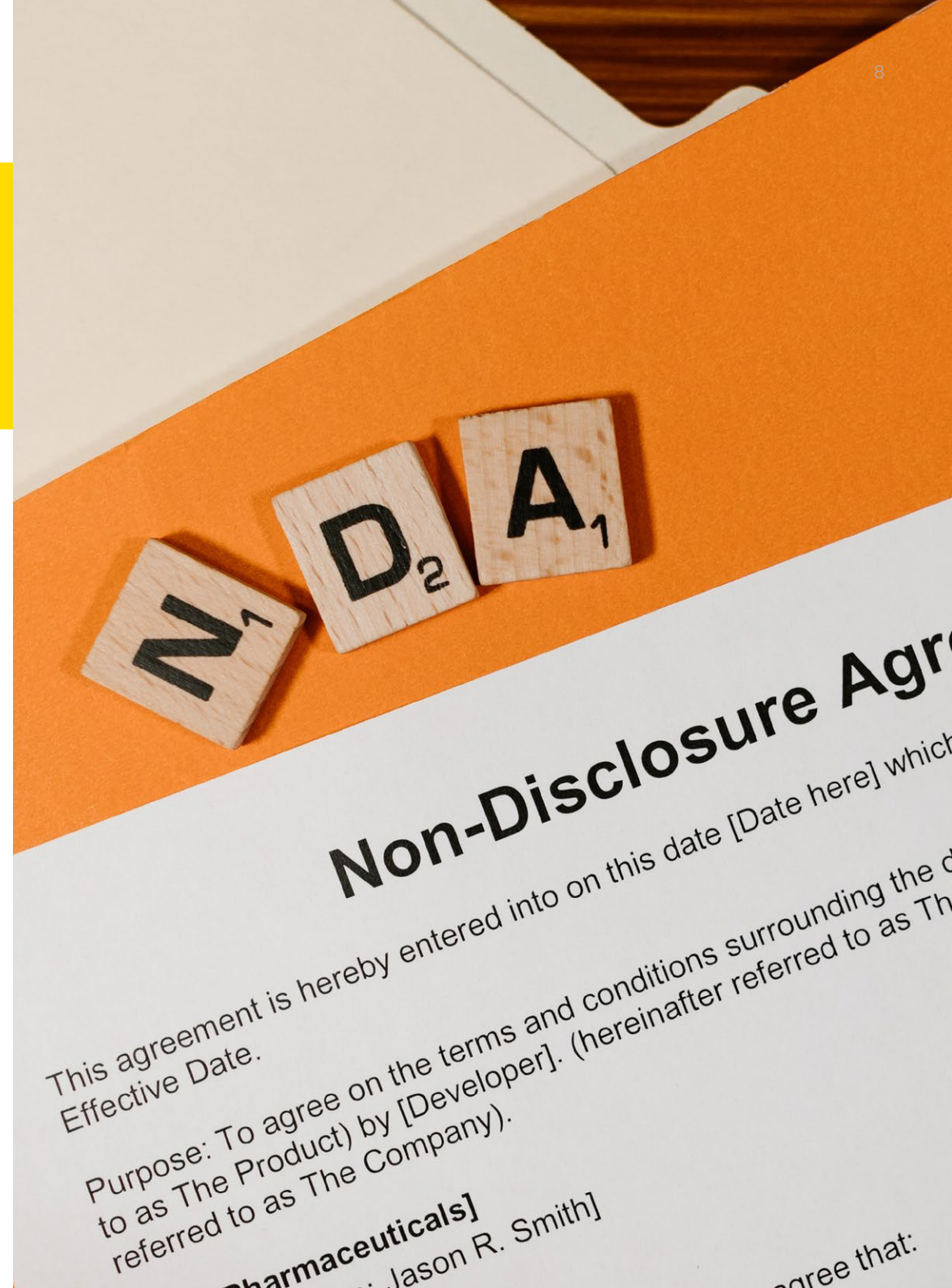
**Don't reveal the idea to anyone without a confidentiality agreement in place, otherwise you could invalidate future intellectual property applications.**

In order to ensure that your idea remains confidential and your intellectual property rights are not compromised or undermined, you should ensure that you disclose your idea to as few people as possible, and then only once a confidentiality agreement or 'NDA' has been signed.

NDA's record the conditions under which information is disclosed in confidence and impose a duty on the signatories not to divulge or use the information so provided. **They crucially enable you to discuss an idea without risk of invalidating a future patent or registered design application.**

There are plenty of NDA templates available free of charge, for example, on the UKIPO website:

<https://www.gov.uk/government/publications/non-disclosure-agreements>





## Confidentiality & Submission

All registered IP firms, including Strachan IP, are regulated by the Intellectual Property Regulation Board ([www.ipreg.org](http://www.ipreg.org)) which sets out very strict confidentiality rules by which they are bound. Therefore, there is no need for a Chartered Patent Attorney to sign an NDA before you can speak to them. This is about the only exception however, and if you're talking to anyone else then do get a signed NDA first.

D2M will always sign a confidentiality agreement with all new enquiries before their idea is disclosed. All staff are subject to this NDA and have confidentiality clauses built into their contract of employment. D2M are committed to ensuring the confidentiality of your idea and guarantee to give you an honest opinion on how to protect your idea and whether it is worth proceeding with the concept. All the Intellectual Property around the concept remains yours, even if we add further protectable features to your ideas.

### KEY MESSAGE

**It is crucial to ensure you own the IP when commissioning a designer, prototype engineer or anyone else to work on your project, as you don't want to find out later on that they have some ownership over existing or new IP going forwards.**



## Confidentiality & Submission

### A word of warning on crowd funding

Before you disclose your idea to the world via a Crowd Funding platform you must give some thought to your intellectual property.

### How are you going to prevent others from simply copying your idea?

It might be that an initial patent application or registered design application will need to be filed, but these must be filed before the idea goes public so please do talk to an IP attorney early, especially if you plan to use Crowd Funding as a source of funding.



**KICKSTARTER**

**INDIEGOGO**



# Confidentiality & Submission

## KEY MESSAGE

**You don't have to navigate this on your own. Initial consultations with both D2M and Strachan IP are free.**

D2M offers a free consultation to discuss your project, the challenges you might face and the potential development journey. This can be a phone call or a meeting. To book a free initial consultation, please visit <https://www.design2market.co.uk/contact-us/>. Once we've received your contact form we will send an NDA for you to sign. We guarantee to protect your confidentiality and we will not pass your details to anyone else.

Strachan IP also offers a free initial consultation, and it is wise to have that first conversation during the early stages of the product development cycle. Intellectual Property can not only be used to protect your business when your product is ready to be commercialised, but can also be an invaluable design tool and help to guide the development process. To book a free initial consultation, please visit [www.strachanip.co.uk/contact/](http://www.strachanip.co.uk/contact/)





# Confidentiality & Submission

## KEY MESSAGE

**Design and Intellectual Property go hand in hand, so your designer and your solicitor should have an ongoing collaboration.**

If you provide your permission, D2M and Strachan IP can, and often do, work together right from these early stages, so that there is a focus, throughout the product development process, on what the unique selling point(s) of the new product are likely to be, and how they will be protected.

Your IP strategy is likely to develop and, possibly, change during the product development stages, and this ongoing collaboration between the designers and an IP attorney, which is usually provided free of charge, can be invaluable in ensuring that the right elements of your new product end up being protected, at the right time, and as robustly as possible.





# The Cost of IP



# The Value of Patents

## KEY MESSAGE

**Patents have become increasingly valuable to innovative companies. In simple terms, if you have developed something technically new and innovative, a patent would enable you to stop others from being able to incorporate the same technical innovation in their own products.**

This technical innovation can be anything from a small technical improvement on an existing product, to a ground breaking or disruptive technology, and if it would be valuable to your business to be able to stop your competitors from doing the same, then it is worth considering patent protection.

Of course, if you discover someone infringing your patent rights, and you successfully take legal action to stop them, then the value of the patent is self evident. Similarly, if you licence a patent to a third party, then again the value can be quantified. However, it is well known in most tech industries that patents are expensive to infringe, and only the most unscrupulous (or misguided) companies will knowingly infringe another's patent. This deterrent effect is one of the 'hidden' benefit of a patent, but it is almost impossible to quantify, so its value is often underestimated. Nevertheless, this, and of course any applicable Patent Box benefits all contribute to the overall value of having patent protection.

In order to reap those benefits, however, it is important to ensure that your patent covers everything you want/are entitled to stop others from doing (i.e. is as broad as possible), and that it would stand up to scrutiny if its validity were to be contested. This means that the patent specification should describe, not only what has been invented, but all possible combinations, permutations and alternatives. Because patents are expensive to infringe, there will always be those that seek to 'get around' your patent, and it is the job of your patent attorney to make sure that doesn't happen to the greatest extent possible. This requires a lot of time, energy and experience, and that translates to cost. Most seasoned patentees know that the more time that is spent on drafting the patent specification, the better and more robust will be the end product.

# How to maximise the value for your money

So how can you make sure you maximise the value you're getting for your money? And how can you effectively budget for patent costs as your patent portfolio grows?

- 1** **Always use a qualified Chartered Patent Attorney** to prepare and file your initial UK patent application (check the Intellectual Property Regulatory Board register to make sure). The first patent application filed for an invention is critical and must describe the invention to its fullest extent possible. This takes time, effort and, above all, experience, so be prepared for a relatively high bill. However, a good patent attorney should be able to provide a reasonable estimate of costs from the outset, provided that you make sure you have provided them with all relevant information from the start. If you keep changing or adding things during the drafting process, it will inevitably take longer and cost more; so be clear and concise from the start, so as to minimise the number of iterations of the draft patent specification.
- 2** Ask your patent attorney for a **forecast of likely costs**, what these costs are for, and when they will be billed out. Many patent attorneys will, on request, provide a rolling schedule of your patents and applications, including next steps and estimated costs.
- 3** If you email or telephone your patent attorney, **ask them from the outset whether or not they will be charging for their time**. If you are getting bills for getting answers to simple questions, it might be time to think about changing your patent attorney!
- 4** Check to see if your patent attorney **charges for sending you reminders** for things like responding to an examination report. Some (like us) don't, but if they do, consider putting the deadline and a reminder into your own diary, and then ask them to send only a single reminder near the deadline.
- 5** When you receive a search report or examination report, **ask them not to spend time reviewing it** unless and until you instruct them and, when the time comes to prepare and file a response, ask for an estimate of costs. If it seems high, there may be things you can do to help reduce the cost (see 6. below).

## How to maximise the value for your money

- 6 Always thoroughly review any search or examination report in which 'prior art' documents are cited, and get it very clear in your head **what features of your invention set it apart** from those described in your documents, and why those features make your invention better. The more clearly and concisely you can express that to your patent attorney, the less time it will take them to prepare and file a response, and the lower will be the cost.
- 7 It is not unusual for various patents and patent applications to become less valuable/relevant to your business as it grows and evolves, and new innovation emerges, so make sure you review your entire portfolio **at least once a year and decide whether or not there is still value in maintaining or continuing with each patent right** – does the value of being able to stop your competitors from doing what is claimed in the patent/application still match the cost of maintaining it? If you decide to drop any of your patent rights, make sure you let your patent attorney know, without delay, not to incur any further costs on that/those patent right(s).
- 8 **Mark your patented products** (and/or their packaging) with the associated patent/application number. This outs any potential infringer on notice of your rights. It might deter them altogether, but if it doesn't, they can't claim they didn't know.
- 9 And finally...**don't disclose your invention(s)** to anyone, except confidence, unless and until an initial patent application has been filed.



# Defending your IP

## KEY MESSAGE

**There are a number of avenues that can be followed if someone infringes your IP rights, without having to issue court proceedings.**

It is worth remembering that part of the value in your IP rights is **their deterrent effect** and you'll never know how many potential competitors have been deterred from copying you for fear of the legal repercussions. However, if someone does copy you, the matter can, more often than not, be settled by correspondence, without ever needing to go anywhere near a court room.

On top of that, there are the customs registration facilities available in many countries around the world, whereby you can get the customs officials of a particular country to stop shipments of infringing products at their border. This can be a really powerful way of stopping infringing products at their source and providing a huge incentive to settle the matter swiftly.

Let's not forget that many third party e-commerce platforms, such as Amazon, have the facility to allow you to apply to remove infringing products from their platform if they infringe your IP rights. This doesn't usually cost you anything, except a little of your time.



# Starting a Company



# Starting a Company

If this new product idea is for an existing business then the process is a lot simpler as, hopefully, you have existing routes to market, resources to draw upon within your business and existing customers that might be able to provide market insights. If not, then you'll almost certainly need to form a business.

This will mean that you can offer shares to investors and sell products to other businesses or direct to customers and, provided you also register the company for VAT, you can reclaim VAT on all professional fees.

**If you are thinking of starting a company and selling your product directly (rather than licensing), then there is a lot to think about. You will need to find a manufacturer, obtain orders, register your company and start running accounts. Distribution, shipping, returns and product insurance are further concerns.**

## TRADEMARKS

You may wonder where IP could come in at this early stage, but it does. For example, if you are starting a company, you will, of course, choose a company name and, if it is available, register the Ltd company with Companies House. But that does not automatically give you the right to use that name as the brand or trade mark under which to commercialise your product. You could end up infringing someone else's registered trade mark and have to re-brand, which can be an expensive exercise, especially after all the packaging and marketing materials have been produced.



Strachan IP can help here by helping you to have a trade mark search performed and obtaining an expert opinion as to whether or not you are safe to use your chosen name. We can, eventually, help you to register your trade mark too, but you might want to wait until the product is nearer to commercialisation before committing to that expenditure. We can talk you through the options and help you to decide what and when you need to think about trade marks (yours and those of others).



# Product Branding

## KEY MESSAGE

**When you have decided on a name for your brand, it is essential that you check, as early as possible, whether or not you are free to use that brand name (or 'trade mark').**

Simply owning the Ltd company name or the domain name does not give you any rights in relation to a trade mark. If a third party has registered the same (or a similar) name for the same (or similar) products, your use of the trade mark is highly likely to infringe their intellectual property rights.

Make sure that you have a professional trade mark search performed in relation to (at least) the UK and consider doing the same for all of your other major markets, because if you find out after your packaging, website and promotional materials have all been branded up that you will infringe (or are infringing) someone else's registered trade mark, the re-branding exercise is likely to be very time consuming and costly.

When you have decided on a brand name and identity, Strachan IP can help you to have a proper freedom to operate search and analysis performed, which will (hopefully) give you peace of mind or, on the other hand, prevent the need for a costly re-brand exercise later.

From the award-winning

ark<sup>®</sup> 





# Intellectual Property



# Intellectual Property

**Intellectual Property (IP) it needs to be considered throughout the product development cycle**, not only to ensure that your business is properly protected when a product is ready for launch, but also to ensure that money is being spent on IP at the right times (and not too soon or, worse, too late), to satisfy investors and to secure funding. Nevertheless, it is important enough to warrant its own section in a description of the product development cycle, especially in relation to patents.

Securing patent protection for an idea can be a complicated process, but it could be very important, and often critical, to the future success of your idea. If the idea is patentable, this is generally considered the best way to protect it because it protects the underlying concept, rather than the way it looks or the specific way it is eventually realised. Nevertheless, there are many other types of intellectual property rights that can help too, each one being applicable to different aspects of your product. As well as patents, registered designs, registered trade marks and copyright, to name a few, all offer protection too and may be applicable to your idea. **By consulting an IP attorney early in the process, you will have a much better idea as to how you will protect your market share when it comes to commercialising your idea, which will be critical to your business plan.**



If you would like more detail about patents, please download our free ebook, "The SME Guide to Patents" at Downloads – Strachan IP. Further detail on many of the different types of IP rights can be found on our website [www.strachanip.co.uk](http://www.strachanip.co.uk) and if you would like to speak to someone about protecting your idea, please do book a free initial consultation and assessment at [www.strachanip.co.uk/contact/](http://www.strachanip.co.uk/contact/).

# Patents | The Process

In order to be patentable, an invention must be new (i.e. have at least one novel feature over what has been done or published before) and have an inventive step (i.e. that novel feature must not be an obvious modification of what has been done or published before and provide some technical advantage). If a patent is right for your idea, here is a brief outline of the steps involved:

## 1 Step 1: Patentability Searching

Obtaining a worldwide patentability search is a sensible first step before drafting and filing a patent application and, can even be very useful in helping to guide the development process. This is principally because you will not be able to patent your idea if someone else has already patented (or tried to patent) the idea (just because it isn't on the market does not necessarily mean someone else hasn't thought of it before). Patent searching should always be performed by a licensed search company, as they use techniques, algorithms and databases that are not available to the general public for free. We can help with this, and if you would like to discuss having a patent search performed, please let us know.

## 2 Step 2: Developing your idea

It is important to define and, in most cases, start to develop the novel aspects of your idea. It is rarely possible to protect the overall concept, and it is essential to include in a patent application a detailed description of at least one way to realise the idea. The closer that description is to the product you actually plan to commercialise, the more likely it is that you will eventually secure patent protection that effectively covers that product. At D2M, we specialise in creating innovative, patentable solutions to design problems and we have a lot of experience working closely with IP firms like Strachan IP to ensure that our clients' products are properly protected.

## 3 Step 3: Drafting your patent application

Once you have defined and (at least partially) developed your idea, and you are satisfied that it is in fact unique (using the results of the patentability search), you can draft your patent specification. Drafting a patent specification is a very specialised task and is best done by a Chartered Patent Attorney (i.e. a member of the Chartered Institute of Patent Attorneys, or CIPA, and regulated by the Intellectual Property Regulation Board – [www.ipreg.org](http://www.ipreg.org)) who will ensure that this is done correctly for you. D2M and Strachan IP have been associated for many years and have worked closely together on many successful projects.

### KEY MESSAGE

**Don't protect your idea with a patent too quickly.**

New clients sometimes come to us with their concept already patented. You might think this is a great step to take, to protect the idea before you share it, even with a company who specialise in product development.

While we don't profess to be patent specialists, we do know that the development process our clients go through often means that their idea changes considerably from the point they come to us and the time it goes into production. Often these changes to the design are vital to make the product manufacturable, viable and marketable. The problem comes when these changes invalidate your patent! It's often sensible to make sure that your idea is well developed BEFORE you apply for a patent or registered design.





## Patents | Integrating Design

Even if an initial UK patent application has been filed, innovative product design during the subsequent 12 months can help to strengthen your patent application. It is not usually possible to protect a broad concept, and the more detail you have in your patent specification, especially at the 12-month point (from filing the initial UK patent application), the better your chances are of securing strong patent protection for your product.

**Product design refines and improves how an idea works and is therefore often integral to achieving strong patent protection.** D2M and Strachan IP often work closely together at this stage of the product development process, to ensure that our clients' IP protection is eventually as strong as possible.





# Registered Designs

## KEY MESSAGE

**Unlike patents, which take some years to be granted and have to go through a relatively complex process in the meantime, registering designs in the UK and EU is a comparatively simple administrative process with formal registration usually taking around 8 weeks from the date of application.**

There is no detailed examination of design applications and, provided the drawings and application documents are complete and in the correct format, issues rarely arise.

This means that, during early stages of commercialising your product, you could have a piece of registered IP that can be used to enforce your rights against early 'copycats' which could otherwise, not only undercut you on price, but also potentially damage your brand if the copies are not only cheaper but of inferior quality.

Registered designs protect the outward appearance of a product (as opposed to patents, which protect innovative technical concepts and functionality). For this reason, they are often considered to be 'weaker' intellectual property rights. However, even if you have a patent application pending, the potential power of registered designs should not be overlooked...especially for consumer products.



# Registered Trademarks

## KEY MESSAGE

**It is easy to forget that unprotected ideas are simply out there in the public domain and anyone can take them and use them for their own benefit.**

Intangible company assets such as trademarks are sometimes neglected in favour of the more exciting and creative areas of launching a new product. However, your brand or trademark may be one of the most valuable assets your business may have if it is as hugely successful as you think it could be one day! (think Apple, Boots, Costa Coffee)

So you should protect it using trademark registration. However, it is important to get registration right so here are a few things to consider before starting the registration process.





## Registered Trademarks



### Do a search

Before applying for your trade mark you should do a search through the database of the Intellectual Property Office UK to make sure that names, phrases or symbols that you want to trademark aren't already taken. This is essential as you need to make sure that you are not in danger of infringing someone else's registered trademark, especially as infringement could leave you and your business open to legal action by the trademark rights holder and needing to change your brand later when it could be detrimental to your launch and costly. A search will highlight any trademarks, national, international or Community, that designate the UK for protection. If you are thinking of trading internationally then you will need to search internationally.



### What's in a name?

If you have a new business, product or service, coming up with a creative name makes it more likely that the trademark application will go through without a hitch. Being too literal with your company or product name may throw hurdles in your way as many other companies are likely to have done the same. For example, it would be very difficult to trademark the name "Rapid Plumbers" as other plumbers may want to use the same descriptive word to describe their business. Using a made-up word also makes your business or product stand out amongst competitors – look at Nike, Kodak or Google for example.



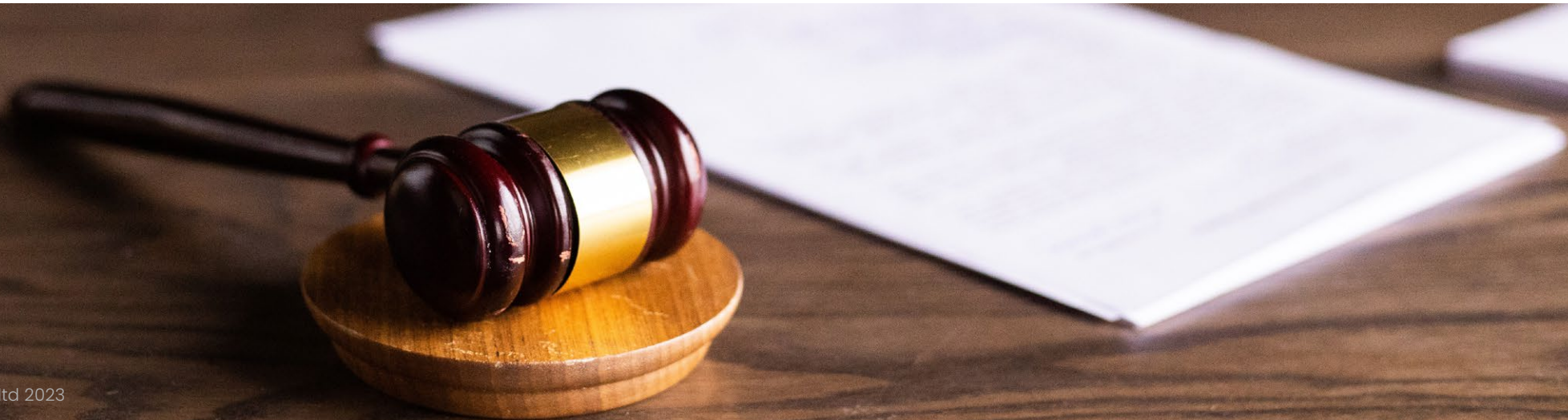
# Registered Trademarks

## Think ahead

A trade mark, once registered, will last for ten years before the renewal fees are due so before registering your trade mark you should think of where you want your business to be in the future. Then, when you do register your trade mark, register it in all the relevant classifications of goods or services you are intending to trade in, but please be aware if you do not trade in a class of goods or services in which your trade mark is registered within five years from date of registration your trade mark can, if contested, be revoked in the unused classifications. Think broad but not too broad!

## Enforce your rights

There is little point in registering your trade mark unless you are prepared to enforce it. You will need to keep an eye on your market to ensure that no one is using your trade mark without your permission. Infringement does not automatically lead to court proceedings as most times a simple 'Cease and Desist' letter written by an IP Attorney is enough to put an end to the infringement. You should not be tempted to write such a letter yourself as it needs to be carefully worded to ensure you yourself do not get accused of defamation. Be reassured though that often stopping someone using your trademark is a simple and relatively cost-effective process.





# Copyrights

## KEY MESSAGE

**Don't underestimate the value of copyright and its importance to your business. Make sure you count the IP in your creations as valuable company assets, and police and protect them as such.**

In this digital age, many (if not all) businesses have valuable copyright and database rights. Many don't even know they are there, let alone appreciate their value.

Copyright gives you the right to prevent a third party from:

- copying your work
- distributing copies, whether free of charge or for sale
- renting or lending copies of your work
- performing, showing or playing your work in public
- making an adaptation of your work
- putting it on the internet

For many types of work, UK copyright lasts for 70 years from the end of the year in which the author dies.



## Case Study

### Couch Coaster

Representative: Barry Freeder

CouchCoaster is an innovative product designed to support your drink securely while sitting on a sofa, thereby removing the risk of accidental spillages. It has weighted arms that keep it in position. Developed from sketch concept to production by D2M, it is now selling internationally.

"I worked with D2M on two design projects which resulted in the successful launch of my first two inventions. These have become worldwide best sellers across five continents."

Barry has a turnover of £850,000 per year from the two products D2M has helped design.



d2m innovation ltd 2023



## Case Study

### Couch Coaster

Representative: Barry Freeder

#### Launch:

CouchCoaster was launched in mid-2016 and is now being sold internationally through a network of stores and online retailers. The business turned over just under £1M last year from CouchCoaster and its sister product, Table Coaster.

Its routes to market include distributors in other countries and Amazon, as well as direct retail in the UK. The business overheads are low, with Barry, the originator, working from home and using distributors for logistics and the day-to-day task of selling the product, yielding an impressive margin and associated profits.





## Case Study

### Couch Coaster

Representative: Barry Freeder

#### Intellectual Property:

Given the worldwide success of the CouchCoaster, what is preventing a third party from copying the design and launching their own, competing product? The simple answer is intellectual property. Hit Products Ltd, the company that developed and now commercialises the CouchCoaster, has filed a patent and registered designs protecting various aspects of the concept. Patents protect technical innovation, whereas registered designs can be used to prevent third parties from making or selling something with the same outward appearance as the protected design, and can be a hugely powerful tool, especially for consumer products like the CouchCoaster, to help you to maintain your market share and prevent (often cheaper, sub-standard) copies from entering the market and, not only reducing your profits but potentially damaging your brand.

Barry believes that the money he spent on the IP protection was some of the best money he spent. He has used his patent to stop many copies, particularly on Amazon, which is one of his main retail outlets. Amazon has a system built into its web platform where sellers can report infringing items and then Amazon de-lists those copy-cat products. This is free and Barry has used this many times over to stop cheap replicas from eroding his market share.



# In Summary



Protecting your new ideas is absolutely critical and hopefully this guide has helped you understand why and more about what's involved.

The next step is probably a free consultation with a Chartered patent attorney to see specifically what is the best route for your concept.

We hope you found the guide useful, don't hesitate to get in touch with my team or our partner patent attorney, Vicki Strachan to discuss your specific requirements further.



# Thank you



We hope you have found this guide useful.

If you require any further information on any of the things we have covered, please do contact us:



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