

Legal Update

Imitation is the sincerest form of flattery (and can be the most costly)

Online browsing has replaced 'window shopping' for the new generation of customers and businesses are increasingly dependent on their website to provide their income stream. However, one of the biggest concerns for these businesses is that it is almost impossible to physically protect online content. Images and text – entire websites – can be copied and replicated by unscrupulous competitors marketing similar products. If not careful, entire businesses can be imitated.

Many businesses 'sub-contract' the design and content of a website (including photography and copy for the web pages) to outside agencies. When attempting to tackle 'infringers' some companies struggle to establish their right of ownership and origin of the material on the website.

In order to avoid this, businesses should ensure:

- Contracts with web designers, photographers or copywriters expressly assign the intellectual property rights (IPR) to you. Any failure to do this will see the ownership of the IPR remain with the contractor as 'authors' of the material, even though you have paid them for their services and the material they have produced.
- Retain proof of the origin and date of creation of your product. Retain electronic and/or hard copies that are date and time stamped as evidence.
- Register the appropriate 'trade marks' to protect not only the name of your business or product, but also the logo. Both may be capable of protection.
- Register 'design rights' to protect your design of your products in appropriate circumstances.

If you believe your IPR has been infringed, you may be able to bring an action for damages, or obtain an interim injunction to restrain infringement. The most common actions are for infringement of your copyright, trade mark or design rights.

Even if you have not registered a trade mark you may be able to bring an action for damages for 'passing-off' should a competitor use your business name or style to promote their own business and this might cause the public to confuse their business with yours. This will depend on how long you have been trading under the name and how much 'goodwill' you have amassed.



A final note of caution – do your homework in advance! Research names already in use on the internet – you do not want to be the imitator!

For further information about Weightmans or to discuss any of the issues in this update, please contact Craig Blakemore, Partner on 01 51 243 9505 or craig.blakemore@weightmans.com

**Weightmans LLP
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