

Please be seated and make yourselves comfortable... our Jelly Babies will join you shortly.



Imagine Coca Cola without a logo

Imagine Apple's iMac as a grey rectangular box

Imagine Nike without its TV adverts

Question 1

- Paper and pen is given to an artist...
- Who does a drawing and gives it to a friend...
- The friend discards the drawing (hates it)...
- Which is discovered by somebody who appreciates its value...
- An offer from a print company is accepted..
- Are they legally entitled to print it?

Question 2

- A local journalist discovers the story and takes a photo of the drawing with its owner...
- And runs a story in the local paper about it
- The photo includes the drawing
- Was this legal?

Design and innovation - protection?

To fully exploit the potential of IPR you need to understand the range and type of intellectual property rights that are available to you... however

Design and innovation - protection?

“Because IP assets cannot be seen or touched it is sometimes hard to appreciate their value” (UKIPO, 2007)

Design and innovation - protection?

Yet in the US “65% of assets are not the factories or equipment, but intellectual property” (Christobal, 2006)

**What do you need to
know next?**

There are 4 major intellectual property rights:

Copyright

Trademark

Patent

Registered Design

Copyright

“Copyright is a proprietary right given to the creator of an original literary, dramatic, musical or artistic work”

Copyright Designs and Patents Act, 1988

Copyright is an Intellectual Property Right

It's not a physical asset

It is a proprietary right

It can be bought and sold

It has a value like any other asset

Copyright is created as a result of any act that involves original creative work

What types of creative works are protected by copyright?

Literary (E.g. Books)

Dramatic (E.g. A Play)

Musical (E.g. A Musical Composition)

Artistic (E.g. A Painting)

Sound Recordings (E.g. Music CD)

Films (E.g. Funnily enough – A Film)

Broadcast or Cable Programmes (E.g. TV or Radio)

Typographical Work (E.g. Typeface or layout of a book)

Now let's look at the copyright symbol itself



The use of this symbol itself does not create copyright, it simply acts as a notice to tell people that you are the copyright owner, and should warn them not to copy your work without your approval.

When is copyright created?

**Copyright is automatically created
when an original work is created**

**The test of originality isn't very high;
to be original the work must simply not be copied**

When is copyright created?



The drawing to the left may be poor, but is an original work and therefore subject to copyright protection.

The same goes for a song, book or any other original work, the quality is not important; to be original the work must simply not be copied.

When is copyright created?

Fixation

Fixation is a legal term used to describe the point at which copyright is created.

When is copyright created?

Do you have to register your copyright work?

In the UK, registration is not necessary; copyright is created automatically as soon as the work takes a 'fixed' form.

In some countries however, the USA for example, copyright is not acknowledged until the work is registered with the US Patents Office.

There is no copyright in an idea:
Copyright is only created when the idea is
expressed in a 'fixed' form.

Practicalities of copyright

Be aware of “fair Trading” or “Exceptions”, some examples include;

Students and researchers can copy once for private research or study... they must acknowledge you!

To criticise a work you may be allowed to reprint / copy extracts of the original.

If you wish to report on current affairs that are newsworthy it is OK to do so.

For the purpose of caricature, parody or pastiche.

Copyright isn't only infringed if the whole of the work is copied, it can still be infringed if a **substantial** part of the work is **copied**.

Whether a part of a work is substantial or not is a test of quality not quantity.

Even if the part copied is very small, it can still be judged substantial if it is recognisable, for example, one character from an illustration.

Infringement of copyright

It is not necessary to copy an entire work to infringe copyright.

Remember the words “Substantial Part”.

Includes direct copying in any material form, even sketching from a photograph.

When is copyright infringed?

The copyright owner has the exclusive right to:

- **Copy the original work**
- **Issue copies of it to the public**
- **Rent or lend it to the public**
- **Perform it in public**
- **Broadcast it**
- **Sell it to the public**
- **Make an arrangement or adaptation of it**

If anyone does any of the above without the owner's permission, it's known as copyright infringement.

Duration of copyright

Literary, dramatic, artistic or musical works:
70 years after the death of the author

Film:

70 years after the death of the last surviving person from either the Principal Director, Screenplay/Dialogue Writers, or Composer of any specially commissioned music.

Duration of copyright

Sound Recording:

**70 years from the year it was made or released
(recently increased from 50)**

Broadcast or Cable Programme:

50 years from the end of the first broadcast

Typographical Arrangements or Published Edition:

25 years after the first edition was published

After the time-spans listed above, the work falls into the public domain – this means the work is no longer protected and can be copied freely by anybody.



Art Rogers – 1985

Case Study

Photographer Art Rogers shot a photograph of a couple holding a line of puppies in a row and sold it for use in greeting cards and similar products.



Art Rogers – 1985



Jeff Koons – 1988

Case Study

Internationally, renowned artist Jeff Koons in the process of creating an exhibit on the banality of everyday items, ran across Rodgers' photograph and used it to create a set of statues based on the image.



Art Rogers – 1985



Jeff Koons – 1988

Case Study

Koons sold several of these structures, making a significant profit. Upon discovering the copy, Rodgers sued Koons for copyright. Koons responded by claiming fair use by parody.



Art Rogers – 1985



Jeff Koons – 1988

Outcome

The court found the similarities between the 2 images too close, and that a “typical person” would be able to recognize the copy.



Art Rogers – 1985



Jeff Koons – 1988

Outcome

Koon's defence was rejected under the argument that he could have used a more generic source to make the same statement — without copying Rogers' work.



Art Rogers – 1985



Jeff Koons – 1988

Outcome

Koons was forced to pay a monetary settlement to Rogers.



Case Study – Associated Press v Shephard Fairey



Famous street artist Shepard Fairey created the Hope poster during President Obama's first run for presidential election in 2008. The design rapidly became a symbol for Obama's campaign, technically independent of the campaign but with its approval.



In January 2009, the photograph on which Fairey allegedly based the design was revealed by the Associated Press as one shot by AP freelancer Mannie Garcia — with the AP demanding compensation for its use in Fairey’s work.



Fairey responded with the defence of fair use, claiming his work didn't reduce the value of the original photograph.



The artist and the AP press came to a private settlement in January 2011, part of which included a split in the profits for the work. Though there wasn't a court case and an actual verdict, this case created a lot of discourse around the value of work in these copyright battles.



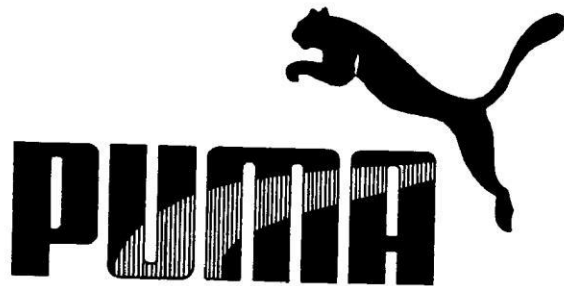
It's unlikely that Garcia's work could have ever reached the level of fame it did, if not for Fairey's poster. Garcia himself stated he was "so proud of the photograph and that Fairey did what he did artistically with it.



He was happy the effect it has had on his career and the subsequent exposure he got,” but he still had a problem with the fact that Fairey took the image without permission and without credit for it’s originator.



You see them every day...
so what are they?



Trademark

Trademarks – a Definition

Any sign capable of graphically distinguishing the goods or services of one individual to another.

For example it can be applied to;

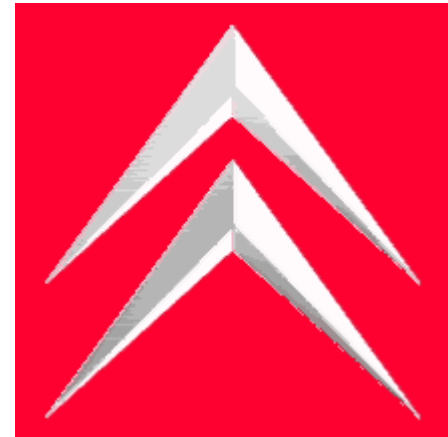
- Words
- Letters
- Jingles
- Even shapes!!!

Even shapes.....



...with trademarks on them!

Trademarks - What is this product?

The logo for Picasso, featuring the word "Picasso" in a stylized, handwritten black font. A long, thick black diagonal line starts under the 'P' and extends towards the right, ending under the 'o'.

Trademarks - What is this product??



Xsara *Picasso*



Colours as Registered Trade Marks??



- as applied to the outside of petrol filling stations



- in relation to roadside recovery services



- in relation to milk chocolate



- in relation to cat food



- in relation to baked beans



Colours as Registered Trade Marks??



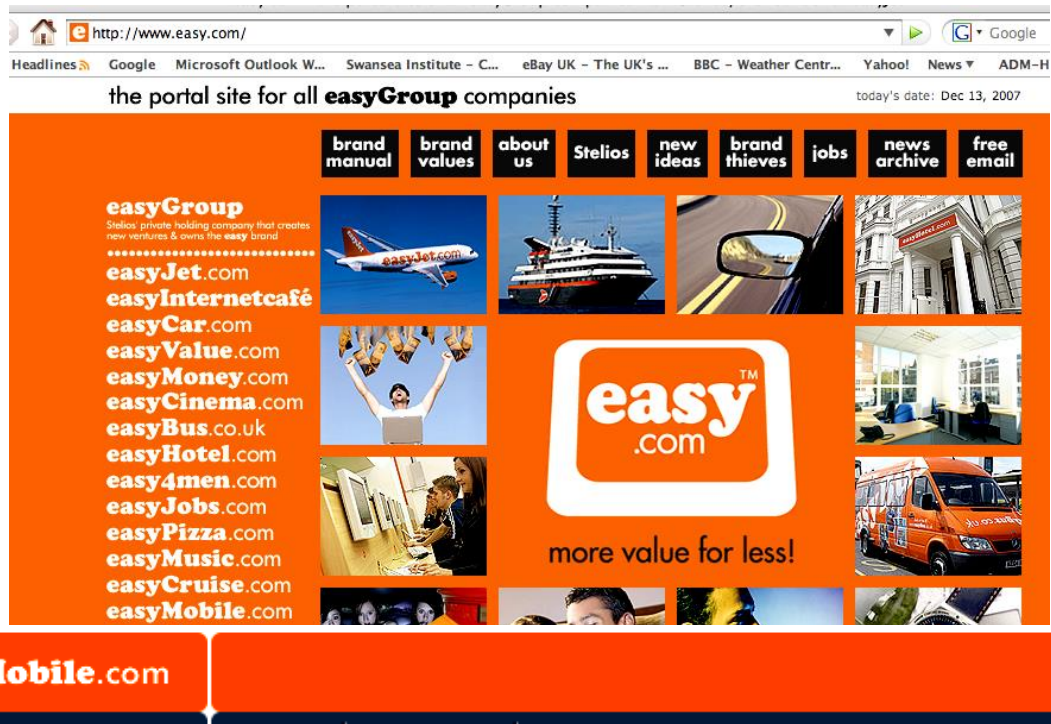
- In relation to mobile communications



- In relation to air travel?



Was there a problem here?



easyMobile.com

How about now?

Slogans as Registered Trade Marks?



Just Do It



I'm Lovin' it



Every Little Helps



Red Bull®

It Gives You Wings!

Trademarks - Recognition

Registered Trademark 

Must be distinctive for your goods or service

And not resemble one already in your line of business

This will be subject to checking in the 'Trade Marks Journal'

Trademarks - Recognition

Unregistered Trademark TM

Common law allows you to simply use this

And to defend it against infringers

However, it is far more difficult to enforce

And it could be your most valuable asset!

Trademarks in summary

“A badge of origin, a sign which is capable of distinguishing goods or services of one company from those of another” (UKIPO)

Name

Shape

Domain Name

Slogan

Colour

Logo

Music





Case Study

In 1994, Adidas and Payless got into a scuffle over stripes. Adidas had used its three-stripe mark as a logo of sorts since 1952, and had recently registered it as a trademark.



Case Study

But budget brand Payless was selling confusingly similar athletic shoes with two and four parallel stripes.

The two companies hashed out a settlement, but by 2001, Payless was again selling the look-alikes.



Case Study

Fearing that the sneakers would dupe buyers and tarnish its name, Adidas America Inc. demanded a jury trial.

The trial lasted seven years, during which 268 pairs of Payless shoes were reviewed.



Outcome

In the end, Adidas was awarded \$305 million – \$100 million for each stripe, as the *Wall Street Journal's Law Blog* calculated.

Patent

Patents - Definition

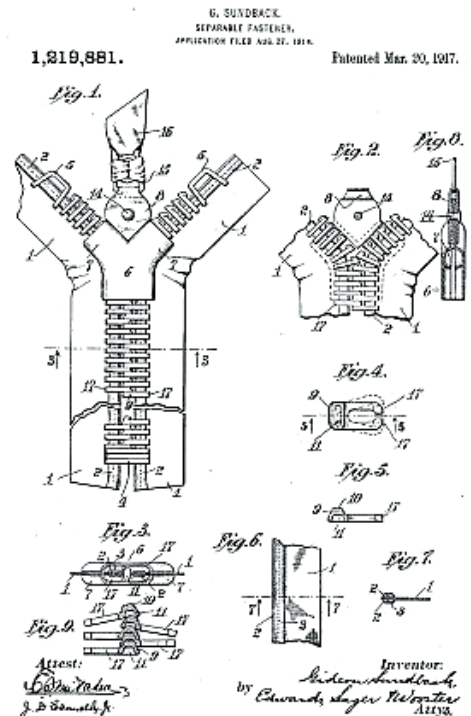
Protect how something works or how it is made

Must be new

Must not be obvious

Must have a useful application

Should be *Better or Cheaper*
or *Different*



Patents - Definition

Granted by a country or by a group of countries
(eg European Patent Office)

Are country or region specific

Can be bought, sold or licensed

Do not last forever – 20 years standard

Cost of a UK patent starts from £200+ extras (eg.
Patent attorneys, renewal fees etc)

Patents - Obtaining

Required information:

Full technical description of invention

Drawings

Abstract (technical summary)

Registered Design

Why register a design?

Protects the 3D shape and / or appearance / surface pattern of individually produced and manufactured items

It only costs £60 - renewable every 5 years

It can safeguard you for up to 25 years

Think - lines, contours, colours, shape, texture, material and combinations

Think - new, individual, not seen before

Why register a design?

It ensures that you exploit the design...not others!

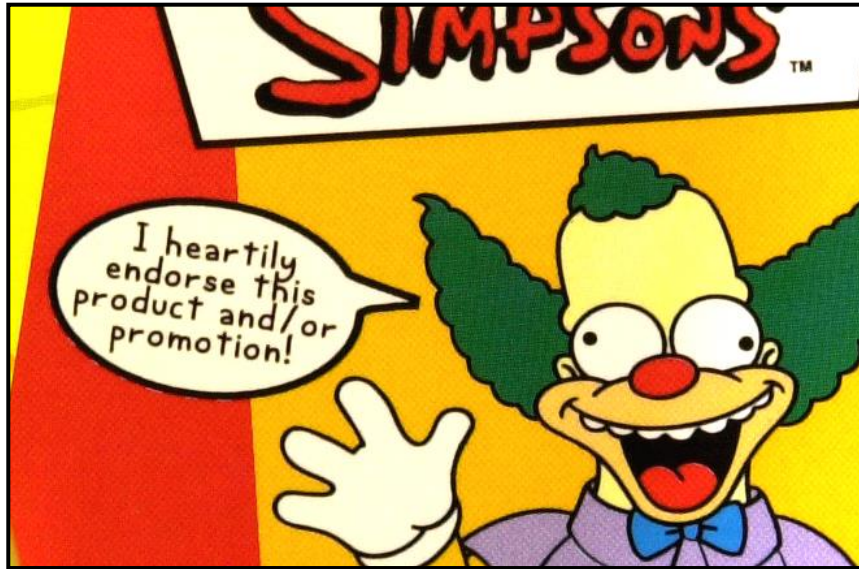


Licensing

Working under License

Many companies will work under license -





Granting
Licences is
big business



Licensing

Exploiting your IPR

Exploiting your Intellectual Property



© Ian Simmons

How much did I charge?

£400 and the illustration was never used as the magazine never got to the shelves but I was still paid.

Two months later I licensed the illustration to a book publisher for £600.

And I still own the copyright so will license it again if I can!

Exploiting your Intellectual Property



© Ian Simmons

How much did I charge?

£600 for the painting – the client owns the physical work – I still own the IP rights.

Have relicensed this illustration twice so far!

Exploiting your Intellectual Property



© Ian Simmons

How much did I charge?

£200 – relicensed 5 times to date!

In brief summary:

- **Copyright** ...protects the author
- **Trademarks** ...a distinguishing mark
- **Registered Designs** ...protect appearance
- **Patents** ...protects invention

Can you answer our original questions?

- Are they legally entitled to print the picture that got passed around?
- Was it OK to print the photograph in the newspaper?
- Finally - Do you now feel more able to protect your business IP assets?

We would wish to thank the Jelly Babies for their contribution to this lecture.



As Bassett's 25 year design rights have expired - they are multiplying quite happily

Further information?

www.ipo.gov.uk