



The small print for BIG IDEAS

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Client Reference Number: [Confidential]

Monday 21 March 2022

Privileged & Confidential

By email to: [Confidential]

Dear [Confidential],

Re: Your appointment with qLegal on Monday 28 February 2022

How we work

Thank you for attending your appointment with us and for using the services of qLegal at Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors or patent attorneys, our advice is free and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the Laws of England and Wales only. If you require advice outside of this jurisdiction, please contact us.

Summary of the facts and documents you have provided

You are currently a sole trader operating under the name '[Confidential]' and are in the process of incorporating a limited liability company. You design different [Confidential] and plan to offer online lessons on [Confidential] and [Confidential]. The online courses and live stream videos will be offered using Facebook and short videos will be uploaded on Instagram.

You also intend to create [Confidential], [Confidential] and [Confidential] detailing the process of making the items. The [Confidential] will be printable downloads sold on the Etsy platform while the [Confidential] and [Confidential] will be available on Facebook. You intend to sell all these on your website in the future. You have developed a logo for the business using an online platform called Canva. You have chosen the name '[Confidential]' as your intended trade mark and also registered a domain name.

We have been provided with the following document:

- A sample of your brand and logo.

Scope of our advice

You want to understand how you can protect the intellectual property (“IP”) in the brand name, the logo and the various content that will be produced and offered for sale online. Specifically, our advice relates to:

- How can you protect your brand name and logo using trade marks?
- How can you protect your video content, [Confidential], [Confidential], and [Confidential] using copyright?

Summary of advice

Based on the careful consideration of the facts you provided us at the interview, our summarised advice is as follows:

- A logo developed using the Canva platform may result in exclusive or non-exclusive rights to trade mark the logo. This will depend on the type of Canva template you used to create the logo. If the rights are non-exclusive, this will restrict your right to register the trade mark.
- In the event your rights are exclusive, your brand name and logo may be registrable as a trade mark with the UK Intellectual Property Office (“UKIPO”).
- You do not need to register your copyright to protect it as it is automatically protected upon creation.
- The use of Facebook and Instagram give the platforms authorisation to use any IP material posted on their websites. It is better to use your own website to offer online classes and videos. This way, you have control over the access to information and retain control and ownership of your IP rights in the content.
- You should include a confidentiality/non-disclosure clause in the registration form or contract with your customers to protect your IP usage.
- You should use a “Rights Manager”, which is a tool on Facebook to automatically detect copyright violations for content creators.

Explanation

What is IP?

IP refers to creations of the mind, such as inventions, literary works, artistic works, designs, symbols, names and images used in commerce. It is protected in law by different means, including through patents, copyright, and trade marks, which enable people to earn recognition or financial benefit from what they invent or create.

How can you protect your logo and brand name using trade mark?

According to the UK Trade Marks Act 1994, a trade mark consists of signs including shapes, words, colours, sounds, designs, letters, and numerals which are capable of distinguishing one good or service from another. Trade marks can be registered or unregistered. Through trade mark registration, you can protect your brand name and logo and prevent other people from using it without permission. It is advisable to register a trade mark to protect it as an IP right. For your business, both your brand name and logo may be registered as a trade mark.

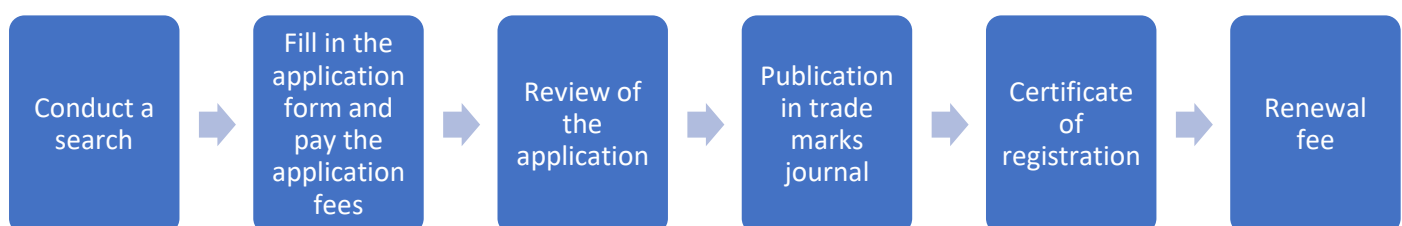
Your brand name and logo can be registered under one trade mark application. The implication of this is that trade mark protection will only cover the brand name and logo together. If you wish to protect the brand name (known as a “word mark”) and logo (known as a “figurative mark”) separately, you will need to make two separate applications. Two separate applications will incur separate application and renewal fees.

While your brand name and logo are not yet registered, to indicate that you consider it a trade mark, you should use the ™ symbol. When you register it as a trade mark, you can place the ® symbol to indicate to others that your mark is a registered trade mark.

It is important to note that IP rights are territorial and trade marks will be protected in the territory it is registered in. Currently you aim to register in the UK, therefore, you will only be able to sue for infringement in the UK.

How do you register a trade mark?

Process for registering a trade mark



To register a trade mark, it is important to do the following:

- **Conduct a search:** When conducting a search, you may do this through the UKIPO database. You need to check if there are trade marks that have a similar name or logo to your intended trade mark, and which may also be operating a similar business structure to yours. You can access the database through this link <https://trademarks.ipo.gov.uk/ipo-tmtext>. If there are indeed similar trade marks, it might be necessary to redesign your logo to ensure that it is distinctive from other logos.

- **Determine the class of goods and services:** You will first need to determine what class of good or service you intend to trade with. There are 45 classes of goods and services to register your trade mark under. It is important to determine the classes before you register your trade mark as registering your trade mark under other classes in future may be expensive. You may wish to consult a solicitor or trade mark attorney about this before you proceed with the registration process. You can also consult this website for additional information: <https://www.gov.uk/guidance/how-to-classify-trade-marks#fee-for-extra-classes>.

- **Submit an application:** You will need to submit an application to the UKIPO by filling in a prescribed form and then pay an application fee which is currently £200. After this is done, the application will be examined by the UKIPO. In up to 20 working days from the date of submission, you will receive an examination report from the UKIPO detailing whether your application has been accepted or if there are any problems.

If there are any problems listed in the report, you will have two months to resolve them. If there are no problems, your application will be published in the trade marks journal for two months. This is to give time for anyone to oppose the trade mark if they wish to do so. Also, if a registered trade mark holder has a similar logo to that in your application, the UKIPO will contact the holder. After the two-month period, an extra period of two weeks will be given to finalise the processes. Once this is done, you will be given a certificate to confirm the registration of your trade mark.

- **Renew the application:** Your trade mark will last for 10 years, after which you will need to renew it every 10 years. The renewal fee is currently £200. More details on the fees to be paid while registering a trade mark can be found here <https://www.gov.uk/government/publications/trade-mark-forms-and-fees/trade-mark-forms-and-fees>.

Do you have exclusive IP rights to your logo?

We note that your logo was created on a platform called Canva. We advise that you should review the policies on that platform before proceeding to register your logo as a trade mark. Under the Canva policy, if you use the logo templates or stock content on the platform, you will only have a non-exclusive licence in the logo or mark created from it. This means that you cannot trade mark such a logo. Thus, you should be careful and note whether you have the exclusive licence to register and use your mark. If you do not have an exclusive licence, you will need to create a new logo for registration. For more details on the Canva platform requirements, see <https://www.canva.com/help/article/trademarks-logo/>.

How can you protect your content under copyright?

Copyright is a property right which provides you with ownership over the works you have created. Copyright can exist in original literary, artistic, musical, or dramatic works, sound recordings, and films amongst others. For your business, the type of copyright you would be primarily concerned with is the copyright in your [Confidential], [Confidential], [Confidential], newsletters, and videos.

For copyright to subsist in a work it must be the original creation of the author. Therefore, you must have come up with the videos and [Confidential] for your [Confidential] by yourself and it should not be the same as other [Confidential] and videos for there to be copyright protection. You will then own all copyright in your work. In future, if you wish for the company to use your work without retaining ownership of it, you may decide to license it to the company. You may also decide to assign the work to the company and give it ownership instead.

There is no need for registration to prove ownership of copyright. However, you may choose to use the sign © in the content of your work to show that you are claiming copyright ownership in it. You may also use a watermark with your brand name or logo for your videos' identity. Additionally, you may put up a statement in your downloadable [Confidential], [Confidential] or [Confidential] and videos warning people against using your work or distributing it without your permission. This will help to deter the users of your content from infringing your copyright.

How can you protect IP rights in your video content?

You intend to offer pre-paid classes and other video content via Facebook and Instagram. Access to the classes or live stream videos will be via a link for those who have made payment externally to you. It is important to appreciate the IP policy for content shared on the two social media platforms.

It is advisable that when you open the Facebook group, it is made a '**private hidden group**' as opposed to a public or private group. This is because with a private hidden group, as the administrator, you can approve membership requests before someone new joins the group and invite new people to the group with a link. The link may be turned off at any time such that access to your materials is no longer available.

Do you have exclusive IP ownership for content posted on Facebook and Instagram?

IP owned content shared online remains the property of the right holder and is protected by UK laws. A person who owns IP may authorise another person to use the IP by giving them a licence. By choosing to use Facebook to share your creative content on Facebook and Instagram, you will also be giving the platforms a licence to use your content for as long as it is stored in their systems. Ownership of the content (inclusive of your brand name and logo) and its copyright will still be vested in you. You may share it with anyone else, but the platforms will also enjoy a right to use it. This is because you would have entered into a contract with Facebook and/or Instagram, whose Terms of Use state that "**when you share, post or upload**

content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content made available by you or on your behalf for any business purpose”.

You should note that the Terms of Use do not allow the posting of content that violates another person’s IP rights, and places restrictions on the use of Facebook and Instagram IP. The terms and policies for commerce also prohibit the selling of services on both platforms (allowing only products) and any sales must comply with the Facebook Community Standards or Instagram Community Guidelines (see <https://transparency.fb.com/en-gb/policies/community-standards/> <https://help.instagram.com/477434105621119>).

Although you will not be using any of the platform’s marketplace or commerce space, the above rules are important to note. You must ensure that the items and videos that will be posted by you or on your behalf do not have IP restrictions nor offend the terms of service.

How can you protect your IP on Facebook?

You should note that it is your responsibility as the owner of the IP rights to protect them. Facebook has mechanisms available to ensure the protection of your rights. You can choose to use a Rights Manager to help protect content published online. A Rights Manager is a tool within Facebook, which when enabled, helps to automatically detect copyright violations for content creators. You will need to request access from Facebook to enable this tool. Using a “Rights Manager”, you will be able to:

- Upload and maintain a reference library of video content that you wish to monitor and protect, including live video streams.
- Specify permitted uses of each video by approving pages, profiles and setting match rules.
- Block content from appearing publicly.
- Report potentially infringing content so that it is taken down.

As the IP owner, you can report any copyright infringement to Facebook by filling in a form as the owner of the rights or make a copyright claim to a Facebook designated agent. Before making a report or claim to Facebook, it is important to consider whether such use is in fact infringement, and for this you may need to seek legal guidance. In the event Facebook is satisfied that your IP was infringed, they will remove the cause of complaint from their website.

Additionally, non-disclosure or confidentiality clauses may be inserted in the registration forms. The clauses will be for the clientele to undertake not to use any of the materials from the classes without your

authorisation. This commercial aspect of the business has already been addressed in a different qLegal advice letter.

You should also do the following in order to protect the copyright material:

- Restrict access to materials that have been paid for, like videos and [Confidential] by limiting time access.
- Restrict the ability to download materials, such that customers have a view-only access. Alternatively, you can make downloads available for a certain fee.
- Consider offering the video classes and other materials online via your website, so that you may retain control of the downloads and access.

Do you also have design rights?

As you will be creating [Confidential] for the products you sell, it is possible that they may be available for protection as design rights. You may have these rights if the [Confidential] are original designs. There are registered or unregistered design rights. As you have not started operating and have no designs yet, you may wish to consider the possibility of design rights later as the business grows. For this, you should seek further legal advice to determine if your [Confidential] qualify for protection. Please refer to this link for more information- <https://www.gov.uk/register-a-design> and <http://www.qlegal.qmul.ac.uk/resources/>.

Additional information resources

Comprehensive and easy to follow information relating to copyright and trade mark protection is available for further information at the following links:

- https://www.facebook.com/help/399224883474207/?helpref=hc_fnav.
- <https://help.instagram.com/126382350847838>.
- <http://www.qlegal.qmul.ac.uk/resources/>.

Next Steps

You are advised to take the following steps to protect your IP rights:

- Read the Canva terms of use to determine whether you have the right to trade mark your logo.
- Register your brand name and logo with the UKIPO using the above steps as guide. You should consult with a solicitor or trade mark attorney to assist with the registration.

- Use the copyright and/or trade mark symbols and watermarks to identify your products. Include a statement of IP ownership on your products.
- Read the Facebook and Instagram Terms of Use before sharing your IP on the platforms.
- For the Facebook group, create a private hidden group that gives the administrator control over access to content.
- Limit time access to your IP material and only offer downloads upon payment.
- Include a non-disclosure/confidentiality clause in your registration forms for online classes, to restrict use of your IP. Please refer to the qLegal advice letter covering the commercial aspect of your business.
- Use a Rights Manager for your Facebook IP materials.
- Read the Facebook and Instagram Community Standards to ensure that you are not violating their IP policy by using or sharing unauthorised copyrighted or trade marked content.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact us.

We would be extremely grateful if you could take a few moments to complete this short form <https://qmul.onlinesurveys.ac.uk/client-feedback-on-qLegal-2021-22>, as your feedback is important to our educational development and the development of our services.

Yours sincerely,

[Confidential]

Student Adviser

[Confidential]

Student Adviser

On behalf of qLegal