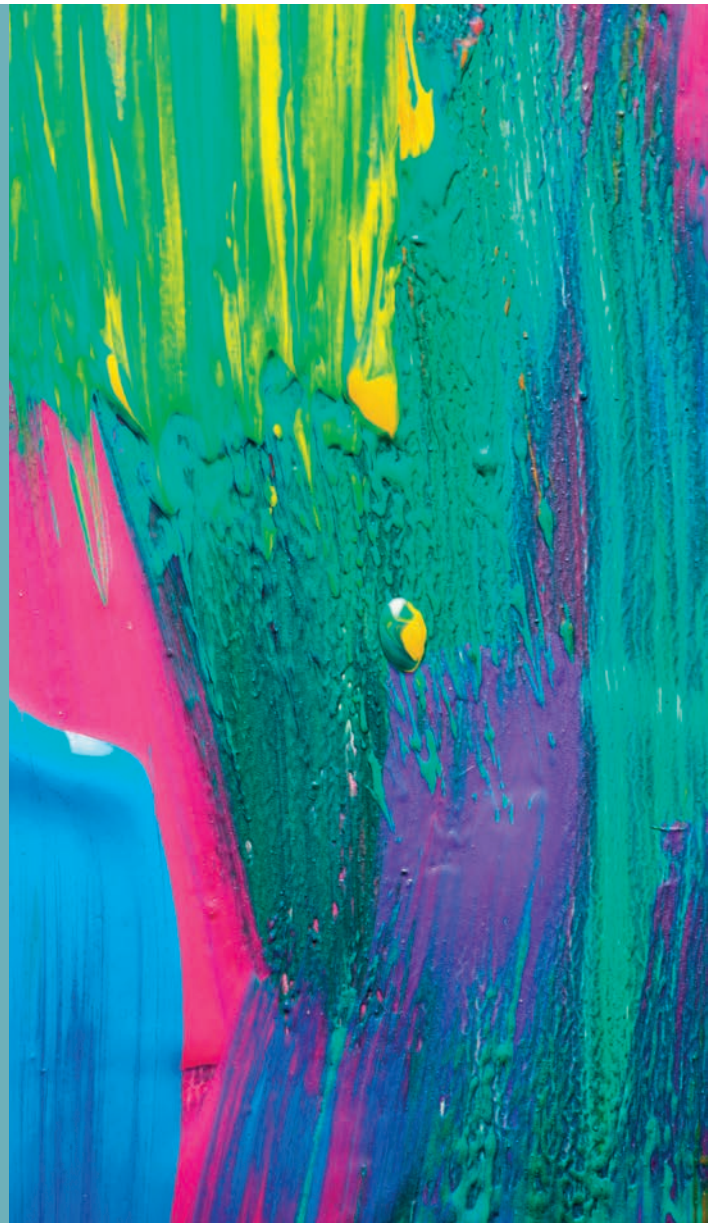


A GUIDE TO INTELLECTUAL PROPERTY IN THE CREATIVE INDUSTRIES



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Ever had a creative concept stolen by a client or prospective client? Are you certain that you legally ‘own’ your brand identity? Could you defend yourself if accused of copying someone else’s ideas?

Whether yours is a specialist or full-service agency, your creativity and ideas — your intellectual property (IP) — are your business. ***Protecting them should be your priority.***

Our experience and recent research amongst creative agencies tells us that few understand IP and fewer take steps to protect themselves.

When used effectively, IP rights provide three main benefits:

- **Protect your creative concepts** (your pitch processes, proposals)
- **Protect your brand** (your name, logo, identity)
- **Add value to your client relationships** (with IP knowledge and confidence)

IP law is complex and can be difficult to understand, but that shouldn’t be a barrier to protecting your business. All you need is the right advice from the right partner.

We’ve produced this guide to help you grasp the basics and give some ideas about how to harness your IP to add greater value to your business and clients.

At UDL, we’ve advised agencies of all sizes for more than 20 years. We truly understand IP’s role in the creative process.

For an initial free-of-charge chat, get in touch with us at **creative@udl.co.uk**.

You can also find out more about IP rights for the creative industries at **udl.co.uk/creative**.

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WHAT IS IP?

According to the World Intellectual Property Organisation, IP “refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

Another commonly used term is ‘IPRs’, which stands for ‘intellectual property rights’ and usually refers to the various forms of protection available for IP.

Ultimately, all IP begins with an idea — your creativity — whether you’re creating a new brand, developing a website or building a video game.

Any IP that you create may be entitled to **registered** or **unregistered** rights.

A **registered IP right** is one that you must apply for.

There are three main types:

- **Patents** (protect new inventions and technical innovations)
- **Trade marks** (protect branding, including words, logos and colours)
- **Registered designs** (protect the appearance of a product)

Registered IP rights are types of personal property and assets, which can be bought or sold, licensed and borrowed against.

Unregistered IP rights are those that come into existence automatically, either when something has been created or used. A common unregistered right is **copyright** which protects, among many other things, literary, musical, dramatic and artistic works.



IP IN THE CREATIVE INDUSTRIES

IP is the lifeblood of the creative industries. Whether you know it or not, if you’ve ever pitched a creative concept, developed a new product design or produced original content, you’ve generated IP. *Protecting your ideas, originality and business is critical.*

Effective IP advice can enable you to:

- protect the embodiment of your ideas from being copied
- protect your brand from copycats and competitors
- ensure that you get fair remuneration for your creativity
- look after your clients’ interests (so that neither of you get sued for using an idea you’ve created but haven’t thoroughly checked)
- add value to your business proposition and client relationships
- open-up new revenue streams through licensing and royalties
- attract investment and increase your company value
- defend yourself from other creative businesses that have IP rights

We recently undertook a body of research with leaders in the creative industries to get their views on IP. Unsurprisingly, the majority consider IP law to be complex — no-one we spoke with considered themselves to be an ‘IP expert’. In fact, **IP is generally seen as a ‘black hole’** — a major gap in knowledge.

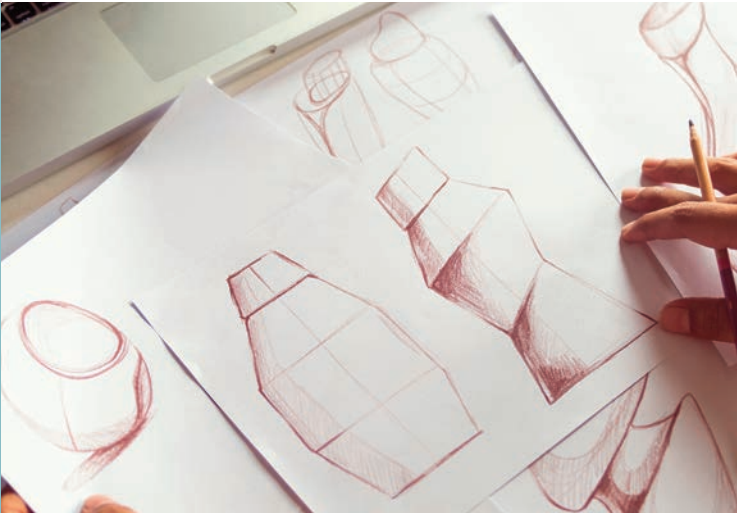
While you certainly don’t need to be, nor should you aim to be, an expert in IP, it’s important to understand the basics.

You should be able to explain to clients:

- how and when you’ll transfer ownership of the IP you create
- how long you retain ownership of IP for (e.g. until all invoices have been paid)
- the contractual basis for the client-supplier relationship
- whose responsibility it is for clearing brands, designs and artwork for use

“You know pretty much straight away if you can’t use something — but it’s difficult to say that you definitely can.”

Director, Digital and Print Design Agency



PROTECTING YOUR IDEAS DURING THE PITCH PROCESS

Every business owns, uses or creates some form of IP. IP is where the value lies in the works that you create for both yourself and your clients. In fact, in the creative industries, IP is what you sell to your clients.

You own the IP in all original materials in your pitches or client presentations. If a client or potential client copies work that you pitch, you can take legal action to prevent them from using the content in your pitch or, at the very least, to secure a fair payment. This is particularly common in the case of ‘over-pitching’ to a large client to try and secure work.

If you aren’t fully aware of the importance of IP, you’re at a higher risk of having work or pitch ideas copied. Potential clients may be more respectful of agencies that can demonstrate a good knowledge of IP law.

We recommend that before you pitch, you present a **non-disclosure agreement (NDA)** to the client in which it’s clear that:

- any ideas you pitch are confidential
- you retain ownership of the IP rights in the ideas you pitch
- the presentation of your ideas doesn’t give them any form of licence or right to use your work, even if your pitch is successful, until contractually agreed

While many agencies have items in their contracts with clients which stipulate the relationship between the two parties, if you’re pitching to a new client or for a new job to an existing client, your contract may not cover the work. For this reason, putting in place an NDA is an essential and straightforward step.

However, the existence of an NDA on its own may not be enough to protect your business. You must be prepared to enforce the NDA in the event that it’s breached and your work is copied.



“In one instance, we ‘won’ a pitch but were told two days later that the work had gone to another agency, which took our idea and copied it.

It really does bother me, but I haven’t the faintest idea how to address it.”

Creative Director, Print and Digital Communications Agency

WHOSE RESPONSIBILITY IS IP — YOURS OR THE CLIENT’S?

When developing a new brand, there’s no value to you or your client if you create an idea that can’t be used because it infringes the rights of others. In fact, this is likely to harm your agency’s reputation and could be costly for both you and your client if the adoption of your brand leads to legal action.

While most claims of IP infringement never reach a court, many settlements result in the alleged infringer agreeing to stop the infringing activity. This could include changing a brand name or removing infringing content from a website or packaging.

If your client is faced with a claim of IP infringement which requires it, for example, to rebrand in a short period of time, this can be a costly and time-consuming exercise. If such a claim arises from a brand created by you, while the client may not have a claim against you, there could be significant damage to your relationship as well as wider reputational harm if your client is vocal about who created the brand.

Whether or not a client can make a claim against you depends on your terms of business and what searching, if any, you’ve done to ‘clear’ your ideas for use. One advantage of using a firm of IP professionals is that they are insured where you are not when it comes to clearance.

“We can’t do everything a professional would... We don’t want the comeback... We’re too small to be stung with a big bill [as a result of an infringement claim].

Director, Brand and Communications Studio

We’re a young company, so we’ve made mistakes... it hasn’t happened often but there have been some problems.”

MD, Creative Social Media Agency

WHO OWNS YOUR LOGO?

‘Who owns my logo?’ may seem like a straightforward question — the client paid for it, so therefore the client owns it, right? Well, not always. The question of ownership isn’t as simple to answer as you might think...

Even the definition of ‘ownership’ is a common misconception. This should refer to the legal ownership of the copyright that exists in the logo — not just the permission to use it, which is granted by the designer upon payment by the client. While this may not seem important to you right now, it could have costly implications in the future.

Why does it matter?

For a client, a logo is likely to be an essential part of its branding which will be used to identify the business online and in all marketing collateral and corporate materials. It’s therefore important that the client can use its logo freely and has the necessary permissions to evolve and change it over time.

If the ownership of the copyright in the logo remains with the designer, your client may not have the right to use the logo how it wants to and certainly won’t have the right to make changes to it. The client also won’t be able to obtain valid registered IP rights such as trade marks or registered designs.

As a general rule, clients rarely want to spend time seeking permissions to use ‘their own’ logos or become embroiled in disputes with designers due to your lack of IP awareness.

In our experience, questions of copyright ownership usually arise when you undertake due diligence, for instance:

- as part of a finance raise or sale
- during a dispute with a designer
- when you need evidence of ownership for a dispute with a third-party

So, who’s the owner?

The most frequent circumstances under which a logo is created are:

1. An employee creates the logo

Copyright law provides that the designer of the logo is the first owner, unless it’s made by an employee in the course of their employment, in which case the copyright will be owned by the employer. If you employ a designer who creates your new logo, you will own the copyright in it. The exception to this should be noted by the words “in the course of their employment”. If, for example, a member of your accounts team who isn’t employed as a designer creates a logo that you want to use, you’ll first need them to transfer the copyright in it to you.

2. An agency creates the logo

If you used an agency to design your logo, the copyright will usually be owned by the employer of the designer who designed it, until it’s formally transferred to you.

3. A friend or partner creates the logo

In this case, your friend or partner will be the creator of the work and, therefore, the first owner of the copyright in it. You’ll need to ask your friend or partner to transfer the copyright in the logo to you before using it.

How do I transfer copyright?

When working with third-parties, it’s essential that you both understand your obligations and duties and for the terms of business to be clear. It’s rare that an agency’s terms of business cover the transfer of the copyright in a logo. Usually, at most they provide a bare, non-exclusive licence for the logo’s use.

Copyright law in the UK provides that for the legal ownership of copyright to pass from one person to another there must be a written assignment signed by the owner of the work. This would usually be signed by the parties once the client has paid for the logo. We can help you to put together the necessary assignment document.

This additional administrative step can work to your benefit — we have successfully used the ownership of the copyright in a logo as a mechanism for one agency to get paid when a client refused to play fair.

Disputes over the ownership of a logo arise more frequently than you may think. It’s essential that all terms relating to the ownership of the copyright in a logo are set out clearly in a contract at the outset.

We help both brand owners and designers in drafting such contracts.

IS A BRAND NAME AVAILABLE TO USE?

You’ve thought of a great brand name for your client — but rather than go full-steam ahead, using up time and budget, your next step should be to conduct searches to find out whether the name is actually available for you to use. If someone owns a trade mark registration for the same or a similar name to the one you’ve devised, your client’s use might infringe those rights. Even if there isn’t a trade mark registration, if someone is using a particular brand name, they may have ‘passing-off rights’ which could be used against your client.

“When branding agencies come to us for help with a new naming project, our motto is give us your shortlist of names and we’ll make it shorter...”

Gareth Price, Partner,
UDL Intellectual Property

Clearing brands for use is difficult. The number of registered trade marks has increased significantly in the last ten years. The internet has opened-up opportunities for easy export, so many businesses now trade internationally. With such opportunities come greater risks, as your client’s brands need to be free and suitable for use in multiple countries. Searches must be done early and certainly well before the client has developed any emotional attachment to your ideas.

Most agencies have no standard process in place for identifying and dealing with IP, so it gets dealt with on an ad-hoc basis, or often not at all. When developing work for clients, many undertake their own basic searches online, but these are limited and can create liabilities if you don’t correctly explain the limitations of the searches you’ve carried out.

Some clients will be happy to handle all forms of searching and clearing themselves. For you, this can be great, as you don’t need to worry. However, this can lead to ‘lawyer says no’ comments about your ideas, with little or no explanation as to why.

Most companies that work with IP firms factor in legal costs, like those associated with searching, to their estimates. If your client wants professional searches to be conducted, we can do this for you.

While you can undertake initial research into brand name availability yourself via online searches, this will only ever provide you with a vague indication as to whether a brand name can be used. You’ll also need to provide appropriate disclaimers — notably that you’re not providing legal advice — to your client.

“I would like [our approach to IP] to be more joined-up and... formalised as a process.”

CEO, Digital Social Media Agency



CONTRACTS AND LICENCES — THE BORING BUT ESSENTIAL BIT

You should make sure that your terms of business, employment contracts and freelancer arrangements contain appropriate IP provisions. Many contracts in the creative industries make little or no reference to IP rights or, as a minimum, say that you'll transfer IP on receipt of invoice payment.

This is a classic example of the complexity of IP law (and yes, we're going to get nerdy here for a minute). Say your terms of business state that you'll transfer the copyright in a work you create to your client on receipt of invoice payment — and that following the completion of a new website, you receive said payment. The payment won't actually trigger the transfer of the copyright, as your terms of business are only an 'agreement to assign', rather than an 'assignment' itself. What happens is that the invoice payment creates a licence in favour of your client, legally allowing it to use the copyright that makes up the website. For the actual ownership of the copyright to transfer, there needs to be a separate, written copyright 'assignment', signed by both you and the client.

As you can see from just one small example, a little bit of understanding can help you to impose at least some controls without worrying too much about the specifics. It may be that you don't want your client to have ownership of the copyright in the work, as that hands over full rights to reproduce the work. It's common for commercial photographers to retain ownership of the copyright in the photographs that they take and grant licences to their customers to use the work in limited circumstances. This can create opportunities to generate future income if the client wants to use the images for other purposes.

Ultimately, recognising that you're creating IP and having some understanding of how to enforce your rights is a must. This can really work in your favour — particularly if you find yourself in the position where your client has tried to avoid paying you for your services.



CASE STUDY: CLIENT WON'T PAY? LET US TAKE IT AWAY...

Our client, a small creative agency, was commissioned to develop illustrations, branding and creative content for a tech start-up. We were asked to step in when invoices for the work it had done went unpaid.

Issue	Action
We've worked with the creative agency since 2014 and it has always been aware of IP issues, especially since it regularly works with freelancers to produce cutting-edge branding and multimedia content for its clients. Following a competitive pitching process, our client was awarded a contract to develop branding and web content for a tech start-up. The relationship progressed well for a number of months but, as cash was tight, our client was offered stock options in part-payment for its services. When this failed to materialise and invoices went unpaid, we were asked to review the matter and take action on our client's behalf.	We'd already been able to advise the agency on the IP aspects of its terms of business. We made it an explicit term in the agreement between our client and the freelancers it worked with that the copyright would transfer upon payment to the freelancer. In this case, our client was out of pocket, as it had paid freelancers for the work done on the project before the tech start-up had paid its own invoices — but as a consequence of this, our client actually owned the copyright in the works. The drafting and terms of our client's business were key to the successful resolution of this matter. Under its terms of business, our client grants a licence to its clients to use the materials that it creates. The licence continues, provided that the invoice is paid on time, but terminates once an invoice becomes overdue. The terms of business don't constitute an assignment of the copyright in the works created by our client. As our client retained ownership of the copyright in the works it had created, it was in a position to have these works removed from various online content-sharing platforms. This turned out to be a very effective way to focus the mind of the tech start-up, as its online content was immediately removed.
Outcome	
Our actions led to a renewed dialogue between the legal advisors for both parties and a proposal for payment of the outstanding invoices, in return for an assignment of the copyright in the works created. This was a good outcome for our client, as it was able to recoup its costs in return for the transfer of the copyright in works which couldn't be reused elsewhere.	

PROTECTING YOUR OWN BRAND FROM COPYCATS AND COMPETITORS

“We’ve had issues when another agency set themselves up using our name.”

Trade mark registrations

One potential pitfall is believing that your industry is different to any other when it comes to protecting your brand. In the food and drink sector, for example, if a rival product pops up which is very similar to your own under a virtually identical brand name, the original company will use its IP rights to protect itself from the new rival. This prevents any competitors from stealing your market share or diminishing the value of your brand in the case of providing a below-par product or service.

The creative industries shouldn’t be seen in a different light simply because of the number of agencies and consultancies around. After all, even if you do most of your work with local clients, you’ll still be competing with rivals from other nearby cities as well as those based in London.

Registering trade marks to protect your brand and identity is important. A trade mark gives you the exclusive right of ownership in a particular sector. It enables you to take legal action against anyone who might try to copy you or use a conflicting mark – whether this happens inadvertently or not. A registration also allows you to prevent your competitors from using your brand in their online advertising. A trade mark registration is personal property which can be bought and sold, licensed and borrowed against. As an asset, it’ll increase the value of your company and demonstrate your credibility to potential investors and clients.

Why should you care about registering trade marks?

While UK trade mark law recognises that rights are acquired through use, such rights can be limited by geography. In contrast, a trade mark registration gives you nationwide rights in your brand. Therefore, if you haven’t protected elements of your brand like your name and logo, you risk someone else registering a conflicting mark. In this situation, if your use pre-dates the filing of such a trade mark, you’d be able to continue trading in your geographic area – but if you wanted to expand your offering or seek clients in a new region, you’d risk being the subject of a claim for infringement. Legal disputes are always costly both financially and in terms of management time – but they can be easily avoided by registering your brand as a trade mark as early as possible.

To maintain the value and validity in your brands and registered rights, you should be prepared to police and enforce them when necessary. Ultimately, you should keep an eye on the marketplace, social media and your competitors to ensure that they don’t adopt any marks which come too close to yours. Allowing an unauthorised third party to use a trade mark like yours can dilute your brand, reduce its value and weaken any rights you might have.

What should you do if someone copies your brand?

Never contact someone who you believe is infringing your rights. Always call an IP firm immediately to get strategic advice about the strength of your rights and the correct approach to take, which must be tailored to your unique circumstances.

Few agencies take the necessary steps to protect their own brand – and those that do often only seek professional advice for a limited period of time as part of their rebranding process. To maintain value, IP rights should be looked after. This means that you should set up ‘watching’ services for new filings by third parties and take action where you feel that your rights are being infringed, your reputation taken advantage of, or your brand’s distinctiveness eroded.

You shouldn’t be waiting until you have to seek advice – it should be built-in to what you do. After all, what’s the value of your business without your creativity and brand being protected?

Did you know?

In addition to words, slogans and logos, you can also protect colours, shapes, patterns, smells, sounds and gestures as trade marks – as long as they can be represented graphically and consist of more than the product itself (for example, you couldn’t register a perfume!).

SHOULD YOU TRADE MARK YOUR BUSINESS NAME?

It's a question that crosses the mind of every business owner at some point — and, you guessed it — there isn't a simple 'yes or no' answer. However, there are many good reasons to consider protecting your business name as a registered trade mark.

Here are four key considerations to help you decide whether this route is right for you.

1. What is a trade mark?

It's very easy to misunderstand what this form of IP actually is. A trade mark is any sign (word, logo, slogan, etc.) used by its owner to distinguish goods or services from those provided by others. It essentially acts as a 'badge of origin' for consumers, letting them know where a particular product comes from and what they can expect from it.

2. Is it possible to protect my business name as a trade mark?

Broadly speaking, a business name can be protected as a trade mark so long as it's distinctive and you're using (or intend to use) it in a way which is visible to your customers. Crucially, a protectable business name needs to 'stand out' from the crowd in the eyes of consumers.

Think about a UK cosmetics company which decides to trade under the name 'Make-up Products'. Unless the public is given enough time to become familiar with this name as a trade mark, it will simply be perceived as a descriptive, generic and rather forgettable name. On the other hand, if that same company marketed itself under a distinctive name, the public would be able to rely on it as a 'badge of origin' and it would therefore be suitable for protection as a trade mark.

3. Is there anything I need to be aware of?

Trade mark rights are exclusive and territorial. This means that before you start using your mark, you need to be aware of the possibility of 'stepping on the toes' of other parties. If, for example, your business began selling shoes in the UK under the name 'The Nike Shoes Company', consumers are likely to think that your business was connected with the famous 'Nike' brand — and you would almost certainly be sued. So even if you have a distinctive business name, it's a good idea to conduct searches to identify any earlier marks which could cause you a headache further down the line.

4. How can I protect my business name as a trade mark?

The best way of obtaining legal protection for your business name is to register it as a trade mark in the UK. This would be done at the UK Intellectual Property Office (UKIPO). You'll need to submit a trade mark application, which must include a representation of the mark, a list of the goods and services you want to protect the mark for, details of the applicant and (of course) the appropriate fee.

Once the application is filed, it's examined to ensure that it meets certain legal criteria, particularly with respect to the mark's distinctiveness. If it meets these requirements, it gets published and, for a period of two months, third parties may oppose the application on the basis of earlier rights. If the application survives this opposition period, it becomes registered and officially protected as a trade mark for ten years. The registration may then last indefinitely, providing that you renew it every decade.

The verdict

A trade mark registration is an effective way of protecting the reputation and goodwill of your business if you have:

- a distinctive business name
- conducted searches to assess the risk of infringing existing rights
- accounted for the possibility of receiving an objection from an earlier rights holder and considered how likely this is to be resolved

"Another agency [set itself up] with a similar name and almost identical branding. We have a trade mark for our name, so the other agency had to change. It was responsible for removing its name and branding from any publications."

Finance Director, Digital Agency

ADDING VALUE TO YOUR CLIENT RELATIONSHIPS

Few creative businesses have a detailed knowledge of IP rights. By getting up-to-speed yourself, you're able to stand out from competitors. You'll look more professional during the pitch process and be far less likely to have your ideas copied. You'll be better able to advise your clients and not waste their time and money (as well as your own) by working to create something that infringes another's rights. This offers your client a distinct benefit before you've even pitched or produced any work.

Adding substance

Understanding IP rights can be especially valuable when it comes to working with larger clients. They'll know from experience when they'll be able to pinch an idea from you without any consequences.

If you walk into your first meeting with a clear knowledge of IP and an NDA to be signed, a client knows that you mean business. If not, they'll know that if they want to use an idea you've put forward but employ one of your rivals (or decide against using an agency at all), they can simply put your best ideas to use without any negative implications.

If a potential client won't countenance the idea of signing an NDA ahead of a pitch, you should seriously consider walking away, as there's no good reason for them to object — this is best practice.

Getting to grips with IP and your agreements can truly add substance to your offering, meaning that you can deal with clients with confidence. You'll also seem more accomplished than other agencies who don't have this knowledge, which will appeal to larger clients.

Working with an IP firm

Only the larger creative agencies tend to have their own legal teams to turn to. Often, these are separate organisations which advise only 'as and when'.

Partnering with an IP firm doesn't necessarily mean that you'll be spending big. Anything you do spend could be saving you much more in the event of any infringement proceedings or a client stealing your ideas. By working with a trusted advisor, you'll be confident in the ideas you put forward to clients. A quick search or call to your attorney when bouncing around new brand names could save you a significant amount of trouble.

If you work with us, we can provide your team with training to enable them to spot IP, understand the different types, get to grips with the risks and learn how to carry out basic searching. We can also provide you with a suite of template documents so you can ensure that any IP created as part of a project is owned by you, you get paid fairly for any work you do and that on completion, the IP can be assigned to your client.



“Start-ups should probably consider IP more at the initial stage. It's only going to be if they are successful that people start making challenges and then it's possibly too late.”

Director, Digital and Print Design Agency

“You have the problem where you have an amazing name and it doesn't work in a different location. You have to check all that out as well.

Car manufacturers find that — they have this amazing name and then find out it means something like ‘cock’ in Italian.”

Director, Brand and Communications Studio

CASE STUDY: A FULL HOUSE FOR MR BINGO

Mr Bingo is an illustrator, artist and well-known global speaker based in Shoreditch, London. A key part of his identity, and one of the main messages of his talks, is that he doesn't allow his work to be used by, or associated with, brands.

Issue	Action
In October 2018, Mr Bingo discovered that a bag brand was using an artwork from his Hate Mail project as the basis for a poster and flyer that was being distributed in Shoreditch. Mr Bingo's artwork was clearly the basis for the flyer as, while the brand had added elements to the artwork, they had left on the distinctive Mr Bingo tag. This was a clear case of blatant copyright infringement and, following a friendly recommendation, Mr Bingo asked us to take legal action on his behalf.	We presented a number of options. Yes, this looked like a case of blatant copyright infringement, so legal action was possible. However, this can be expensive and protracted with no guarantee of a successful outcome. On this occasion, we advised against sending a cease and desist letter initially and devised a more creative approach... Mr Bingo was able to harness the power of his social media reach by calling out the infringement on Instagram. In response, the brand contacted him. We provided guidance to Mr Bingo on the ideal response to the brand (a firm tone, informing that advice had been sought but being reasonable). The brand recognised that it had infringed Mr Bingo's rights and agreed, in return for the removal of the social media posts, not to repeat the infringement and to make a payment to him for the infringement.
<i>"I'm very happy with this simple solution as it's now resolved without any messy business. BIG THANKS again to both of you for your help on this, I would have never reached this point without you".</i> Mr Bingo	Outcome
	This is an example of where calling out an infringement on social media and making direct (albeit guided) contact with an infringing brand had a successful outcome. This approach will not always be appropriate and legal advice should be sought beforehand so that you understand the strength of any claim of copyright infringement.

CASE STUDY: FOLLOWING THE COPYRIGHT CRUMB TRAIL

Our client, Crumbs Martech — a start-up AR (augmented reality) software developer — developed code, branding and creative in-house for the demo of a new game. It then commissioned an agency to improve the demo, providing inputs including the original code, branding and creative materials, along with confidential information about the model and UX (user experience).

Issue	Action
As the agency was coming to the end of its involvement in the project, our client Crumbs Martech wanted to ensure that it owned all the IP rights in the improved demo, as well as ensuring that the agency couldn't use any of the materials that had been provided to it on other projects. Crumbs Martech initially decided to draft its own 'do-it-yourself' legal agreement. It had been led to believe, thanks to a little guidance from the internet, that these were pretty straightforward. However, it soon became clear that this wasn't the case. To complicate matters further, Crumbs Martech was about to go through a funding round, so time was of the essence.	• what had been created by our client • what information had been provided by our client to the agency under a duty of confidence • what IP rights attached themselves to the improved code • which warranties we could reasonably ask the agency to provide to protect our client We undertook negotiations on behalf of Crumbs Martech to agree and execute the terms of an agreement. This included negotiating what IP rights were to be transferred to our client and which warranties and undertakings we were able to secure.
Outcome	We were able to ensure a swift and certain outcome for Crumbs Martech. Over a period of just 36 hours, we were able to: • negotiate, draft and conclude an agreement which transferred the IP rights in the code for the improvements to our client • secure warranties and undertakings to protect our client's business in the future This enabled Crumbs Martech to embark on a successful funding round and raised its awareness of key IP considerations. Having worked with many agencies over the years, we were able to manage our client's expectations about which warranties and undertakings it would be able to obtain, which helped to ensure that the negotiations were relatively painless for both parties.

ABOUT UDL INTELLECTUAL PROPERTY

We're a leading IP firm, specialising in British, European and international patent, trade mark, design and copyright law, from strategy through to litigation and dispute resolution.

Our team advises over 1,900 clients in the UK and overseas including small, medium and large organisations, universities and research bodies. We're proud to have some of the world's leading brands as clients, including Black Sheep Brewery, Boost Drinks, END., Hermès, Hitachi, JD Sports, Lidl, LV=, Maybourne Hotel Group (Claridge's, The Connaught, The Berkeley), Revolution Beauty and Young's Seafood.

We're ranked as a top-tier UK firm in The Legal 500 for 2020 and operate from six offices across the UK.

Our services

- Advice for protecting the ideas that you pitch to a potential client
- Screening searches during the naming process
- Brand name clearance once a preferred name(s) has been chosen
- Trade mark registrations (yours, your client's)
- Watching (trade mark, domain name, company name, online)
- Enforcement advice and action if you discover that you or your client's brand has been copied
- Copyright advice
- Design protection
- Audits and identification of your IP
- Advice about the ownership of IP
- IP transfers
- Training workshops for you, your staff and your clients



Get in touch

For an initial free-of-charge chat, get in touch with us at creative@udl.co.uk or **+44 (0)330 107 5077**.

You can find out more about IP rights for the creative industries at udl.co.uk/creative.

ABOUT THE AUTHORS

Gareth Price

Partner and Senior Trade Mark Attorney

Gareth specialises in the creation and implementation of brand protection strategies and brand portfolio management. In addition to securing global registrations and handling contentious trade mark and design matters, Gareth works with creative agencies on brand clearance. Among many other clients, Gareth manages JD Sports' international portfolio of over 1,600 live marks as well as our work for Hermès and Maybourne Hotel Group.



Alison Cole

Senior Trade Mark Attorney

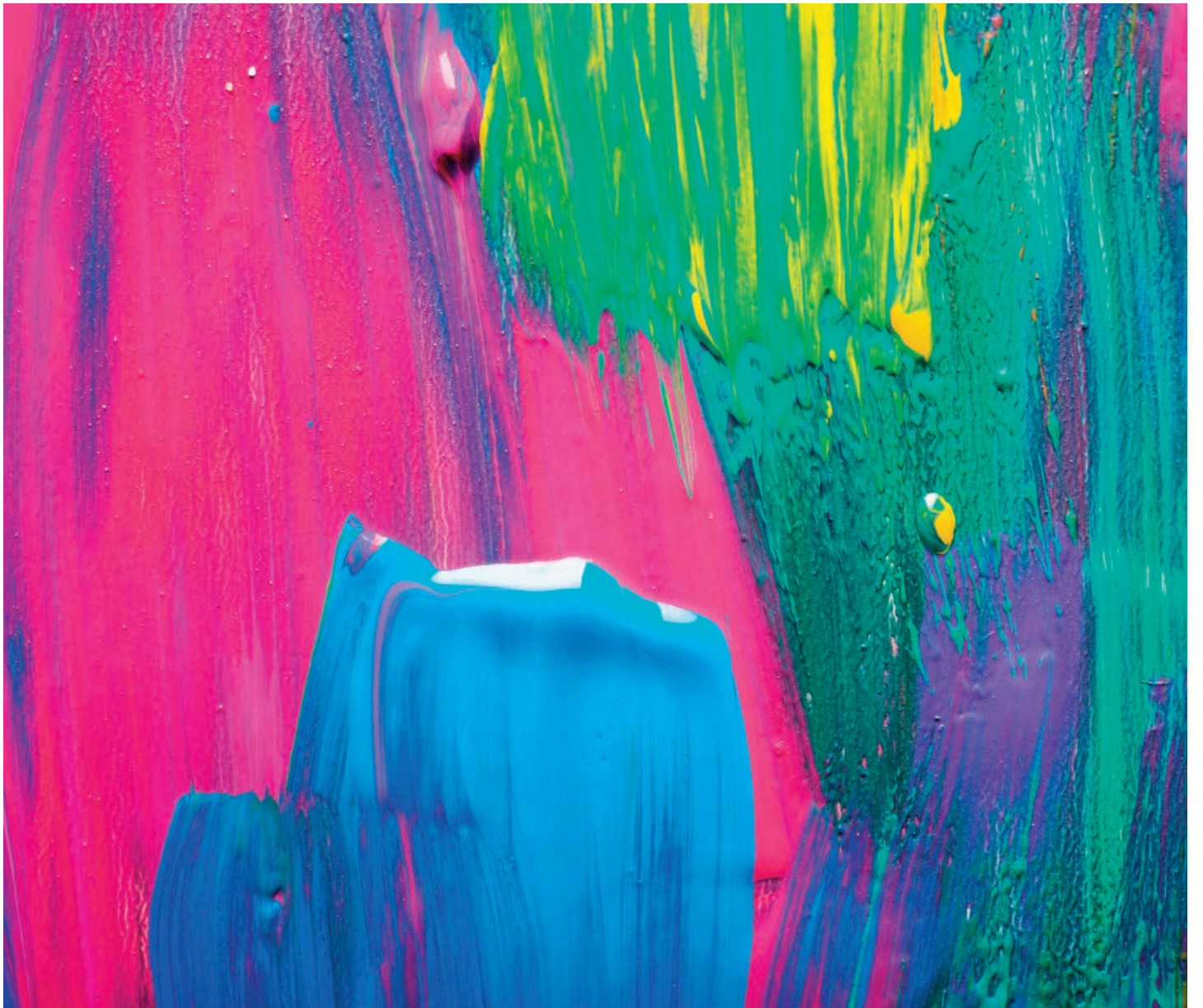
Alison's particular areas of expertise include handling domain name disputes and obtaining protection for unusual and/or unconventional trade marks. She advises creative and communications agencies and consultancies on the impact of Brexit and on copyright pitfalls when using social media. Her clients include Anna Park, HippyChick, Jem + Bea, The Perfume Studio, Totseat and White Heron Brands.

Sharon Kirby

Senior Trade Mark Attorney

Sharon specialises in trade mark portfolio management, working across a wide range of sectors including FMCG, cosmetics and fashion, alcoholic drinks and restaurant services, media and publishing, software and pharmaceuticals, and automotive. She has worked with a variety of global figures and brands including JJ Abrams, Little Brown Book Group, Octopus Publishing Group, Penguin Random House and Tommee Tippee as well as creative agencies including BBH.





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