

Chapter

1

.....

CREATING AND IDENTIFYING YOUR IP

Take away from English authors their copyrights, and you would very soon take away from England her authors.

Anthony Trollope, Autobiography

TRADE MARKS

What can you register as a trade mark?

Trade marks are essential tools for protecting the reputation and goodwill achieved by brands over their lifetime. They symbolise your quality and enable your customers to recognise your products or services quickly and effectively. If your trade mark is registered, you as proprietor have an exclusive right to use the mark for the goods or services for which it is registered for an initial period of 10 years, renewable upon payment of a fee for successive 10 year periods without limit. Once registered, you can rely on it to prevent a competitor from using an identical or similar mark. Registered trade marks are valuable property rights which can be licensed or assigned for considerable value. A portfolio of registered trade marks therefore adds significant value to your business. Trade mark registrations are granted on a 'first come first served' basis, so it is vital to make your application as soon as possible.

You should consider registering as a trade mark anything that is unique to your business and that is perceived by the public as a trade mark. It is not just your brand names and logos which can be registered as trade marks. Any sign which is capable of being represented graphically and of

.....

distinguishing your goods or services from those of other companies can be registered as a trade mark. Provided your mark has distinctive character and can distinguish the goods or services which it represents, you can in principle register any of the following categories as trade marks:

- company names
- brand names
- individuals' names
- words
- logos
- pictures
- letters
- numerals
- shapes
- packaging
- marketing slogans
- jingles
- music and other sounds
- domain names
- colours
- smells
- gestures

It is therefore possible to register non-traditional trade marks and you should be creative and think laterally when considering which marks to register. A word of warning though: the European Court of Justice has shown some reluctance to

.....

permit registrations for certain non-traditional trade marks. In the case of shape marks (e.g. bottles, electric shavers), in order for the shape to have the necessary distinctive character to be registered as a trade mark, consumers must rely upon the shape itself as an indication of trade origin when buying the goods: it is not enough that consumers recognise the shape, but rather consumers must, whenever they see the shape, think that the product originates from a particular manufacturer. In other words, the shape must be perceived by consumers as being a trade mark. In the case of smell, colour and sound marks, the description of the mark applied for must be self-contained, clear and precise.

There are three potential types of trade mark registration available to you, all of which will cover the UK: a UK registration; a European Community registration; and an international registration.

What can't you register as a trade mark?

Trade marks which are devoid of any distinctive character cannot be registered. For example, Macfarlanes could not register as a word mark 'GOOD ADVICE' for legal services because our competitors would no doubt claim that we are not alone in being able to provide good advice.

Purely descriptive marks cannot be registered as trade marks. This applies to marks that consist exclusively of signs or indications which would serve in trade to designate nothing more than the particulars of the goods or services themselves, e.g. 'BLOOD PRESSURE WATCH' for blood pressure meters, or again 'GOOD ADVICE' for legal services.

Trade marks consisting exclusively of signs or indications which have become generic descriptions in the relevant trade cannot be registered as trade marks, e.g. 'lino'.

There are further restrictions in respect of shape marks. A sign cannot be registered as a trade mark if it consists exclusively of (a) the shape which results from the nature of the goods themselves; (b) the shape of goods which is necessary to obtain a technical result; or (c) the shape which gives substantial value to the goods. For example, an application by Philips to register the shape of its three-dimensional rotary electric shavers was refused on the ground that the shape performed purely technical functions.

A trade mark will not be registered if it is contrary to public policy or to accepted principles of morality or if it is of such a nature as to deceive the public. For example, the mark 'www.standupifyouhateamanu.com' was rejected

.....

on the basis that it was antagonistic and could promote football violence.

Certain specially protected emblems cannot be registered as trade marks, e.g. the Union Jack, or representations of members of the royal family.

If a mark is applied for in bad faith, it will not be registrable. As a result, an application to register a trade mark must contain a statement that the mark is being used by the applicant or with its consent or that the applicant has a bona fide intention that the mark will be used. Applications made deliberately to block a competitor's use of a similar mark will not therefore be permitted.

Finally, a mark will not be registered if it conflicts with an earlier trade mark, i.e. it looks or sounds identical or similar to one already registered or applied for in respect of identical/similar goods or services.

Always conduct pre-emptive searches

In order to ensure that your mark is registrable and that it does not conflict with other existing registered marks, it is important at the outset, before embarking upon a new marketing initiative or product launch, to conduct a clearance

.....

search to ensure that you will be free to use the name or mark in question. Solicitors and/or trade mark agents should always be instructed, at the outset of a new advertising campaign, product launch or re-branding exercise, to conduct a trade mark search in respect of the word or mark that you want to use, before you start incurring any marketing costs and before you make any trade mark applications. This should be done as early as possible because you do not want to discover too late, via court proceedings, that a new campaign or new product name infringes an existing registered trade mark.

Registered trade mark searches can usually be conducted quickly and cheaply, within 24 hours if necessary, although naturally it is advisable to leave far more time if you want extensive and thorough searches to be undertaken in multiple jurisdictions. A search can be done for registrations of and pending applications for identical or similar trade marks in the UK or across Europe, or in any other jurisdiction where you will be using your mark. Unfortunately, there is no single database to search to clear a mark internationally and instead registered trade mark searches outside Europe are generally done on a jurisdiction by jurisdiction basis.

There are a number of trade marks searches available as follows:

- Quick and cheap online searches: this is a search that you can do yourself as a good starting point, but be aware that the results are not always accurate and comprehensive. Online searches of the UK Trade Marks Registry (see page 37) are available at www.patent.gov.uk; of the Community Trade Marks Registry (see page 44) at www.oami.eu.int; and of the WIPO database of Madrid Protocol registrations (see page 49) at www.wipo.int. You can search against particular words/text, proprietors or, if you know them, registration numbers.
- Registry searches: due to the limitations of online searches, it is often advisable in any event to instruct trade mark agents to conduct a comprehensive national search of the local trade mark registry. You will have to do this in countries where no online database is available (e.g. France and India).
- Specialist searches: for more comprehensive searches (e.g. to determine if there are any similar devices registered as trade marks), you will need to instruct trade mark agents or a specialist trade mark search agency such as Compu-Mark. You can limit your search to identical marks only or alternatively go for a 'full availability' search which also looks for confusingly similar marks. This will result in a clearance report which analyses all identical or similar marks worldwide if necessary. There-

after, you should seek legal advice on the risks that any similar marks pose.

- A more extensive 'common law' search can be done to try to locate unregistered trade marks, involving searches of company registers, websites and trade press.
- Although clearance searches will give you considerable comfort, unfortunately no one can guarantee that you will not be sued or that you will definitely be successful in obtaining a trade mark registration. That said, trade mark searches are indispensable in assessing the risk of adopting a new mark.

Unregistered trade marks

The fact that you have not yet registered a particular trade mark does not mean that you have no protection. The law of passing off protects unregistered trade marks. In particular it protects reputation and goodwill by preventing third parties from using your name, get-up, unregistered trade mark, advertising theme or style, in such a way as to cause the public to be confused as to the origin of the third party's product or service.

In order to bring a passing off claim, you must establish that a third party has made a misrepresentation in the course of trade to a prospective customer or ultimate consumer, which is likely

to injure your goodwill or business and which causes actual damage to you. Typically, passing off claims will be relevant to 'me too' look-alike products.

However, registering your mark as a trade mark provides wider protection than is available through the law of passing off and means that you can avoid the additional hurdles which have to be overcome in succeeding in a passing off claim. When a trade mark is registered, you will be granted a registration certificate which is proof of the ownership of the mark. In most cases you do not therefore need to prove goodwill or reputation, unlike the position under the law of passing off. Furthermore, if you as registered trade mark proprietor can show that a competitor is using an identical mark in respect of goods and/or services identical to your registration, you can prevent the use of the mark by that competitor without having to establish that the public has been confused by the competitor's use of the mark. As a result, suing for passing off tends to be more complex and therefore more expensive than suing for trade mark infringement, which is perhaps the most compelling reason to register your trade marks.

Use of ® and ™ symbols

You should always emphasise the status of a trade mark with the appropriate trade mark notice,

.....

® or TM, and preferably also with a statement that the particular sign is a trade mark owned by your company. This allows you to assert your rights over the mark and alerts competitors in the market to the fact that you are the proprietor of that mark.

You should note, however, that the ® symbol or the abbreviation 'RTM', both of which designate a registered trade mark, can only be used by a registered trade mark owner. Use of the ® symbol or 'RTM' in conjunction with a mark that is not registered can constitute a criminal offence for falsely representing a trade mark as being registered.

A trade mark that has not been registered or that is incapable of registration can still, as I have explained, be protected from infringement under the law of passing off. In the case of unregistered trade marks, you cannot use the ® symbol but should instead use the TM symbol to put the world on notice that the mark is an unregistered trade mark being used in a trade mark sense. The TM symbol does not denote any specific protection other than that available under the law of passing off, but will hopefully cause people to think twice before infringing your unregistered trade mark and exposing themselves to a potential passing off claim.

COPYRIGHT

What is copyright all about?

The law of copyright rests on a very clear principle, namely that anyone who by his or her own skill and labour creates an original work shall, for a limited period, enjoy an exclusive right to copy that work.

You as a brand owner should hopefully already own the copyright in a myriad of works, such as your logos, labels, jingles, advertising, annual reports and brochures/catalogues, website content and possibly even slogans. Some of your works will themselves comprise a number of different types of copyright, for example your sales catalogue will contain both literary (the text) and artistic (the photographs/illustrations) works.

Unlike with trade marks, there is no cost involved in protecting copyright works because copyright protection arises automatically, as soon as the work has been created, and does not need to be registered. There is also no need to maintain a portfolio of your copyright works because copyright is not, like trade marks, renewable.

From a brand protection point of view, the most important thing for you to ensure is that, if you or your employees have not created the work in

question, you have dealt adequately with the copyright ownership position. Is it important that you own the copyright? If so make sure that the creator assigns it to you. You don't want to find yourself in the same position as Dr Martens, who discovered that the copyright in their logo had been retained by a freelance designer who then assigned it to one of Dr Martens' competitors!

Why is copyright important? Because it gives you as owner of a copyright work the exclusive right to do certain acts which include copying the work, issuing copies of the work to the public, performing, showing or playing the work in public, or making an adaptation of the work. As owner of copyright in a work you can therefore stop someone else from doing those acts and in particular from copying the whole or a substantial part of your work.

What attracts copyright protection?

Copyright protection exists in the following categories of original works:

- literary works (e.g. books, articles, advertising scripts, computer programs, website content, brochures and, in certain cases, slogans and invented words)

- dramatic works (e.g. plays, works of dance or mime)
- musical works (e.g. melodies, jingles or theme tunes)
- artistic works (e.g. logos, labels, illustrations, photographs, paintings, drawings)
- films and broadcasts
- sound recordings
- typographical arrangements

What does not attract copyright protection?

Copyright protection does not cover works which are not original. Your work therefore needs to be original in the sense that it must not have been copied from other works; it does not, however, have to be 'novel' or unique. In order to obtain copyright protection you must have expended certain skill, labour and judgement in the creation of the work. However, there is no *de minimis* quality requirement: as long as your work is original, it will be entitled to copyright protection, regardless of its artistic merit.

Copyright does not subsist unless the work is recorded in a permanent form, for example in writing or in a sketch.

Protecting your ideas

Copyright does not protect general ideas. There can be no copyright in an idea which is merely in the head. Copyright does, however, protect the way in which an idea is expressed. Therefore, if ideas are sufficiently detailed and set out, for example, in a written synopsis, they can be protected by way of copyright.

If you believe the underlying concept or idea is valuable and unique, and you want to develop it further, you should not just rely on copyright protection. The concept should also be protected separately by way of a confidentiality agreement which you should enter into with anyone to whom your idea is disclosed.

Make sure that you own the copyright

The first owner of copyright in a work is generally the author of that work, i.e. the creator of it.

However, where the author or creator of the work is one of your employees, who creates the work in the course of his employment, you do not need to worry because you as employer will be the first owner of the copyright in the work.

.....

In respect of non-employees, there are specific rules relating to more unusual copyright works. For example, the first owner of copyright in:

- sound recordings is the producer of the sound recordings and not the musicians
- a film is the producer and the principal director jointly
- a broadcast is the person who makes the broadcast
- a cable programme is the person providing the cable programme service in which the programme is included
- typographical arrangements of published editions is the publisher

Where you commission works to be created by third parties it is of critical importance that you agree at the outset who will own the copyright. The starting point is that copyright will be owned by the third party creator. If this is not what you want, then you need to deal with the position contractually. Do you need to own the copyright? If so, you will need an assignment from the creator. Alternatively, will you be happy to take a licence of the copyright, and if so on an exclusive or non-exclusive basis? For a further explanation of licences and assignments and the differences between them, see page 102.

.....

Some examples of cases where you as brand owner will use third parties but may want them to assign copyright in their work to you are as follows:

- Advertising agencies: you will want to own the copyright in the advertising copy that they produce.
- Branding consultants: if you re-brand and retain consultants to devise a new logo/corporate image for you, presumably you will want to own the rights in it.
- Website designers: again, you will want them to assign copyright in the artwork and layout of your website to you.
- Freelance copywriters: if you appoint a freelance writer to prepare the narrative for your annual report or sales catalogue/brochure, you should ensure that he assigns copyright in his literary work to you. Similarly, you may want to own the artistic copyright in any photographs that you have commissioned.

It is very important to keep on top of your ownership of copyright. If it is not properly assigned and you do not keep track of which entity owns the particular copyright, this can lead to difficulties when enforcement action is required as you must establish first that you own the copyright. When was the last time that you reviewed who owns the copyright in your logos, labels or packaging designs?

Period of copyright protection

Copyright in a work does not last forever and is not renewable. The period of protection depends upon the type of work.

For literary, dramatic, musical and artistic works, the term of protection is the life of the author plus 70 years. Copyright in films lasts for 70 years from the death of the last to survive of the principal director, the author of the screenplay, the author of the dialogue and the composer of music created specifically for and used in the film.

Copyright in a sound recording lasts for 50 years from the end of the year in which it was made. However, if it is released within that time, copyright lasts for 50 years from the end of the year of release.

Copyright in broadcasts expires 50 years after the end of the calendar year in which the broadcast was made.

Copyright in cable programmes expires 50 years after the end of the calendar year in which it was included in a cable programme service.

Copyright in published editions expires 25 years after the end of the calendar year in which the edition was first published.

Moral rights

There are two key moral rights automatically available to the creator of a copyright work:

- The right of ‘paternity’: the author of a literary, dramatic, musical or artistic work has the right to be identified as the author.
- The right of ‘integrity’: such authors also have the right to object to any derogatory treatment of their work, such as additions, deletions or adaptations.

One other thing to look out for when commissioning copyright works to be created for you by a third party is moral rights. If you want an assignment of the copyright to you, you will probably also want the creator to waive his moral rights (copyright law does not permit moral rights to be assigned as they are, by their nature, personal to the creator).

If, for example, you retain a freelance writer to prepare your sales brochure, you may not want to have to credit him with writing the narrative. You therefore need to ensure, in the contract of appointment, that he agrees to waive his moral rights.

Your employees who produce works in the course of their employment are not entitled to moral rights.

.....

Moral rights last for as long as the copyright term of protection.

DATABASE RIGHT

What is database right?

You may not appreciate it, but you are probably already the owner of database right in a number of your databases (e.g. customer contact details, mailing lists, market surveys, your well-ordered trade mark portfolio). Database right is a European right introduced in 1997 but is likely to be less relevant to you as a brand owner than trade marks, copyright and designs. What follows is therefore only a brief overview of this evolving IP right.

Database right was created because in some countries the requirement that copyright works be original was such that, although databases were expensive to create and valuable to exploit, they were mere arrangements of information and did not always qualify for copyright protection.

So the new right covers:

- databases: which is any collection of independent works, data or other materials which are (a) arranged in a systematic or methodical way, and (b) individually accessible by electronic or other (e.g. a paper database) means;

- in which there has been a substantial investment: in order to have database right protection, you must have invested in obtaining, verifying or presenting the contents of the database, as opposed to any investment in *creating* the underlying information.

As with copyright, there is no cost involved in protecting your databases. Database right arises automatically upon creation of the database and there is no registration system.

What protection does database right give you?

If your database does qualify for database right, the protection you receive is broader than under copyright law which always requires some form of copying.

Database right on the other hand is infringed where a person:

- extracts or reutilises (note the absence of the word 'copies') all or a *substantial* part of your database; or
- repeatedly and systematically extracts or re-utilises *insubstantial* parts of your database.

Database right is not infringed by fair dealing in a database which has been made available to the public.

Database right lasts for 15 years from the end of the calendar year in which the database was made. Database right is not renewable, but databases of course tend to be constantly evolving and in that respect your database will be protected for perpetuity because each time you amend it the 15 year period arguably starts again.

In what respect do you need to bother with database right for the purposes of your brand strategy?

Make sure you own the database right:

- The first owner of database right is the person who takes the initiative in obtaining, verifying or presenting the contents of the database and who assumes the risk of investing in it.
- In practice, this means that commissioning the creation of a database should be less problematic than in the case of copyright works because you as commissioner will have invested in the preparation of the database and should therefore be the first owner.

- Nonetheless, it is prudent to ensure that, in the terms of appointment, any third party commissioned to do any form of creative work for you assigns all IP rights to you including database right.
- As with copyright, where one of your employees makes the database in the course of his employment, you as employer will automatically own any database right.

Don't forget about it: database right might provide a more obscure claim for you against infringers. For example, where you suspect that a competitor is using your mailing list but you have no evidence of copying, database right infringement may be a more straightforward claim.

Trojan horses: an old (but important) trick of the trade is to include some bogus or meaningless data in your database to prove, beyond doubt, that someone else has had access to and utilised, extracted or copied it. For example, in a customer list you could include the maiden name of a director's wife.

DESIGNS

Designs is an area often overlooked by brand owners, not least because design law is a complex area of intellectual property law. Somewhat

.....

confusingly, there are four different forms of design protection available, each of which has arbitrary differences: UK registered designs; UK unregistered designs (often referred to merely as design right); registered European Community designs; and unregistered European Community designs.

As a brand owner, you need to be aware of what can be registered as a design. For example, it is possible to register not only your products but also your logo and packaging as a UK and/or community design.

Whenever a new product is devised, you should therefore consider whether to register its design.

Before launching a new product design, you should also, at an early stage in the product's creation, instruct patent attorneys or external counsel to check that there are no similar designs or patents already registered. This is important for two reasons. First, you do not want your new product to infringe someone else's rights. Second, you want to ensure that your design is original enough to be registered.

UK registered designs

These cover your two- and three-dimensional product designs, including the product itself, its

packaging and get-up. The definition of a 'product' is sufficiently wide to include your logos and graphic symbols.

The appearance of the whole or a part of a product can be registered as a design at the UK Patent Office, if the appearance results from features such as the lines, contours, colours, shape, texture or materials of the product or its ornamentation.

As with copyright, your design does not need to have any aesthetic merit or 'eye appeal' to be registrable. It does, however, have to satisfy both of the following two tests:

- *Novelty*: your design must be new and must not have been disclosed anywhere in the world before you apply for the registration. So if you have devised a new product design, do not use it in trade or exhibit it at trade shows until you have applied to have it registered. (Although there is actually a 12-month grace period to allow a designer to market a design or seek financial backing, you should exercise caution and apply to register your design as soon as possible without disclosing it.)
- *Individual character*: the overall impression of your design must differ from the overall impression of any earlier publicly available design, as judged through the eyes of an 'informed user'.

.....

Certain features of your product cannot be registered as designs, e.g. features whose shape/design is dictated solely by the product's 'technical function' or by the need to form part of or attach to another product (often referred to as the 'must fit' and 'must match' exclusions). For example, a camera film cartridge has to be a specific size and shape to fit into the camera casing so that element of the film cartridge will not be registrable as a design.

The first term of protection for a UK registered design is five years, but it can be renewed, on payment of a fee, up to four times, giving a maximum of 25 years' protection.

The person who can apply to register a design is the author/creator of the design, save for two exceptions of importance to you:

- **Commissioned designs:** unlike with copyright (see page 15), you need not worry about obtaining an assignment from any third party creator. If you commission a third party to design a product for you, you as the commissioner will be the first owner of the rights in the design and you can apply to register it.
- **Employees:** as with copyright, you as employer will be the first owner of the rights in a design created by your employees in the course of their employment.

UK unregistered designs

The fact that you have not registered your product as a design does not mean that you have no rights in it. UK law recognises unregistered designs (also known as 'design right') in certain three-dimensional articles, although this will not cover logos which are two dimensional.

Confusingly, the test for which designs qualify for design right is different to the test for registered designs. In order to qualify for design right protection, your design must:

- *be original and not commonplace*: it must not have copied another design (which is different to the novelty test for registered designs); and it must not be commonplace in the design field in question at the time of its creation; and
- *relate to any aspect of the shape or configuration of the whole or part of an article*: the key point here is that design right does not subsist in mere surface decoration. So if you design an original shape and pattern for a cup, the shape of the cup will attract design right, but the pattern will not (although it may be an artistic work and therefore protected by copyright). Similarly, design right does not cover logos.

As with registered designs, features that are necessary for their technical function or to fit/match another product do not attract design right.

.....

The period of protection for unregistered design right is either:

- 10 years from first sale; or
- 15 years from design/manufacture if it is not put on sale.

As with registered designs, if you commission a design from a third party, or if your employee creates the design in the course of his employment, you will automatically own the design right without the need for an assignment.

European Community designs (registered and unregistered)

These cover your two- and three-dimensional product designs. It is worth reviewing your trade mark and product portfolio to establish whether there are any post-March 2002 designs that you may now want to register as community designs. Going forward, you should always consider whether new logos or product designs should be registered as community designs as well as trade marks.

By way of example, some designs that have been registered as community designs include diaries, chairs, vases, shoes, circular saws and toothbrushes.

.....

Since March 2002 the EU has added a community-wide protection to the various national protections that already existed for designs. There is now an automatic three-year protection for 'unregistered community designs' and up to a maximum of 25 years' protection for 'registered community designs'.

These new rights protect the design of a product; both concepts are broadly defined:

- A *design* is the appearance of the whole or part of a product resulting from its lines, contours, colours, shape, texture and/or materials and/or ornamentation.
- A *product* is any industrial or handicraft item, including packaging, graphic symbols/logos and fonts, but excluding computer programs.

This means that community design rights do not protect only those items which would usually be thought of as consumer designs – e.g. mobile phones, irons, staplers – but can also cover your logos and packaging/shapes.

As with UK registered designs, any design which is *novel* and has *individual character* qualifies for community design protection. This means that there must have been no previous identical design and your design must give users a different overall

.....

impression so that they can tell it apart from other designs.

The first owner of community design right will be the designer or, if he is an employee, his employer. Unlike with UK registered or unregistered designs, the commissioner of a design will not be the first owner of any community design right. Therefore, as with copyright, if you retain a third party to create a design for you, you need to ensure that you have dealt adequately with the community design ownership position and ideally you will get the designer to assign his community design right to you.

Unregistered community design right takes effect immediately when you make the design available to the public and allows you to prevent it from being copied within the EU. However, it lasts for only three years if not registered. If you register a design within a year of making it available to the public (note that after that year the design will no longer be seen as 'new' and will not therefore be registrable), you will have a monopoly in that design in the EU. You can then prevent anyone making a product to that design, whether or not they copied your design to do so, for up to 25 years. Unlike trade marks, registered designs cannot be renewed beyond the maximum 25 years' protection. Registration is nonetheless ben-

.....

eficial as it provides wider protection against independent development of the same or a similar design without you necessarily having to prove copying.

The first term of protection for a community registered design is five years but it can be renewed, on payment of a fee, up to four times, giving a total of 25 years' protection.

There are limits to what can be protected. As with UK registered designs, where a product looks the way it does simply because it needs that appearance in order to perform its function (for example, a wheel has to be round), that element of the design will not be protected. The same applies to those elements of the design which are needed to allow one product to be connected to another, such as plugs and other connections (the 'must fit' and 'must match' exclusions).

Overlap between trade marks and designs

Your device marks and logos which are applied to your products will constitute designs for the purposes of UK registered designs and community registered and unregistered designs, as they relate to the appearance of a product.

.....

As long as your device marks and logos are new and have individual character, they can be registered as designs as well as trade marks.

Benefits of registering device marks/logos as designs

You will need to consider this on a case by case basis and seek advice as to the necessity and cost effectiveness of registering your device marks/logos as both trade marks and designs, but here are some benefits:

- The design registration process (both UK and community) is quicker and cheaper than the trade mark registration system.
- Unlike trade mark registrations, a design registration does not only protect you in relation to limited classes of goods. Trade marks do not give monopoly rights, whereas registered designs can give you up to 25 years' monopoly protection during which no one else can use your design in respect of any goods without your permission.
- If your trade mark is not distinctive enough, or is descriptive, it will not be registered as a trade mark, but this does not prevent it from being registered as a design. Similarly, unlike with registered trade marks, there is no risk that the way in which you use your logo will result in

.....

the revocation of your design registration where the brand's distinctiveness is diminished, e.g. where it is being used as a decorative motif resulting in the consumer no longer associating the product with the brand owner.

- Unlike with trade marks, your design registration is not capable of being revoked for non-use.

