



your personal and business needs - secure in our hands



Attwaters' Update

Intellectual Property ("IP") affects all businesses in one way or another. In most instances it will be the website that attracts IP protection of some description. IP covers trade marks, copyright, patents and designs. In the case of websites the most likely area that will be of interest to a business is trade mark and copyright. The Intellectual Property Office ("IPO") website defines "Trade Marks" as;

"symbols (like logos and brand names) that distinguish goods and services in the marketplace."

Trade marks can be protected in one of two ways, either by registration with the IPO or under the principle of passing off. Registration is a simple process that can be undertaken online via the IPO website and has better protection rights than passing off. Passing off is the common law action where provided you are able to show that, the mark is yours, a reputation has been built up around the mark and you have suffered loss, you gain protection. Obviously the registration of a trade mark makes enforcement much easier.

Copyright protects original work that is created using independent skill and effort and provides the owner of that work control over how it is used. Copyright extends to websites, pictures, articles etc. When creating a website you need to consider who owns the copyright. If it is created in house then the copyright is owned by the business. If the website is created by an external contractor then unless otherwise agreed contractor will own the copyright. You will need to make sure that any contractor who is creating a website for you checks the content of the website for any copyright infringement issues involving 3rd parties such as, the use of pictures or layout of the website.

Copyright only provides protection from someone copying the original works. Should it come to your attention that part of your copyright has been infringed your protection lies in the Copyright Designs and Patents Act 1988. In order to protect copyrighted works through the Courts the first step is to show that there is access to the material in the first instance. In the case of a website this is easy to do. If the work is copied in its entirety then the proof is easy to evidence. In cases where part of the work has been copied or amended the Court will focus on the core of the material to determine whether there has been an infringement. It is a good idea to get a copy of the site you consider has infringed your copyright as it exists at the time, in most cases by printing off a copy. This is to protect against the potential for a site owner to change their site in the future.

IP for a business is part of its make-up and holds a value. Not to protect this is essentially leaving the keys in the car! Yes, you can track down the car and seek to recover the loss but you have suffered the inconvenience. For a significant number of businesses websites are becoming their "shop front" and to leave it unprotected without suitable wording referring to copyright and registered trade marks is asking for trouble.

Should you wish any further information concerning this article or any other employment matters please contact Tim Carter by clicking on the button below.

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