



NOW YOU SEE IT, NOW YOU DON'T

Creative Arts and Social Media

Bill and Ben are both performing artists and designers and have an idea to start a business for creating and running “ephemeral events” to promote brands and other types of marketing. They don't wrap up bridges or do stunts over rivers or buildings but do night time 3D light shows melting displays, or impromptu street theatrics, all based on product branding. The idea is that the event is so short that only people in the right place at the right time get to see the event, but film it and the videos go viral. They do a load of free events for well known brands, to get started, and have a big success, with followers trying to “catch” the moment, guess the brand, and be the first person to post the event on the web. Once they have gone viral, they put the poster's film(s) on their website.

How can they protect this idea and business venture?

Photo by Drew Graham on Unsplash





QUESTIONS

Q1: **What form of protection did or should the creator choose and why?**

Bill and Ben can protect the ephemeral events and the name of the company. Ephemeral events can be protected through copyright and the name of the company under trademark right.

They are able to protect the ephemeral events through **copyright** because it can be considered as a work of art. Moreover, by registering the name of the company as a **trademark** or as a **domain name**, Bill and Ben can prevent others from using it for the same service and support their reputation in the market.

Q2: **How does this IP protection work?**

Copyright protection for the ephemeral events is used to protect against copying, modifying and distributing or “communicating” the work. The protection arises automatically when the work is fixed in a tangible medium (i.e. impromptu street theatre) – there is no filing or registration required, though evidence of creation is useful, and countries do have voluntary copyright registries. Copyright protects original works such as ephemeral art and gives the creator of the work certain exclusive economic rights: to reproduce it, to modify or transform it, and to distribute or communicate it. The author also has the moral right to be recognised as its creator. The duration of copyright is – generally speaking – the life of the author plus 70 years, but this depends on the case and the law of the specific country in question.

Furthermore, Bill and Ben can register the name of the company through trademark rights. Registering their denominative brand as a trademark may be helpful to distinguish their products from those of their

competitors. Trademarks signal the origin of products to customers and can also be a powerful tool that can be used to build brand recognition. Bill and Ben could obtain trademark protection by filing an application in a national patent and trademark office where they want to sell their products or services or at the European Union Intellectual Property Office – EUIPO – and keep it indefinitely, pending renewal every 5 years. Trademarks may consist of any sign that is capable of: i) distinguishing the goods or services of one undertaking from those of other undertakings; and ii) being represented in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor. However, as the purpose of the trademark is to distinguish products and services, it must be used in the market. If it is not used, third parties can challenge the trademark for non-use (except genuine use 5 years after registration).

Q3: How do you think the IPR law would help the creator to innovate and protect against abuse (false/unfair competition)?

IPR law helps creators to innovate by recognising and rewarding them for their commercially-successful inventions and creations, prohibiting third parties from copying or using their creation without authorisation. IPR law therefore protects creators against abuse by providing specific legal actions against “copiers” and competitors who violate their IP rights. By giving exclusive rights to those who invest and create something new, they can license the invention or work for economic return, sharing it with society, and forcing competitors to innovate by looking for new solutions over something already on the market. Furthermore, when a new technology enters the market, society benefits and it enables further technological research and development.

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