Sarah Phillips, from Abel & Imray (a firm of UK and European patent attorneys), explains more about intellectual property in the furnishings industry, on behalf of the Chartered Institute of Patent Attorneys (CIPA).

Are you Protected?

The pharmaceutical industry famously relies on patent protection, but is there also a place for intellectual property in the home furnishings industry?

For a growing number of businesses, intellectual property can account for more than 80% of the value of the company and is something to be identified, protected and put to commercial benefit. Home furnishing production generates intellectual property in many different forms: the visual appeal of individual products (for example tables, chairs, cabinets and 2-D patterns/surface decoration) is protectable by unregistered and registered designs; the look of your websites, brochures and new software are protectable by copyright; and the technical innovations (for example new fixtures and fittings, or methods of assembly) required to make items function are protectable by patents, or may be retained as secret know-how. Aside from protection relating to products and methods of manufacture, trademarks allow you to protect and assert your brands.

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Patents • Trade Marks • Designs • Copyright

There are a range of options for protecting your ideas. Know-how, when recognised as such and kept confidential in the form of trade secrets, can be a powerful way of retaining valuable information inside your company for an indefinite period of time.

On the other hand, should the information be leaked, it becomes public knowledge, and the options for protecting your intellectual property are greatly reduced. Know-how arises organically, and can be lost, for example as personnel move on, taking with them their knowledge and expertise.

Another draw-back is that know-how provides no protection against independent generation of the same ideas by a third party. Know-how can be captured and defined, and if commercially important, can be actively protected through registered rights, or managed through internal confidentiality procedures.

Patents, however, can provide a 20-year monopoly for exploitation of your new technical innovations, in exchange for disclosing to the public what you have devised. The right is exclusive: you can prevent others from working your invention but will still need to check for existing rights to be "free to operate" in the field yourself. At the end of the patent term, protection expires and the public may freely use your invention.

Patents, therefore, give you the certainty of exclusive use of your invention for a limited period of time, and during that time protect against independent generation of the same idea by a third party. In addition, patents provide a tangible business asset than can be attractive to investors, and can be used to generate extra revenue, whether through licensing or as a result of having exclusivity over the innovation. Of course, having a patent also provides marketing value, and serves as a deterrent to potential competitors.

Registered trademarks protect your brand, enabling your customers to identify you and to differentiate your products from those of others. They usually take the form of a word, slogan or logo but, in certain circumstances, can also cover shapes, colours and sounds. Trademarks are registered for particular goods or services; the more narrow the category, the easier they are to obtain. As long as they don't conflict with other existing rights, they are straightforward to register in the UK.

"ASIDE FROM PROTECTION RELATING TO PRODUCTS AND METHODS OF MANUFACTURE, TRADEMARKS ALLOW YOU TO PROTECT AND ASSERT YOUR BRANDS."

Copyright arises automatically through the creation of a work, and protects the expression of your ideas, rather than the ideas themselves. It arises in original 2-D artistic works such as drawings, patterns and other graphic works, and photographs. It also arises in literary works such as computer programs.

Importantly for the home furnishing trade, there is also provision for works of artistic craftsmanship. Since 2016, copyright bans replicas of such pieces, thus protecting original, high-quality works like the Eames DSW chair and the E1027 side table. Copyright outlasts other forms of protection (e.g. design right), which might subsist in such designs (lasting for a considerable period of 70 years after the death of the author, or 50 years from the making of any computer-generated work). In order to assert copyright, it is necessary to prove actual copying; there is no protection for independent creation of the same work.

Registered designs protect the appearance of your product, and aside from the product itself, cover things such as packaging, get-up, graphics, surface decoration and parts for assembly into a complex product. To qualify for protection, designs must be new and have individual character (giving a different overall impression to previously disclosed designs).

Registered designs last up to 25 years from registration, providing a monopoly right for use of the design. Registered design right provides many of the same benefits as patents, but can't protect the function of an article, just its 2-D or 3-D appearance. Unregistered design right can arise automatically under certain conditions, but lasts for a shorter duration, and doesn't provide a monopoly right (so copying must be proved in order to establish infringement).

If you would like further information on any of the points discussed, or have a query on any intellectual property matter, Sarah would be happy to assist you — you can email her at Sarah.Phillips@abelimray.com

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