



Talking Trademarks for Start-Ups – don't make the same mistake as this company

The start-up journey can be a whirlwind, from conception, market research, branding, advertising, setting up a team to and the holy grail, raising funding.

London is widely renowned for being home to a number of tech start-up companies who have experienced a rapid rate of growth and with that, publicity, further rounds of funding and the national and global adulation.

If you have conducted research in your chosen market and found a niche which your company now proudly fills, you might be forgiven for thinking there is only one way for your company to go, and that is up. As lawyers, we have come across a number of driven and enthusiastic entrepreneurs whose innovations have been widely acclaimed and they have enjoyed fantastic success in a short space of time.

However, we have also seen some of these companies fall in to decline when further down the line, a discomfoting problem arises which can be financially costly at best, or in the worst case scenario, ruinous for the company. One such pitfall can be the issue of not protecting your brand at an early stage.

During your research stage, you might come across a company in far-east Asia with the same or a similar name in a different market, in a different continent. This might cause you no alarm bells at first and you take comfort from the fact that you might have registered your company name with Companies House in the UK and therefore you are adequately protected.

For one such well known company in the UK, this turned out to be exactly the case and this was after raising a successful round of funding of half a million pounds. It should not be forgotten that many companies have global ambition and within a few years, that company operating from a small room in sunny climates might expand to having a presence in different continents and even straddle a range of sectors, far different to where they initially started. Failure to adequately protect your business' trademark could lead to potential legal action being brought by a company who claims a trademark infringement and large financial costs if your company is forced to change its name and branding. A company might also lose the goodwill and publicity it has generated if a change of brand is forced upon it. In the worst case scenario, what was once a budding start-up may be forced to concede altogether if faced with an expensive legal claim.



Protecting your company's trade mark at an early stage is a vital component of your business strategy, even if you do not have immediate aims to make it globally. A trade mark can be a logo, slogan, business name or shapes, or a combination. There are restrictions on what may be registered as a trade mark and the Intellectual Property Office in the UK can provide further guidance.

You will often build up a great deal of publicity (and therefore value for your business) through recognition of your company's image – a vivid logo will instantly tell your target audience who you are without the need for your company's name. The lack of ability to stop another company using a trading name or logo very similar to yours could lead to your business losing out to its competitors by allowing that company to ride on the back of your hard work and success in building up a brand name and favourable publicity and also by taking away potential customers from you.

A common misconception is that your company name affords you some legal protection – this is not true and company registration should be taken very separately from trademark protection. Similarly, having a domain name will not stop others from being able to use your name or brand logo unless you have registered your trademark. Different forms of trademark are available – for example you might trademark your company's IP in the UK only, or have European protection (known as a Community Trade Mark) or have International Registration. Trademarks will only afford you protection in the countries in which you have proper protection.

While it is possible to argue for protection of your company's IP by long established use and building up a reputation, this is very difficult and costly to prove and will not be sufficient if another company subsequently registers a trademark which is similar to yours. In general, you would need to demonstrate that your brand has its own reputation or value, and use by another has caused confusion in that particular market place and as a result, your company has suffered loss from that use.

A registration of a trademark often lasts for 10 years and may need to be renewed. It is, however, a small price to pay when you consider that successful companies have had to rebrand completely, even after obtaining substantial funding. A potential investor might be put off if they cannot be confident that your fledgling start-up has taken the right steps to adequately protect its interests and their investment.

As well as protecting your company's brand by registering a trade mark, there are a number of other factors you should consider at an early stage to protect your company value and to show potential investors that you have put in place the right protection.

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Documents available are: Introduction to setting up a company in the UK, Shareholders' Agreement, Standard Employment Contract, Terms of Website, Acceptable Use Policy, Privacy Policy, Notice on the Use of Cookies, Confidentiality Agreement.

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