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Intellectual Property Rights – what are they?

Dear Ladies and Gentlemen,

This newsletter was jointly written with Stefanie C. Dolder, trademark lawyer and executive director of "scd-dasmarkenrecht"; and its purpose is to give an overview of intellectual property rights and of the current developments in this field.

Intellectual Property Rights

Intellectual property rights comprise the Patent Act (PatA), the Federal Copyright Act (CopA), the Designs Act (DesA) and the Trademark Protection Act (TmPA).

Intangible or abstract goods are characteristically intellectual objects, not bound by place or time. In contrast to physical objects, they cannot be grasped and are particularly vulnerable and in need of protection.

The Patent Act is about protecting inventions and about promoting technical innovations. By registering the patent, inventors are granted the right to exclusively use their innovations, to licence them, to capitalise on them, and to defend themselves against any infringements of their patents. Preconditions to be met for the protection of an invention are novelty and a commercial application. Additionally, the invention, in an obvious manner, cannot be based on the current state of technology.

Copyright in general and the Copyright Act in particular protect intellectual creations of art and literature that possess individual character. Copyright protection originates with the creation of a work of art and does not require any registration. For each use of a protected work a permission (licence) is required.

The Design Act protects all visibly noticeable characteristics of the appearance of a product. The intended purpose or application of the product is irrelevant. The design in its overall impression must be new, and its characteristics need to differ in significant features from other existing creations that are well-known to the Swiss public. With the lodging and entering of the design in the design register, the entitled person will benefit from the exclusive rights to the design.

Trademarks are symbols that are suitable to differentiate goods or services of one company from those of another company. Excluded from trademark protection are those symbols that are identical with an older brand, or if there is the risk of confusion with another brand that offers the same goods or services. Those persons benefit from trademark law who first enter their brand in the register. Thanks to the Madrid Agreement, the national trademarks of a signatory state can be extended to other countries, thus allowing an internationally registered brand.

Here now are the most current updates in this field:

Trademark law

Indonesia and Afghanistan are new members of the Madrid Agreement.

Brexit: What is going to happen to your brand in the United Kingdom?

Your current EU trademark remains unchanged and continues to be protected in the United Kingdom. For a future new registration of a brand, the Madrid Agreement will provide protection within the United Kingdom.

Co-authorship

Quite often the involved parties are unable to agree on who has made the contribution relevant for copyright. In this situation it might be helpful to come to an arrangement at the very beginning and to regulate it.

IP in the digital world

The European Court of Justice ruled that a business owner who is supplying WLAN to the public free of charge cannot be liable for copyright infringements by users. However, the WLAN supplier can be compelled to protect its network with the help of a password to avoid infringements.

Did you know?

The producers of the movie trilogy "Fack Ju Göthe" wanted to have their movie title protected as a brand; however, the European Union Intellectual Property Office (EUIPO) refused it, as the judges considered this brand immoral, according to art 2 lit. d TmPA.

The name Messi, on the other hand, is now a brand. You can find the name in the Nice Classifications 3, 9, 14, 16, 25, and 28. Among the protected areas of the name brand are particularly sporting goods, clothing, but also various kinds of fan articles (e.g. pictures, jewellery, perfume).

Conclusion

Despite the importance that corresponds to intellectual property rights today, many people and many companies have trouble dealing with the protection and defence of their intellectual property. On the one hand, one reason for this is the spread of information at breakneck speed in the age of digitalisation, making it difficult to react quickly. On the other hand, it is a rather complex issue and not very easy to grasp, as the goods in question are of an intangible (immaterial) nature. Very often it is extremely worthwhile consulting relevant experts in this field.

About the author

Stefanie C. Dolder is a trademark lawyer and executive director of "scd-dasmerkenrecht". She protects and defends brands and designs and is a consultant for legal matters regarding trademark and design law.

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Kind regards

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