

## Legal Brief #10: Influencers and Intellectual Property: Focus on Trade Marks and Designs

Social media influencers share creativity and innovation with the world, whether it is their own or that of a third party. The content they create is their intellectual property (IP) and should be treated and protected as such. Likewise, influencers should respect the IP of others and take care not to infringe it. They should not breach the law and, like anyone else, they could be held liable if they do. It is also important that influencers do not mislead their audience by promoting infringing goods or services (e.g. a fake cosmetic product that could damage their health or a pirated live sporting event, the profits of which could fund criminal activities). Social media influencers can play a pivotal role in fostering a culture of respect for intellectual property among their followers and fellow influencers.

### What is IP and what does it protect?

IP refers to creations and inventions of the human intellect. Most of the content an influencer shares or creates and the results of that work can be protected through IP rights. These rights enable influencers, who might also be content creators in some cases, to benefit from their work and to act against infringers.

There is no one-size-fits-all IP protection measure that protects everything everywhere. Each IP right or other IP protection measure serves a specific purpose in a specific country or region. IP rights encompass copyright and industrial property rights, such as trade marks, designs, patents and geographical indications. This brief focuses on trade marks and designs as these IP rights are among the most relevant for influencers. Information on copyright can be found in legal brief #9.

**Best practices:** take a look at this [infographic](#) on the various types of IP rights and watch the '[IP is everywhere](#)' video. Expand your IP knowledge with the [IP basics module](#) of the EUIPO massive open online course (MOOC) on IP Essentials. Follow Ideas Powered on [Facebook](#), [Instagram](#) and [X](#).

### Industrial property and its protection

**Industrial property rights** are a type of IP right that, unlike copyright, which is protected automatically by creation, can be acquired through registering a creation or invention. Some examples include trade marks, designs, patents, utility models and geographical indications.

**In this legal brief, we focus on trade marks and designs**, which we believe would be most useful to protect the goods and services that influencers create and promote.

### What can be protected as a trade mark or design?

A **trade mark** is a distinctive sign used in trade to identify and distinguish the goods (e.g. a t-shirt) and services (e.g. promotion of goods through influencers) of an individual or company, from the goods or services of another. A trade mark may consist of a word, a figurative element or the combination of both, as long as it is distinctive and non-descriptive, among other requirements. Traditional examples of trade marks would be a brand's name and logo.

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There are also signs that can be protected as non-traditional trade marks, like shape, position, pattern, colour, sound, motion, multimedia or hologram marks.

You should not confuse a trade mark with a **domain name**, which is the 'address' used to refer to a specific location on the internet. In most cases both the trade mark and the domain name would benefit from protection. Registering a domain name that is identical to your trade mark reinforces the IP rights associated with it and would prevent anyone else from registering a domain name identical to your trade mark.

A **design** protects the appearance of either the whole product or part of it that results from its features, particularly the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation (e.g. graphic user interface or an icon). A design needs to be new and differ from the overall impression produced by previous designs.

**Best practices:** for information on the different types of trade marks and the distinction between them, see the dedicated [trade mark information](#) on the EUIPO website. For information on what can be protected as a design, see the dedicated [designs information](#) on the website. The [DesignEuropa Awards](#) organised by the [EUIPO](#) celebrate excellence in design among holders of registered Community designs.

**Best practice:** the EUIPO provides [information on the .eu domain names](#) and their availability by working closely with EURid, the .eu registry manager.

## Protecting trade marks and designs: what, how and where?

The protected **trade mark and design** confer to their owners' **exclusive rights** to use and exploit the sign, product or service protected. These are **territorial rights**, which means they are generally only valid in the countries where they are protected.

Trade marks and designs can be protected at national, EU or international level. National protection can be obtained through registration in the national or regional IP office of the country or region where you seek the protection. International protection can be obtained for a selected number of countries through the [World Intellectual Property Organization](#).

The EUTM and the EU Design are valid in all **27 EU Member States**. An EUTM is valid for **10 years** and can be renewed **indefinitely** for equal periods. After registering your trade mark, you can use the ® or TM symbol, but it is not compulsory. The EU Design is valid for **5 years** and can be renewed for equal periods, up until a maximum of **25 years**.

Regarding designs, it is also possible to automatically obtain protection through an unregistered community design. However, this option grants weaker protection than the EU Design, as it only protects from copying and has a duration of **3 years**.

Before using or promoting a product or service, you should verify whether it benefits from IP protection.

If an influencer creates a trade mark or design, it is important to ensure that it is not already registered by someone else or does not conflict with any third parties' prior rights. It is advisable to carry out a search of prior rights.

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**Best practices:** discover the EUIPO search tools, [TMview](#) and [DesignView](#). Learn how to register EUTMs and EU designs on the '[All about trade marks](#)' and '[All about EU designs](#)' web pages. Watch the EUIPO videos with tips on [EUTM](#) and [EU design](#) registration and what mistakes to avoid.

## The EU legislative framework for trade marks and designs

**Protection in the EU** can be obtained by registering your IP at the EUIPO. This is governed by the following:

- [Regulation \(EU\) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark \(EUTM\)](#);
- [Council Regulation \(EC\) No 6/2002 of 12 December 2001 on Community designs](#).

## How to monetise a trade mark or design?

A rights holder may use and exploit the trade mark and design themselves, or **licence** them to third parties. This can allow you to further expand your business. IP rights can be licensed for some or all of the goods or services for which they are registered, as well as for the whole or part of the territories on which the IP rights are registered. A licence may be exclusive or non-exclusive. However, it is important to bear in mind that the rights continue to be in the judicial sphere of the rights holder. You can also sell your IP rights.

Since IP rights are intangible assets, they have a value. Therefore, under certain conditions they could constitute a guarantee when seeking financial support.

**Best practice:** check out the [Ideas Powered for business](#) website, which provides small and medium-sized enterprises all over Europe with information and tools to power their business through IP.

## Respecting other's trade marks and design rights and how to avoid infringement

After obtaining a trade mark or design, the rights holder should continue to take care of them, monitoring the market for any other applications that may be filed that could conflict with their registered IP; in this case, an opposition avoiding registration of the trade mark may be filed. Moreover, if someone uses one of their rights without authorisation, the rights holder should act to enforce it, initiating a judicial proceeding if necessary. Hence, whenever an influencer wishes to commercially use someone's trade mark or design (e.g. an unaffiliated company logo or distinctive shape created by others for their own merchandising items) they should ask permission before doing so.

**IP infringements** include **counterfeiting**, among others.

**Counterfeiting** is copying a protected trade mark or design without the authorisation of the rights holder. Counterfeiting, or promoting a counterfeit product, with commercial intent can, in some

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cases, constitute a criminal offence. Counterfeit products are often referred to as copies, fakes, forges, replicas, knockoffs, lookalikes, and/or phonies. Be careful with so-called **dupes** (short for duplicate or duplication) as well, as in certain cases, they may infringe on IP rights.

However, this also applies to influencers; whenever they wish to commercially use someone's trade mark or design, they should ask permission before doing it. Should an influencer be faced with an infringement, they should contact an IP lawyer.

Regarding IP rights enforcement, it is important to be aware of this legal instrument:

- [Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.](#)

**Best practices:** for more information on resources and studies, follow the link to the [European Observatory on Infringements of Intellectual Property Rights](#). To assist IP rights holders in enforcing their rights, the Observatory manages the [IP Enforcement Portal](#), a secure communication tool between rights holders and the EU enforcement authorities.