Intellectual Property

- What Intellectual Property (IP) is.
- The types of IP and how they differ.
- IP rights in business.
- IP in the context of Student Enterprises Awards.
What is Intellectual Property

- A company’s intangible assets –
  - Brands
  - Inventions
  - Designs
  - Human capital and know-how
- Often more valuable than a company’s physical assets
# Intellectual Property Rights

<table>
<thead>
<tr>
<th>Registrable</th>
<th>Non-Registrable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Marks = Name, logo,</td>
<td>Copyright = Artistic works, text, graphics...</td>
</tr>
<tr>
<td>slogan…</td>
<td></td>
</tr>
<tr>
<td>Patents = Invention,</td>
<td>Trade Secrets &amp; Confidentiality = Know-how</td>
</tr>
<tr>
<td>function, process</td>
<td></td>
</tr>
<tr>
<td>Designs = Appearance,</td>
<td>Passing Off = Reputation, goodwill</td>
</tr>
<tr>
<td>shape &amp; configuration</td>
<td></td>
</tr>
</tbody>
</table>
Registered IP Rights are Territorial
Why is IP useful?

Your IP:
- Adds to balance sheet of a company – potentially increase value if selling on.
- Facilitates licensing revenue
- Use as security for borrowing
- Marketing (“our newly patented technology..”)

Knowing about IP:
- Don’t miss opportunities: Allows you to secure protection before the chance is lost
- Early warning: Allows you to identify possible infringement problems early on (someone else infringing your IP, or you infringing someone else’s). Enough time to prepare a strategy.
What is a Trade Mark?

Definition (Section 6(1) of Trade Marks Act 1996)

“A “trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.”

- Means of identifying the source of goods or services.
- A guarantee of origin and quality.

Registered Trade Mark ®  Unregistered™
Nice Classification

45 classes of goods (34) and services (11)

- **Class 5** Pharmaceutical and veterinary etc.
- **Class 12** Vehicles; apparatus for locomotion by land, air or water.
- **Class 15** Musical instruments.
- **Class 25** Clothing; footwear; headgear.
- **Class 35** Retail; advertising; auctioneering.
- **Class 38** Telecommunications services.
Marks are registered in respect of specific goods & services.

<table>
<thead>
<tr>
<th>Trade Mark</th>
<th>Proprietor</th>
<th>Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUNCH</td>
<td>CORPORACION HABANOS, S.A.</td>
<td>34: Cigars.</td>
</tr>
<tr>
<td>PUNCH</td>
<td>CADBURY UK LIMITED</td>
<td>30: Chocolate and sugar confectionery.</td>
</tr>
<tr>
<td>PUNCH</td>
<td>ATCO QUALCAST LIMITED</td>
<td>7: Machines for use in agriculture and horticulture; lawn mowers and grass cutting machines; cultivators; parts and fittings for all the aforesaid goods.</td>
</tr>
<tr>
<td>PUNCH</td>
<td>COLGATE-PALMOLIVE</td>
<td>3: Soaps; detergents; fabric softening preparations...</td>
</tr>
<tr>
<td>PUNCH</td>
<td>EDU PONT</td>
<td>5: Agricultural fungicides.</td>
</tr>
<tr>
<td></td>
<td>LIBERTY PUBLISHING &amp; MEDIA LIMITED</td>
<td>16: Printed matter, paper and cardboard articles, stationery...</td>
</tr>
<tr>
<td>PUNCH</td>
<td>PUNCH INDUSTRIES</td>
<td>25: Articles of clothing, footwear, insoles for footwear.</td>
</tr>
<tr>
<td>PUNCH</td>
<td>PUNCH INDUSTRIES</td>
<td>2: Paints and varnishes for footwear...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3: Cleaning, protecting and polishing preparations for footwear...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5: Air Fresheners...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21: Combs, sponges, brushes...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25: Innersoles and fittings for footwear.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26: Laces for footwear...</td>
</tr>
</tbody>
</table>
Examples of Trade Marks - Words / Letters / Numerals

- MICROSOFT
- GUINNESS
- 1001
- 7UP
- “Probably the best lager in the world”
- JUST DO IT
Examples of Figurative Trade Marks
Examples of Trade Marks - Combined
Examples of Trade Marks - Shapes

1. Chocolate bar
2. Bottle shape
3. Cylinder with branding
4. Lamp shape
5. Bottle shape
6. Shaped bottle
7. Lamp
8. Electric shaver
Colour Only Trade Marks
What are the Best Trade Marks?

- Invented words which have no meaning in any language (IKEA)
- A dictionary word whose meaning is unrelated to the goods or services (APPLE)
- Combinations of words and figurative elements
- Do not directly describe the goods or services but contain an allusion to them (WEETABIX)
- A family of marks. (Kodak use “Koda” - Kodacolor, Kodachrome, Kodagraph).
Famous Trade Mark Disputes

- Apple Corps (The Beatles) v. Apple Inc. (Steve Jobs)
- Marvel and DC Comics “Superhero”
- Washington Redskins Football team
- Diesel – 2 companies use the mark in Ireland
- Louis Vuitton v. Haute Diggity Dog (“Chewey Vuitton”)
- Genericide – Hoover, Aspirin, zipper, yo-yo, Google?
Trade Mark Searching

- www.patentsoffice.ie

- TMview (Free database of 50+ National Registers)
  www.tmdn.org/tmview/welcome.html

- Results identify what is already on the registers.

They do not mean your proposed mark is registrable.
EU Trade Mark

- Unitary protection
- Mark valid in all EU Member States
- Single application
The overall look of the product resulting from the ...

- Lines
- Colours
- Textures
- Contours
- Materials
- Ornamentation

(not the function)
Community Design

- **Unregistered** Community Design (UCD) automatic creation as from first disclosure

- **Registered** Community Design (RCD) creation by registration at EUIPO
The Unregistered Community Design Right

• In 2007 fashion designer Karen Millen (KM) alleged that Dunnes Stores (Dunnes) had copied two shirts and a knit top from her collection and had manufactured these for sale.

• Dunnes did not deny copying KM’s designs at trial.

• As the design right was not registered, KM had to establish a valid unregistered design right to prove that the Dunnes clothes were unauthorised copies.

• The High Court found in favour of Karen Millen and the Supreme Court upheld the decision.
What Do You Think?
IP Infringement
Passing-off case study
Patents

“A Government grant of the exclusive right to make, use, or sell an invention, usually for a limited period”  
Encyclopaedia Britannica

Protects a fundamental idea – an “invention”

- it protects function rather than form

- does not exist automatically ! !
Patents – what qualifies?

New/Novel

Inventive step

Industrial applicability
Inventive??
Patent - Protection in Ireland

Via Irish Patents Office

Via European Patent Office (EPO)  
(38 Contracting States to EPC)

Via (WIPO) Patent Co-operation treaty  
(PCT)  (148 Contracting States to PCT)
Famous Patents Cases

- Rubik’s Cube
- 1991 Polaroid v. Kodak $873 million
- 2012 Apple v. Samsung $890 million
- 2013 Pfizer v. Teva & Sun Pharma $2.15 billion
What is Copyright

Copyright is a property right, given to authors/creators of literary or artistic work such as music, songs, films, books, computer programmes, etc.

Relates to the expression of an idea, not the idea itself
Copyright Protection

- There is no copyright registration system in Ireland.
- Automatic right - the Author (original creator of the work) is the owner.

Protection not absolute: must prove copying has taken place (can sometimes be difficult)

E.g. © Copyright Joe Blogs 2015
Copyright and Business

Use of a TV or Radio in a public space must be paid for – royalties!
Copyright case study: Who owns selfies?
Trade Secrets

- **A trade secret** is a formula, practice, process, instrument or compilation of information which is not generally known.

- Can give its owner an actual or potential advantage in business, (e.g., formula for Coca Cola®)

- **Cost to acquire/maintain**: None

- **Time to acquire**: immediate

- **Duration of protection**: perpetual as long as secret is maintained.

Google’s algorithm is its version of a secret recipe: how it mixes the information of a website’s relevance, number of visits, inbound links, anchor tags, user’s location, and other factors, in order to provide the search results best tailored for each user.
Famous IP Cases

- **Marvin Gaye** (Got to give it up) *v.* **Robert Thicke** (Blurred Lines)
- **David Bowie & Queen** (Under Pressure) *v.* **Vanilla Ice** (Ice Ice Baby)
- **Sam Smith** (Stay with me) *v.* **Tom Petty** (I won’t back down)
- **Music sharing websites** – Napster, The Pirate Bay, Grokster
- **Mattel Inc.** (Barbie) *v.* **MGA Entertainment Inc.** (Bratz)
- **National Biscuit Co. v. Kellogg Co.** (Shredded Wheat)
- **Michael Baigent & Richard Leigh v. The Random House Group** (The Da Vinci Code)
- **Adidas America Inc. v. Payless Shoesource Inc.** (3 Stripes)
- **Lucasfilm Ltd.** (Star Wars) *v.* **High Frontier & Committee for a Strong, Peaceful America**
- **S. Victor Whitmill v. Warner Bros. Entertainment Inc.** (Tattoo)
Famous IP Cases

- J.K. Rowling v. Steven Vander Ark *(The Harry Potter Lexicon)*
- KFC “Family Feast”
- The Associated Press vs. Stephen Fairey
One product – many IP Rights

Trade marks
- Company name, Logo
- Product name
- Shape

Patents
- Function of the cap

Copyright
- Text
- Graphics

Designs
- Overall form of the bottle
- Arrangement and shape

Trade secrets
- Blend of honeys, know-how kept "in-house" and not published
What should I do?

• Ask yourself **if you have IP** or if you intend to use IP owned by others.
• If your business is based on **an invention**, take care about disclosure or publication.
• **Look before you leap** – undertake searches of patent, TM and design databases.
• **Consider your market**.
• Consider the **life cycle** of the product.
• Consider the **costs**.
• Reflect IP in **business strategy** and planning.
What the judges are looking for.

- Have you identified any IP in your enterprise?
- Have you considered what you can do with it?
  - Is it worth protecting - Can I commercialise it?
  - How do I go about protecting it?
  - How much does it cost?
- It is ok to have considered your IP and decided not to do anything with it.
- Is my enterprise infringing anyone else’s IP?
Contact Us

Website: www.patentsoffice.ie

Email: patlib@patentsoffice.ie

Phone: LoCall (1890) 220223
or (056) 7720111
(open from 9:30am to 5:00pm)
Thank You

Any Questions?