



Choosing a Logo



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Over the next few years thousands of new businesses and social enterprises are likely to be set up in the United Kingdom in all sorts of industries. All of them will need business stationery. Most will need new websites. Many will design, or commission graphic and web designers to design, new logos.

Logos are tremendously important for a business – particularly a fledgling one - but you need to be careful. Choosing one that someone else has chosen - even one from a different industry or country - can lead to trouble. Also, if you have spent time and money on designing or commissioning a graphic artist to design a logo you want to be sure that nobody else will use it. So, here is how the law protects these important intellectual assets.

What is a Logo?

I've adopted the [Wikipedia definition](#) of "a graphic mark or emblem commonly used by commercial enterprises, organizations and even individuals to aid and promote instant public recognition". According to that article, the name is derived from the term "logotype" used to describe "a uniquely set and arranged typeface or colophon" from the days of hot metal typesetting. The Wikipedia article continues:

"Logos are either purely graphic (symbols/icons) or are composed of the name of the organization (a logotype or word mark). An example of an abstract mark is the blue octagon representing Chase Bank, while an example of a representational mark is the "everyman" icon of PBS. Examples of well-known logotypes (word marks) are the striped IBM design, Mobil written in blue with a red "o" and Coca Cola written in flowing red script."

A good introduction to the topic is "The Anatomy of a Logo" on the ["Search This"](#) website.

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Legal Protection

In the UK, logos may be protected by:

- [copyright](#)
- [the law of passing off](#)
- [trade mark registration](#), and
- [design registration](#).

You should also be aware of consumer protection legislation such as [The Consumer Protection from Unfair Trading Regulations 2008](#) in the UK and unfair competition laws in other countries.

Copyright

It was held in *Re Karo Step Trade Mark* [1977] RPC 255 that the artwork for a trade mark is an artistic work in which copyright can subsist pursuant to s.1 (1) (a) of the Copyright, Designs and Patents Act 1988. Copyright does not require registration in this country and it is infringed by copying. UK copyright law protects not just the original artistic work of British artists but those of every country whose laws protect our nationals' work under [TRIPS](#) or the [Berne](#) or Universal Copyright Conventions. Between them those conventions, cover most of the world. If there has been copying, it is irrelevant that the logo did not show up on a search of trade mark or design registrations. It is also irrelevant that the logo was used in a different industry or in a different country. So the watchword is "Don't Copy".

Copying is presumed where there is objective similarity between the claimed original and the putative copy and the alleged copyist had an opportunity to copy the original. This presumption can be rebutted even where there is objective similarity by manual or computer logs documenting the design process. So long as you have not copied slavishly someone else's work, you or more likely your designer has copyright in the artwork. Persuade your artist to assign the copyright to your company and take out intellectual property insurance cover for at least an infringement action in the Patents County Court (see ["New Patents County Court Rules"](#) and ["IP Insurance Five Years On"](#)).



Passing Off

This is misrepresenting to the market your businesses, goods or services as those of another supplier. The misrepresentation can be made in a number of ways which include using a logo or get-up that is similar to those of another trader. The logo or get-up do not have to be registered. They simply have to be known to the relevant market. The risks of colliding with an established supplier can be minimized by a trade mark and design search (see below) but you should also do some thorough market research of your own. There are specialist market research companies that can help you including companies that are members of the NIPC panel. Also, you should consider intellectual property insurance (see the paragraph on copyright above for details).

Trade Mark Registration

A trade mark is a sign capable of distinguishing the goods or services of one supplier from those of suppliers of similar goods or services. So long as it can be represented graphically (that is to say, in writing or in a drawing or diagram), a trade mark may consist of a word (including a personal name), design, letter, numeral or the shape of merchandise or its packaging. Trade marks are registered with national or regional intellectual property office for specified goods or services and these goods and services which are categorized in a number of internationally registered classes. Trade marks for the UK alone can be registered with the Trade Marks Registry of the Intellectual Property Office and trade marks for the whole European Union known as "Community trade marks") can be registered with the Office for Harmonization in the Internal Market in Alicante ("OHIM"). It is possible to apply simultaneously for trade mark protection in a number of countries with a single application under the Madrid Protocol. The registration process of most countries requires applications for trade marks to be published before they are entered onto the register so businesses with have an opportunity to object to an applications to register similar marks. In the UK this can take the form of representations to the examiner in the hope that he or she will reject the registration or proceedings before a tribunal in the Intellectual Property Office. Even after registration, a trade mark can be challenged on the grounds of identity with or similarity to an existing mark in the same or similar goods by invalidation proceedings in the Intellectual Property Office or the civil courts. The best way to prevent this sort of challenge is to make or commission your own search of UK, EU and Madrid Protocol applications and registrations. Also, you should consider intellectual property insurance (see the paragraph on copyright above).

Design Registration

The design of a logo can be registered with the UK Intellectual Property Office, OHIM or the design

registries of some other intellectual property offices as a "registered design". Registration confers upon the registered proprietor the exclusive right to the design and any design which does not produce on an informed user a different impression for up to 25 years. Design registration is an important additional tool in branding as there are several types of logo designs that could not be registered as trade marks for one reason or another but which can nevertheless be registered as designs. One big difference between design registration and trade mark registration is that there is no substantive examination or publication of design applications before registrations so the first opportunity to object to an application is after registration. Proceedings to remove a design from the register can be brought in the Intellectual Property Office or OHIM or in the civil courts. Before applying to register a design it is sensible to make a thorough search of the design and trade mark registries of the UK and OHIM. As the EU (though not the UK) is party to the Hague Convention which allows multiple design applications from a single application it is prudent to include international applications that include the EU in your search.

Search and Watch Services

Although there is nothing to prevent your making your own search of UK, EU and international trade mark and design registrations and applications over the internet you may miss something. Also, unless you have a lot of experience of trade marks or registered designs you may not fully appreciate the significance of some of the results that you do turn up. There are, however, search services that can help you. An excellent search service is provided in Leeds by the [Business and Patents Information Service](#) of Leeds Central Library and there are similar services offered by the British Library and other PATLib Libraries. If you want a more thorough search we would advise a specialist search service such as that offered by our Northern Ireland panellist [PatentNav](#).

Once you have registered your trade mark or design you will want to be on the lookout for applications and registrations that might affect your business. Again, you can do this yourself by scouring the IPO and other intellectual property office journals or websites or you can get someone else to do it for you. Services that watch out for conflicting applications or registrations are known as "watch services". Most search services including Leeds Central Library and [PatentNav](#) also operate watch services.

Further Information

If you want some further information or assistance whether on the law, searches, trade mark or design applications, oppositions or invalidity challenges, intellectual property insurance or watch services fill out the ["Can We Help You" form](#) or call us on **0800 862 0055**.□