

I think therefore iPad

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Last week Apple announced the launch of its latest product, the iPad, a cross between the iPhone and a handheld notebook. Widely tipped to revolutionise the portable computer market, the iPad is billed as *"the best way to experience the web, email, photos and video. Hands down"*

As with any product launch, it would have been essential for Apple to carefully consider how intellectual property rights can affect the launch and the product itself. It is essential to ensure that any new product does not infringe any third party rights and that it is fully protected prior to any public announcement.

What should a business consider doing before launching a new product in order to minimise its risks?

Trade mark protection

It is vital that a product is backed up by a strong and distinctive brand name. Although difficult to achieve Apple is building a reputation in a brand that simply comprises of the 'i' prefix (i.e. iPod, iPhone and iPad). However, already there are third parties who claim to own rights in the mark iPad.

Selecting a brand name for a new product requires serious thought. The brand needs to be memorable, it needs to stand out and must not contain words which are descriptive or in common use with respect to the type of product being sold. A strong brand name does not only allow consumers to identify who manufactures the product it also provides an 'aura' and represents the products 'values'.

Once a suitable brand name has been identified, it will be necessary to ascertain if anybody else is already using an identical or similar brand name on its products. A full trade mark clearance search should be carried out in all of the territories in which the product is to be sold. In the event that a third party is already using an identical or similar brand name, a risk based decision will need to be made as to whether or not to proceed with the selected brand name. It is worth considering contacting the owner of any earlier right to discuss the possibility of purchasing the earlier right or agreeing co-existence. However, be warned that coexistence can lead to dilution and that any unsuccessful negotiation will alert the owner of the earlier right as to your intentions.

It is also a good idea to make an application for a trade mark before launching the product to avoid a third party from getting in first with a view to selling back the trade mark registration for a substantial sum.

Domain names

In this day and age, marketing via the internet is an essential tool for the launch of any new product. Interested consumers will inevitably go to the internet to find out more about the product. The iPad is no exception with thousands of blogs being set up to discuss the product within 36 hrs of the official launch.

Domain name registrations should be sought at the same time as the trade mark registrations and in any case, prior to any public announcement. Given the opportunity cyber-squatters will purchase relevant domain names (i.e. www.ipad.co.uk, www.ipad.com, etc.) and attempt to elicit a ransom for their transfer. Experienced cyber-squatters will monitor trade mark applications with a view of identifying new brands prior to any public announcement. Although there is limited protection to prevent bad faith domain name registrations – a complaint can be made to the relevant domain name registry or a 'passing off' action might be possible – it is safer to register the relevant domain names at the same time as any trade mark registration.

Patent Protection

Where a product contains innovative technology consideration should be given to whether it can be afforded patent protection as well as ensuring that the product does not infringe any third party rights. A clearance search should be conducted in the relevant territories and legal advice should be sought to ensure that the product is protected to the fullest extent.

It is important to ensure that any patent application is submitted prior to the launch of the new product otherwise the disclosure of the invention to the public as part of the launch will prevent any application for a patent, which means that anybody is likely to be able to use any new inventions contained in the product.

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Apple is already defending litigation brought by Nokia with respect to the underlying technology Apple uses in its iPhone with Nokia citing ten different instances of patent infringement. Whether or not the iPad contains any of the complained about technology is unclear and it will be interesting to see if Nokia joins the iPad product to its complaint.

Designs and copyright

Most products will also have a certain amount of design and copyright protection. The shape of the iPad may be afforded design right protection and the user display is likely to be afforded a certain amount of copyright protection. Although, copyright is an automatic right in the UK and thus does not require registration, it is possible to register design rights. It is important to register any design right as early as possible and we would recommend doing so prior to any product launch.

Conclusion

It is important to carefully consider intellectual property at any early stage of product development. Serious consideration should be given to existing intellectual property rights registered in the territories in which the new product is to be launched to ensure that the new product will not infringe these rights. Also, the intellectual property in any new product should be fully protected prior to any product launch. Third party competitors will always be looking to disrupt any commercial benefit you look to gain from your new product. However, there are positive steps you can take to avoid this.

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