



THE BEES KNEES

Entrepreneurship

Melanie has set up an organic and low sugar food restaurant that had immediate success because she and her colleague chefs cooked and explained the food "while you wait", with additional videos and interactive materials about the real producers of the ingredients (farmers, cheesemakers, wineries, honey makers, etc.). Kids can even play with natural ingredients that make fizzy cola drinks explode, cheese melt magically, olive oil turn into tiny round balls, and crazy colourful drinks with a variety of flavours. She called the restaurant "the Bees Knees" after the English expression meaning "excellent and concentrated goodness". She is now negotiating with three different young chefs to set up similar restaurants in 3 major EU capitals, under the same name.

She sets up a company and registers her company as Bees Knees Ltd, and buys the beesknees.food and beesknees.biz domains. Then she gets a letter from a US corporation's lawyers requiring her to cease and desist using the trademark for her restaurant and online site for promoting her restaurant and business, because it infringes their "Bees Knees" trademark on honey-based ice-creams. The three potential chefs are looking very doubtful if they want to continue with the proposed franchises.

What can she do?



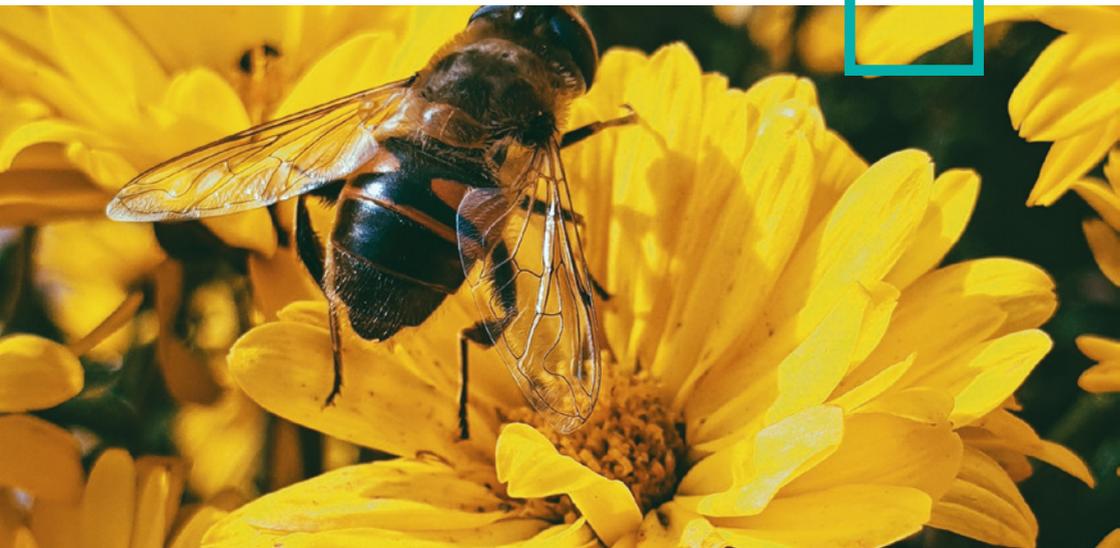
QUESTIONS

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

Melanie may be able to protect the ingredients that make the cheese melt, the fizzy cola drinks explode and turn the olive oil into tiny round balls through **trade secrets** because it is a formula/ingredient not generally known by other undertakings. Because only she knows this ingredient, she can offer a unique service in her restaurant and get an economic advantage over her competitors. They may also be patentable, if the ingredient/combination of ingredients is a new invention.

To protect the name of her project, Melanie should register, first, her restaurant name and protect her online presence through **domain name** registration and, second, as a **trademark** because it identifies her restaurant (trade name) in the market. This could help her to ensure her reputation and to continue with the expansion of her restaurants around Europe.

Photo by Caroline on Unsplash





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

Trade secrets protect business information with commercial or economic value that has not been disclosed to the world, which provides an enterprise with a competitive edge because of its secrecy. Instead, owners of trade secrets seek to protect a practice, a formula, a process, etc., from competitors by ensuring special procedures for handling it. A legal protection of trade secrets includes non-disclosure agreements, and work-for-hire and non-compete clauses. In other words, trade secrets subject matter is information that is not publicly known, and the holder makes reasonable efforts to maintain its secrecy. A trade secret can be protected for an unlimited period of time without registration and formalities. The information has to fulfil the following requirements: i) be secret, ii) to have commercial value and iii) the rights holder must have taken reasonable steps in order to keep it secret.

Secondly, the registration of the name of the restaurant as a domain name would allow Melanie the right of use it in an online market. Domain names are not protected as an IPR as such. However, the domain name is usually protected by a trademark or even by copyright. The domain name can be, for instance, the same as a trademark or as the corporate name. Registering the name of the restaurant as a domain name can add an extra layer of protection for the online presence. A domain name can be obtained by applying for registration with many online registrars, and are given out on a first-come, first-served basis. Because of this procedure, it is recommended to register the domain name, at least, at the same time as the trademark, otherwise conflicts between businesses owning the same or similar trademark rights and third parties could arise.

Finally, registering "The Bees Knees" as a trademark may be helpful to distinguish her products from those of her competitors. Trademarks signal the origin of products to customers and can be also a powerful tool that can be used to build brand recognition. Melanie could obtain trademark protection by filing an application in a national patent and trademark office where she wants to sell her 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.

Trade secrets help creators to innovate and develop new formulas which can help them to perform better, faster or at a lower cost. Information protected through this right can be strategic for decades even though owners don't have an exclusive right. Trade secret regulation establishes civil measures of protections against abuse on which victims of trade secret misappropriation can seek protection. Moreover, some countries regulate trade secret misappropriation as a criminal violation in order to protect it strongly.