

ONLINE FASHION

Fashion and Social Media

Marc is a young fashion designer and uses social networks for marketing, advertising and sales in Europe, with online payment and a third party delivery service. He has just run into two major issues. First, he has noticed that a large clothes company is imitating his designs, using the same cut, colour and materials. They are selling these in the USA at a discount, and the products are also available on a major worldwide online sales platform. On top of this, this same company has complained to online social media platforms that his designs are copying theirs, and two of the platforms (video and sales related) have sent a notice to Marc that they are about to shut down his accounts for IPR breach.

Marc has asked what he can do to (a) protect his designs and (b) maintain his accounts active.

Photo by Pooja Chaudhary on Unsplash





QUESTIONS

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

Marc can protect his designs through **design rights** and his mark and logo through **trademark** rights because he needs to prevent others from selling imitations of his designs and help consumers identify his work as his own. Marc may protect those rights under national or international legislation depending on the territory where he wants to obtain protection.

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

Design protection is used to protect the 2-D or 3-D appearance of a product, which includes the exclusive right to make, offer, put on the market, import, export or use the product in which the design is incorporated or to which it is applied. In order to obtain design protection, designers must file a design application in a national patent and trademark office or in an international office such as the European Union Intellectual Property Office – EUIPO. Some legislations, such as the European Community Design Regulation, gives protection for a period of three years from the date on which the design was first made available to the public within the territory of the European Union. However, some countries recognise “unregistered designs” (e.g. the UK), which may have more limited protection than those registered. Designs have to fulfil the requirements of novelty and individual character. Once a design is approved by the office, it can be protected for up to 25 years.

Furthermore, Marc can protect his logo and mark through trademark rights. Using a logo or sign as a trademark is helpful to distinguish his products from those of his competitors, and formal registration



gives legal protection. Trademarks signal the origin of products to customers and can also be a powerful tool that can be used to build brand recognition. Marc can obtain trademark protection by filing an application in a trademark office where he wants to sell his products or services (e.g. the European Union Intellectual Property Office – EUIPO) – and keep it indefinitely – with renewal every 5 years. Trademarks may consist of any sign that is capable of: i) distinguishing the goods or services of one company from those of another; and ii) being represented in a manner which enables the authorities and the public to determine in a clear and precise way the exact sign that is subject to protection (logo, name, sound, smell). 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). Trademarks are granted on a first come first serve basis in relation to categories of goods and services, and must not be identical or substantially similar to previously registered marks.

Note that design protection and trademark protection may be possible over the same goods because both rights have different subject matter protection: design protects the appearance of a product while trademarks are used to recognise the origin of the product.

Q3: How do you think 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.