

Module 4 - Trademarks

Trademarks in 3D printing

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HEARTHANDS SOLUTIONS

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1.0	05/11/2021	HESO	Creation	C	10

(*) Action: C = Creation, I = Insert, U = Update, R = Replace, D = Delete

REFERENCED DOCUMENTS

ID	Reference	Title
1	2020-1-UK01-KA201-078934	IPinSTEAM Proposal
2		

APPLICABLE DOCUMENTS

ID	Reference	Title
1		
2		

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1. Trade mark

1.1 Learning Outcomes

[This module will help learners understand the importance of trade marks on useful objects]

After completing this module, you will be able to:

- Understand what trade mark is and why it is important
- Grasp the significance of trade marks rights
- Understand the link between a trade mark and product value
- Avoid imitations and learn how not to copy (albeit unintentionally) a trade mark

Estimated seat time: 2 hours

1.2 Main Content

Please provide your content here. Include definitions, explanations, practical examples and case studies/success stories. The main content (not the whole document!!!) shall be around 10 A4 pages.

1.2.1 Terms and Definitions

Trade mark

- Is an identifying mark (e.g. name, logo, slogan, phrase, sound, shape, colour scheme, etc.) that allows consumers to “connect a good or service to its source” and differentiate it from anyone else’s good or service (The Myers LG, 2021, EUIPO, 2021)
- “Your trade mark tells customers who you are” (EUIPO, 2021)

Product value

- Is the *perceived* value of a product or service that defines its *merit* or *desirability* (Kopp, 2021)
- If successfully influenced by the product/service marketing, perceived value can be increased.

Trade mark rights

- Are the rights protected by the implemented trade mark laws at the geographic area where the trade mark was filed (Country, State, Union, etc.).

Trade dress

- Is the visual appearance of a product and/or its packaging and other ornamental features that compose its 'look and feel.' In the EU, trade dress mainly consists of “a combination of three tools: 3D trademarks, Designs, and Copyright” (Melilli, 2019).

Trade mark registration

- Is the process of registering your trademark to benefit from legal protection and exclusive rights.
- You can register trade marks on a national, regional, EU-wide, or international level (EUIPO. 2021)

Registered trade mark

- Is a trade mark that has been registered on national, regional, EU-wide, or international level and is protected accordingly (i.e. it enjoys several rights and benefits wherever it is registered).

Unregistered trade mark

- Is a trade mark that has not been registered and enjoys fewer rights and benefits than a registered one in the U.S. Unregistered trade mark rights are NOT recognized at the EU level.

Trade mark infringement

- Is the unauthorised use of a registered, distinctive mark in bad faith (e.g. to make a sale by deceiving consumers).

Imitation

- Is the result of trade mark infringement, usually a product of lesser value.

1.2.2 Theory behind the IP implementation

Intellectual Property (IP) rights protect original works/ creations and ownership, thus delineating what is legal and what is illegal when using, reproducing or distributing products. This is particularly important in 3D printing, where rapid technological advancements allow for quick and accessible novel solutions and blur the barriers between rightful and illegitimate actions. One of the IP concepts implemented in 3D printing is a trade mark. The rights deriving from this concept allow holders to preserve the originality of their product and to clearly distinguish it from that of their competitors.

A trade mark is any identifying mark (e.g. name, logo, slogan, phrase, sound, shape, colour scheme, etc.) that allows consumers to “connect a good or service to its source” and differentiate it from anyone else’s good or service (The Myers LG, 2021, EUIPO, 2021). The term ‘trade dress’ refers to the visual appearance of a product and/or its packaging and other ornamental features that compose its ‘look and feel.’ In the EU, trade dress mainly consists of “a combination of three tools: 3D trademarks, Designs, and Copyright” (Melilli, 2019). Overall, trade marks and trade dress relate to the perceived product value and, therefore, have a distinct effect on the average consumer.

In Europe, trade marks must be registered to enjoy rights and benefits and be protected accordingly. Registering a trade mark requires a process to be carried out at the respective government authority after filing an application. Depending on a company’s marketing strategy and needs, a trade mark can be registered at a national, regional, EU-wide, or international level (EUIPO, 2021). This way, it can be protected against counterfeits, under one condition: the application must include a clear description and a graphic representation of “the mark and its uses in conjunction with associated products or services” (Ackerman, 2021). The unauthorised use of a registered distinctive mark in bad faith –e.g. to make a sale by deceiving consumers- constitutes trade mark infringement and is persecuted accordingly. The result of trade mark infringement is an imitation product, usually of lesser value.

Three-dimensional (3D) trade marks allow creators to “distinguish their products from those of their competitors”; they also allow consumers to identify the products’ source (Malaty & Rostama, 2021). Subsequently, when unauthorised use/reproduction/distribution occurs for commercial purposes, trade mark holders can be legally protected, provided that the *distinctive appearance element* is registered (Venable LLP, 2021). Since trade marks are associated with “favourable public recognition,” they are essential parts of *product-differentiating* strategies (Crass & Schwiebacher, 2017). As such, trade marks are especially important in 3D printing.

Constant technological innovations have lowered the cost of 3D high-performance printers. As a result, trade mark infringement using 3D printers has augmented. Trade mark infringement and imitation products threaten businesses’ reputations and substantially confuse consumers. Therefore, IP awareness must be developed and be regularly assessed as technology advances.

1.2.3 Practical examples

Trade marks can be *names, logos, phrases, slogans, and any other distinctive element of a useful object's appearance* like *signs, symbols, sounds, smells, colour schemes*, as, for instance (Ackerman, 2021):

- The *MGM lion roar*
- The *Home Depot orange scheme*
- The *Intel Inside logo*

More examples on: <https://euipo.europa.eu/ohimportal/en/trade-marks-examples>

1.2.4 Case studies

Meta PCs vs. Facebook CEO Mark Zuckerberg (case to follow!)

<https://www.theguardian.com/technology/2021/nov/02/meta-parallel-metaverses-facebook-name-change-challenged>

In late October 2021, Facebook founder and CEO Mark Zuckerberg announced that Facebook will change its name to *Meta*. However, a small retail company has already trademarked this name and, therefore, challenges Facebook's renaming.

Coca-Cola

The *Coca-Cola* Corp "owns the trade mark to the name *Coca-Cola*, the trade mark on the bottle shape, and the graphic representation of their name" (Cornell University Library, 2021). All these elements are distinctive features of the brand and help consumers recognise its products among others. Subsequently, any imitation is related to infringement.

1.3 Knowledge Assessment

Quiz-like assessment based on the main content. Please mark the correct answer with bold when required. Include 10 questions for your module. Increase gradually the level of difficulty.

Question 1 (multiple choice or true/false): What constitutes a trade mark?

[the price of a product 1] **[an identifying mark on your product 2]** [a law that protects you from fraud 3]

Question 2 (multiple choice or true/false): How can I protect my trade mark?

[by filing an application for registration 1] [by selling your product/service fast 2] [by protecting trade secrets 3]

Question 3 (multiple choice or true/false): What is trade mark infringement?

[the unauthorised use of a trade mark for commercial purposes 1] [the private reproduction of a trade mark for fun 2] [a law defending imitation products 3]

Question 4 (multiple answers correct): What can be considered as a distinctive mark?

[a symbol 1] [a name 2] [a function 3] [a commonly used material 4]

Question 5 (multiple answers correct): What is the purpose of a trade mark?

[it allows creators to distinguish their products from those of their competitors 1] [it helps produce imitations 2] [it designates a price range 3] **[it allows consumers to identify its source 4]**

Question 6 (multiple answers correct): What is trade dress?

[the materials used to make a product 1] [a marketing strategy 2] **[a product's 'look and feel' 3] [a product's visual appearance 4]**

Question 7 (multiple answers correct): What does trade mark law protect?

[your right to sell a product/service 1] [a company's equity 2] **[trade marks 3] [a product's identifying features 4]**

Question 8 (matching): Match the terms with their definitions.

Term 1 trade mark: A product's registered distinctive mark

Term 2 trade dress: The 'look and feel' of a product

Term 3 trade mark infringement: The unauthorised use of a registered, distinctive mark in bad faith

Term 4 Imitation: The result of trade mark infringement

Term 5 trade mark registration: The process to register a trade mark

Question 9 (matching): Match the concepts with their explanations.

Concept 1 'Look and feel': The overall commercial image of a product

Concept 2 Product value: The perceived value of a product

Concept 3 Use in bad faith: Deceptful use with ulterior motives (usually commercial)

Question 10 (matching): Match the problems with their solutions.

Problem 1 Where should I register my product: On national, regional, EU-wide, or international level, depending on your company's strategy and needs.

Problem 2 My competitor's brand logotype is increasingly popular. Can I slightly change it and make it my own? : No, because this would be trade mark infringement.

Problem 3 I have registered my trade mark in France, but now intend on commercialising it in other countries as well. Am I good to go?: No, you need to register your trade mark in every country that you intend to sell your product.

Problem 4 I found a product with a genuine trademark and an imitation with a much lower price.

Which one should I buy? : Imitations are usually products of lesser value, therefore you will be more satisfied by a genuine product.

Problem 5 I live in the U.S. and my unregistered trade mark enjoys certain rights. If I distribute my product in the European market, does my unregistered trade mark enjoy any rights: No, you should register your trade mark in Europe.

1.4 Skills Assessment

Assign an exercise that promotes problem solving and critical thinking related to the actual implementation of Intellectual Property in STEAM subjects.

Discuss trade mark infringement using 3D printers.

- How can consumers get confused?
- Is the rightsholder's reputation damaged by imitation products?
- Can slight differences in the unauthorised copy protect someone in the eyes of the law?

2. References

Please use [APA Style](#) to write down your references.

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