

Founder Focus: FAQs for Start-Up Success

How to Avoid Intellectual Property (“IP”) Infringement and Litigation

Starting a business is exciting, but one major pitfall that can derail progress is intellectual property (“IP”) infringement. Whether it’s using someone else’s brand name, copying content, or unknowingly selling a patented product, IP disputes can be costly and damaging to a business.

To help UK startups stay on the right side of the law, this article aims to provide a straightforward guide on how to avoid IP infringement and litigation.

1. Understand the basics of IP rights

IP rights result from intellectual creations and typically grant the creator exclusive control over the use of their creation for a specified period. It is important for businesses to identify their IP assets and the categories they may fall into. The key IP rights relevant to UK businesses are:

- **Trade marks (registered or unregistered)** – protect brand names, logos, slogans and other brand identifiers.
- **Copyright** – covers original works like writing, music, images, and some elements of software.
- **Patents** – protect new inventions, processes, and technologies.
- **Design rights (registered or unregistered)** – cover the appearance of a product, including shapes and patterns.

For more information on these types of IP rights, see our previous articles [Intellectual Property \(IP\) Considerations for UK Founders](#) and [Patents for Start-up Founders](#).

Implementing clear policies and guidelines relating to IP can also help ensure that your employees understand the importance of and the procedures for handling and protecting your business’ IP, as well as how to avoid unintentionally infringing the IP of others.

2. Do a thorough name and logo check

Choosing a business name or logo without checking for existing trade marks can lead to legal issues. Before settling on a brand/ company name you should ensure you have carried out relevant checks to establish that the same or a similar name is not already in use.

If your name is too similar to an existing trade mark, you may be forced to change it, which can be costly and confusing for customers.

3. Be careful with images, music, and content

Many startups make the mistake of using material found online, such as music, text and images, without permission. Remember, just because something is on the internet, does not necessarily mean it is free to use. To avoid this issue, you should:

- Use royalty-free or properly licensed images.
- Ensure you obtain permissions for music used in marketing or videos.
- Ensure you use original text where possible, and properly credit sources if you are quoting the text of others.

Businesses are often sued for using such material, which can be protected by copyright – do not take the risk!

4. Check for existing patents before launching a product

If your business is developing a new product, service, or process, it is essential to carry out relevant checks to make sure the technology is not already patented.

- If unsure, consider consulting a patent attorney before launching.
- If you create something novel, consider filing a patent for it yourself to protect your idea.

Ignoring patents can result in expensive legal actions or forced redesigns of your product.

5. Be cautious with influencer and marketing content

Many startups use influencers to promote their brand or create marketing content featuring brands, celebrities, or copyrighted material. However:

- Using another company’s logo in promotional material without permission can lead to trade mark disputes.
- Using celebrity images or names without consent (even in memes!) can lead to legal claims.
- Quoting competitors’ taglines or copying their marketing strategies too closely could be risky.

When in doubt, always aim to create original content, and/or get permissions in writing from others to use their content.

6. Have clear IP agreements with employees and contractors

Startups often hire third parties to create logos, software, or other content. Without a proper agreement, the operation of UK law can mean the individuals who create those works may own the rights in them rather than your business. To protect your rights, you should:

- Ensure you have clear contracts in place which assign or exclusively licence the IP rights to your startup from the start.
- Consider also having confidentiality or non-disclosure agreements in place for sensitive ideas.
- If partnering with others, clarify who owns what IP in writing at the outset of the relationship.

Failing to secure IP ownership or rights to use vital IP early can lead to disputes down the line.

7. Register your own IP early

If your startup develops a unique name, brand, product, or design, securing your own IP rights can help prevent others from copying you. You should never assume that your IP is automatically protected without registration. Registration can strengthen the protection of your IP, and it is important to note that not all types of IP qualify for automatic protection. As a starting point, it is generally recommended to:

- Trade mark your brand name and logo.
- Patent your inventions if they are new and innovative.
- Register designs to protect product aesthetics.

Securing IP early can make enforcement easier if someone tries to copy or make unauthorised use of your work.

8. Monitor for infringement and act quickly

Even if you do all you can to protect your IP, there may still be times when others copy your work. To protect your own IP, you should regularly monitor for third party use.

If you spot infringement, it is important to act quickly to protect the time and money you have invested. We always recommend seeking legal advice promptly to clarify what your options for enforcement are.

9. Seek legal help when needed

Many IP mistakes happen where startups do not seek advice as early as they could do. If you are unsure about anything:

- Speak to a trade mark or patent attorney before launching products.
- Use a specialist lawyer for contracts, licensing, and IP ownership issues.
- If you receive an IP infringement claim, speak to a lawyer timeously – ignoring it can make things worse. For more above what to do when facing litigation, please see our previous article - **What do I do if I face litigation?**

Seeking legal advice early on can save your business time and money in the long run and protect your business' interests. CMS can help with all things IP related, including offering 'IP Health Checks' for your business, as part of the equIP Programme.

Final thoughts

IP issues can be tricky to navigate, but taking proactive steps can assist to protect your business' interests and avoid costly disputes. Checking for existing rights, securing your own IP, and ensuring you use content legally, can help your startup grow without the risk of IP infringement litigation.

Any questions?

Get in touch with our IP team



Megan O'Neill

Associate

T +44 141 304 6122

E megan.o'neill@cms-cmno.com



Cara McGlynn

Senior Associate

T +44 131 200 7506

E cara.mcglynn@cms-cmno.com