



# FASHION AND LUXURY BRANDS - TRADE MARK AND BRAND PROTECTION FACT SHEET

Your brands are among your most important and valuable assets, so it is vital that they are properly protected. Registering your brands as trade marks is an essential step towards achieving this goal.

## WHY REGISTER YOUR BRANDS

- **Peace of mind** – trade mark registration provides automatic statutory rights that are simple and easy to enforce against third parties, before your brand is even launched. Merely using your brand (as a company/trading name or domain name) does not guarantee you brand exclusivity. Insubstantial use of your brand or a temporary fall or lapse in trade could enable a competitor to misappropriate, or even register, your brand and exclude you from using it in future, forcing you to re-brand and leaving you potentially liable for trade mark infringement. Registration is the safest way to secure brand exclusivity and enable effective enforcement against infringers.
- **Deterrent effect** – registration provides formal, constructive notice to others of your trade mark rights. It entitles you to use the ® symbol alongside your registered brands. This often deters competitors and potential infringers from using (or registering) conflicting brands, and makes them aware of your proactive approach to brand protection – so the chances of a dispute arising in the first place are significantly reduced.
- **Territory-wide protection** – registration guarantees territory-wide protection (irrespective of whether or not your brand is used throughout the relevant territory), whereas the goodwill in an unregistered brand may only extend to a specific locality where the brand is used. If your brands are not registered, you could be prevented from using or enforcing your brands beyond your particular locality.
- **Excellent value** – registration is cost-effective. Official fees (excluding professional fees) for registering one UK trade mark in one class are currently £170, equating to just £17 per year when spread over the initial ten-year registration period. Equivalent fees for registering one EU trade mark in one class is €850, or just €85 per year.
- **A commercial asset** – registered trade marks are much easier to value and commercialise than unregistered brands, and are attractive to potential investors or acquirers. Assignments, licences and charges are simpler to negotiate and can each be officially recorded on the trade marks register as evidence of the transaction.
- **Scope for eternal protection** – registered trade marks have the potential, subject to renewal every ten years, to last indefinitely. Did you know that Bass' famous red triangle was first registered on 1 January 1876 and is still in force today?
- **Versatility** – traditional brand indicators (such as words and logos) as well as less traditional forms of brand indicator (such as colours and sounds) are capable of perpetual protection via trade mark registration. See below for more details and some specific examples.
- **Provisional international protection** – the simple act of filing a trade mark application will automatically entitle you to a six month priority period in which to submit corresponding overseas applications that can be backdated to (and protected as of) your original application's filing date, thus preventing third parties from acquiring conflicting overseas rights in the intervening six month period.

Registering your brands is an important investment that generates significant practical, commercial and legal benefits. Actively protecting your brand identity, and preventing others from encroaching on your rights and free-riding on your investment, is vital to securing your future commercial success.

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## WHAT TO REGISTER

- **Words, letters and numerals**, such as your trading name, individual brand names and sub-brands.
- **Figurative** and **combination marks**, such as your logos, emblems, imprints, insignia, icons, signatures and labels.
- **Slogans**: did you know that each of the following is a registered trade mark:
  - Vorsprung Durch Technik
  - Have a Break
  - Just Do It
  - Connecting People
  - The World's Local Bank
  - Priceless
- **Three dimensional shapes** and feature marks, such as novel packaging and product designs. Did you know that the MINI car, the Rubik's cube, the Toblerone box, the Rolls Royce grille, the Lindt chocolate bunny and the Esso petrol station forecourt are all registered trade marks?
- **Sounds** and **music**: each of the following is a registered trade mark:
  - MGM's famous lion's roar
  - Tarzan's yell
  - Nokia's famous ringtone
  - McDonald's 'I'm Lovin' It'
- **Colours** and **colour combinations**: did you know that Burberry's check, IKEA's yellow and blue livery, FC Barcelona's strip, and the black and gold of Duracell batteries are all registered trade marks?
- Even **holograms, moving images** and **smells** are potentially capable of registration. It is important for the directors to understand that the duties and potential liabilities upon a company director under the Insolvency Act 1986 (the 1986 Act) apply equally to shadow directors, de facto directors and non-executive directors as they do to executive directors.

## WHERE TO REGISTER

You should consider registering your brands in all countries/regions where:

- you have actual or anticipated sales/customers (direct or indirect);
- you manufacture or expect to manufacture;
- your goods are transited; or
- a risk of counterfeiting exists.

## WHEN TO REGISTER

**Without delay** and, if possible, before your brand is launched or used in commerce.

## FIND OUT MORE

For further information, please contact:



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