

Intellectual property

don't cast a blind eye!



ACID – Anti Copying in Design is 10 years old this year. Founder and MD Dids Mc Donald outlines its work and importance.

Design, creativity and innovation have contributed to the significant 60% growth rate experienced by the blinds and shutters industry over the last five years. So it is all the more important to consider which elements of intellectual property relate to your business to protect, commercialise and exploit. By reducing the risk of being copied, you lessen the chances of eroding your hard earned market share.

Intellectual property is the collective name for patents (inventions), trade marks (the name by which you are known and have built your reputation under), copyright (e.g. your website, marketing materials, technical literature, photographs, fabric designs (surface decoration) etc) or design right (a free and automatic right created when you design a product which is “novel” and has “distinctive character”). Of course there are other elements of intellectual property such as confidentiality and know how, so it is also really important that you are protected with relevant clauses introduced into the terms and conditions of employment of all your employees. After all, what happens when someone leaves your organisation to join a competitor? Intellectual property is based on property law, its about ownership and use, so in just the same way you can demonstrate ownership of your house/flat with title deeds, you can give permission (sometimes in the form of a licence/royalty agreement) to those whom you allow to use your intellectual property! The recent, highly successful Showcase 08 exhibition will have created further opportunities for business expansion and whilst exhibition showcasing of new products is highly valuable, it can also be the place where look alikes are discovered and technical know how is at risk. So it is really important to think about IP protection before the next exhibition.

ACID member Nick Stanier of New House Textiles says of his own IP strategy, “A multi-layered approach to design protection is probably best, legally protecting designs and trade marks; defend them if need be and always run your business as efficiently as possible, after all if your customers are satisfied, this helps close the door on potential copyists too!”

Intellectual property should be seen as a positive force and having sound industry standard legal agreements in place to clarify your commercial relationships is always a good idea. If you’ve got your IP house in order, you leave the door wide open to sound business and brand extension opportunities e.g. licensing deals, franchising and joint design collaboration, all really excellent ways to leverage and convert your IP credentials into commercial (and fiscal) reality.

What can you do to be proactive against copying within the industry?

Awards

Go in for as many as possible, there is an added advantage! A recent court judgment has meant that awards and PR recognition can be taken into consideration as evidence to substantiate design ownership.

Say no to copying!

Use your website proactively to communicate an anti copying policy! Often design led companies will say, “how can I stop people copying? Tell them! There is no more effective way than a simple intellectual property statement on your website and marketing materials. Acid can help create this for you.

Register your designs/trade mark ©

The good news about registrations is that the ip owner has a piece of paper, a certificate, which says they effectively “own” a design or the name by which they are known and you don’t have to prove infringement! How does that make a difference? Well if you discover an alleged copy in the marketplace or someone has used your registered name it is a much easier and less costly to pursue registered ip rights.

Unregistered design – keep a design audit trail

The minute you create a new design that is “novel” and has “distinctive character” you have protection under what are called unregistered design rights. If you are relying on unregistered design right, keep a design audit trail from the seed of the idea to first point market entry. Becoming a member of acid will allow you to send copies of new designs to the free acid design data bank, providing valuable third party evidence of a design audit trail should you be unlucky enough to be copied.

Exhibitions – Proactive v Reactive

Ensure you have documentation to prove that you own the ip rights or have a licence to market the goods that appear on your stand. In any dispute the onus is on the complainant to provide evidence of ownership, originality and date of creation. Create a no photography policy! Remember with phone cameras, your designs/product ideas can be sent across the world in seconds and could be mass-produced before you even pack up your stand!

What should I do if I discover a copy of my designs?

Number one, try to stay cool and don’t panic. It is difficult because it feels like violation and it is, quite simply, unfair as well as potentially devastating commercially. Instead, go fact-finding and gather all your evidence together, ensure you have easy access to your rights ownership details. Contact your solicitor or a specialist trade association immediately - it really is better to have an intellectual property specialist because they do know and understand the complexities of intellectual property law in this context. Often a comprehensive letter before action can be a shot across the bows of an alleged infringer. Never sue on principle, always work out whether there is a quantifiable loss and that this can be demonstrated. Acid members benefit from initial free advice through a specialist intellectual property hotline

Mediation v Litigation?

Don’t forget that often bringing parties together in a mediation framework can offer more creative solutions such as collaborative or licensing partnerships. Always try to find a commercial route to meet your objectives if you can.