



OIFIG NA bPAITINNÍ  
PATENTS OFFICE

# Intellectual Property

**Dermot Doyle**  
**Head of Trade Marks &**  
**Designs Division**  
**Patents Office**

**Tullamore, Co Offaly**

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# Intellectual Property

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- What Intellectual Property (IP) is.
- The types of IP and how they differ.
- IP rights in business.
- IP in the context of Student Enterprises Awards.



# What is Intellectual Property

- A company's intangible assets –
  - Brands
  - Inventions
  - Designs
  - Human capital and know-how



"I call it 'zero'."

- Often more valuable than a company's physical assets



# Intellectual Property Rights

Registrable	Non-Registrable
Trade Marks = Name, logo, slogan...	Copyright = Artistic works, text, graphics...
Patents = Invention, function, process	Trade Secrets & Confidentiality = Know-how
Designs = Appearance, shape & configuration	Passing Off = Reputation, goodwill



# Registered IP Rights are Territorial





# Why is IP useful?

## Your IP:

- Adds to balance sheet of a company – potentially increase value if selling on.
- Facilitates licensing revenue
- Use as security for borrowing
- Marketing (“our newly patented technology..”)



## Knowing about IP:

- **Don't miss opportunities:** Allows you to secure protection before the chance is lost
- **Early warning:** Allows you to identify possible infringement problems early on (someone else infringing your IP, or you infringing someone else's). Enough time to prepare a strategy.



# What is a Trade Mark?

## Definition (Section 6(1) of Trade Marks Act 1996)

***“A “trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.”***

- Means of identifying the source of goods or services.
- A guarantee of origin and quality.

Registered Trade Mark ®

Unregistered <sup>TM</sup>






# Nice Classification

- **45 classes of goods (34) and services (11)**
- **Class 5** Pharmaceutical and veterinary etc.
- **Class 12** Vehicles; apparatus for locomotion by land, air or water.
- **Class 15** Musical instruments.
- **Class 25** Clothing; footwear; headgear.
- **Class 35** Retail; advertising; auctioneering.
- **Class 38** Telecommunications services.





# Marks are registered in respect of specific goods & services.

Trade Mark	Proprietor	Class
PUNCH	CORPORACION HABANOS, S.A.	34: Cigars.
PUNCH	CADBURY UK LIMITED	30: Chocolate and sugar confectionery.
PUNCH	ATCO QUALCAST LIMITED	7: Machines for use in agriculture and horticulture; lawn mowers and grass cutting machines; cultivators; parts and fittings for all the aforesaid goods.
PUNCH	COLGATE-PALMOLIVE	3: Soaps; detergents; fabric softening preparations...
PUNCH	EDU PONT	5: Agricultural fungicides.
	LIBERTY PUBLISHING & MEDIA LIMITED	16: Printed matter, paper and cardboard articles, stationery...
	PUNCH INDUSTRIES	25: Articles of clothing, footwear, insoles for footwear.
	PUNCH INDUSTRIES	2: Paints and varnishes for footwear... 3: Cleaning, protecting and polishing preparations for footwear... 5: Air Fresheners... 21: Combs, sponges, brushes... 25: Innersoles and fittings for footwear. 26: Laces for footwear...

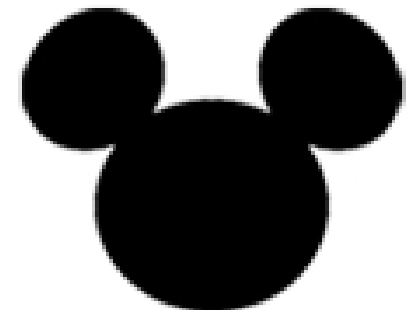


# Examples of Trade Marks - Words / Letters / Numerals

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- MICROSOFT
- GUINNESS
- 1001
- 7UP
- *“Probably the best lager in the world”*
- JUST DO IT

# Examples of Figurative Trade Marks





## Examples of Trade Marks - Combined

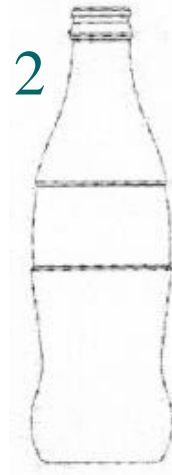


# Examples of Trade Marks - Shapes

1



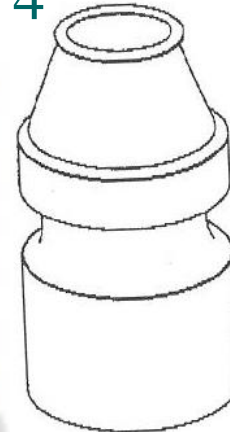
2



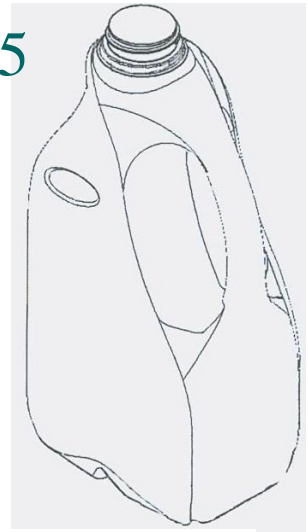
3



4



5



6



7



8



# Colour Only Trade Marks





# What are the Best Trade Marks?

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- Invented words which have no meaning in any language (IKEA)
- A dictionary word whose meaning is unrelated to the goods or services (APPLE)
- Combinations of words and figurative elements
- Do not directly describe the goods or services but contain an allusion to them (WEETABIX)
- A family of marks. (Kodak use “Koda” - Kodacolor, Kodachrome, Kodagraph).

# Famous Trade Mark Disputes

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- Apple Corps (The Beatles) v. Apple Inc. (Steve Jobs)
- Marvel and DC Comics “Superhero”
- Washington Redskins Football team
- Diesel – 2 companies use the mark in Ireland
- Louis Vuitton v. Haute Diggity Dog (“Chewey Vuitton”)
- Genericide – Hoover, Aspirin, zipper, yo-yo, Google?





# Trade Mark Searching

- [www.patentsoffice.ie](http://www.patentsoffice.ie)



- TMview (Free database of 50+ National Registers)  
[www.tmdn.org/tmview/welcome.html](http://www.tmdn.org/tmview/welcome.html)
- Results identify what is already on the registers.

**They do not mean your proposed mark is registrable.**

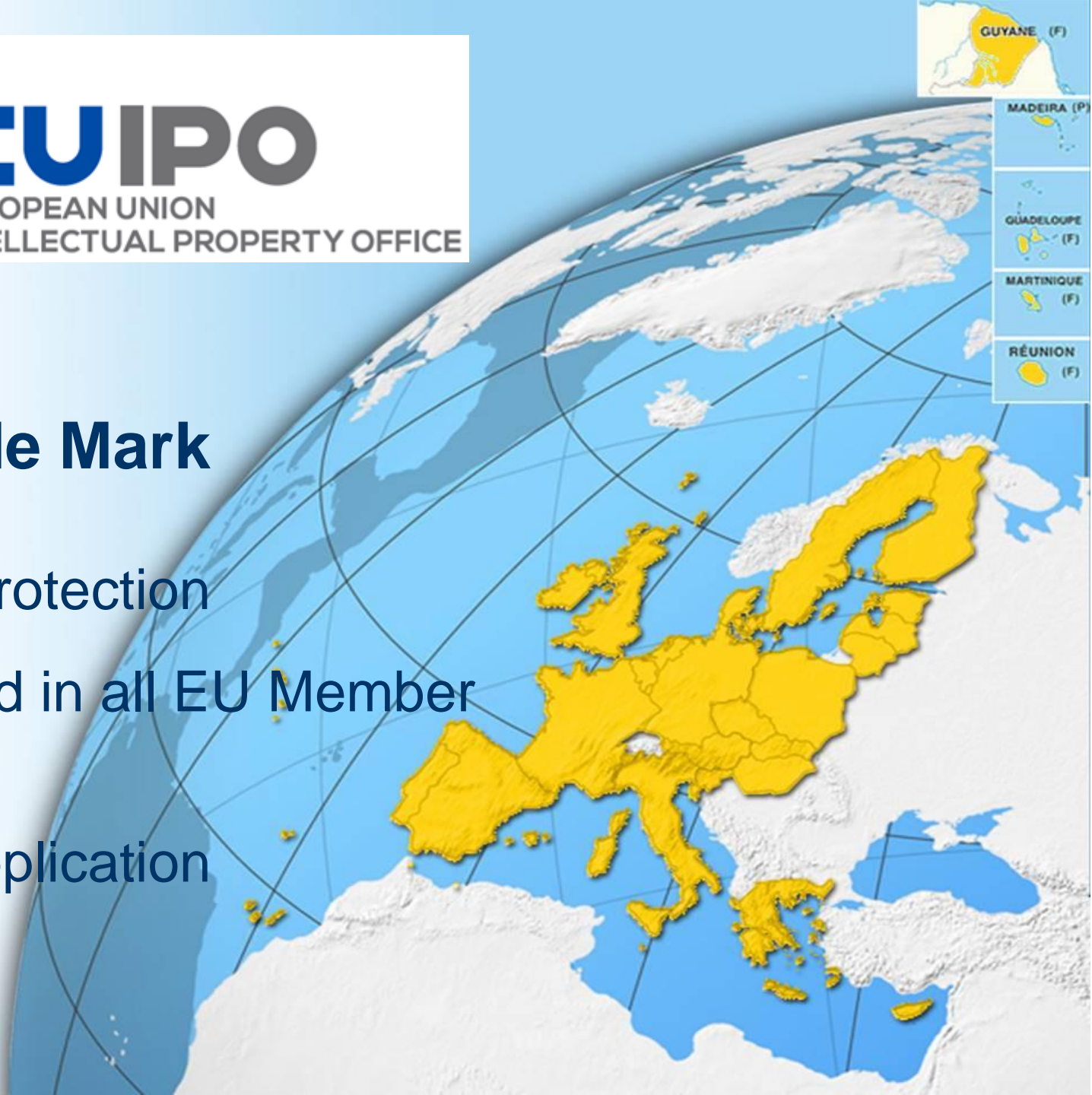


**EUIPO**  
EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE



## EU Trade Mark

- Unitary protection
- Mark valid in all EU Member States
- Single application



# Designs

The overall look of the product resulting from the ...

- Lines
- Colours
- Textures
- Contours
- Materials
- Ornamentation



(not the function)

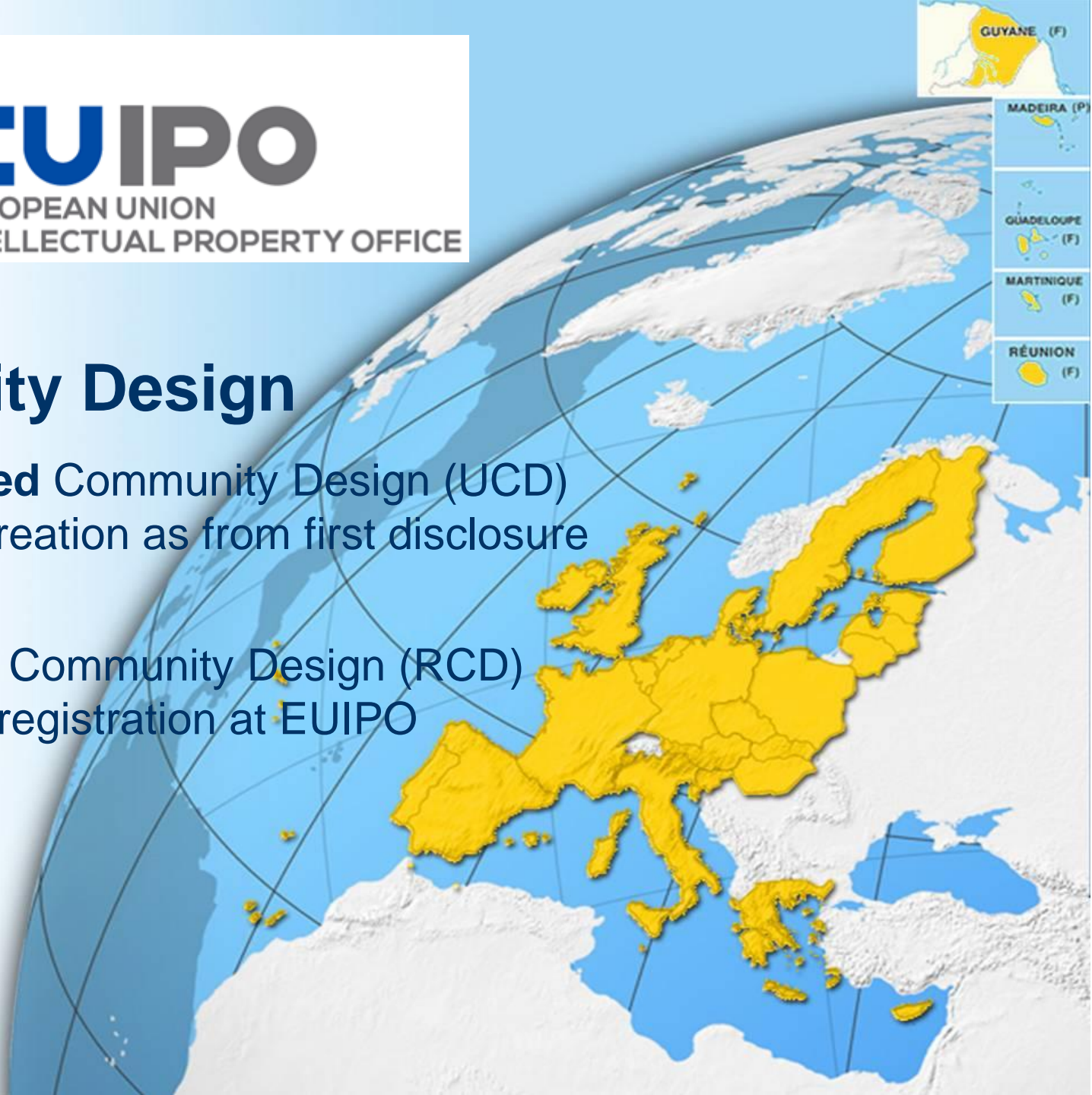


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EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE



# Community Design

- **Unregistered Community Design (UCD)**  
automatic creation as from first disclosure
- **Registered Community Design (RCD)**  
creation by registration at EUIPO





## The Unregistered Community Design Right

- In 2007 fashion designer Karen Millen (**KM**) alleged that Dunnes Stores (**Dunnes**) had copied two shirts and a knit top from her collection and had manufactured these for sale.
- Dunnes did not deny copying KM's designs at trial.
- As the design right was not registered, KM had to establish a valid unregistered design right to prove that the Dunnes clothes were unauthorised copies.
- The High Court found in favour of Karen Millen and the Supreme Court upheld the decision.



# What Do You Think?





# IP Infringement Passing-off case study





# Patents

“A Government grant of the exclusive right to make, use, or sell an invention, usually for a limited period” *Encyclopaedia Britannica*

Protects a fundamental idea – an “invention”

- it protects **function** rather than **form**
- does not exist automatically !!



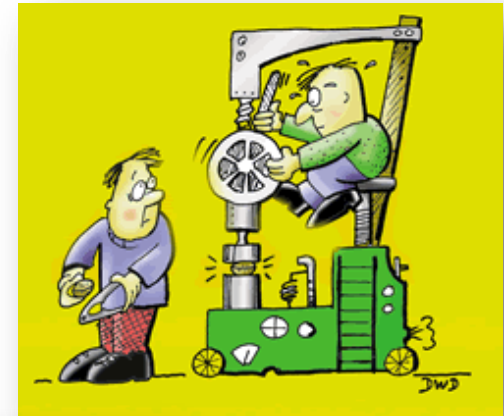


# Patents – what qualifies?

New/Novel



Inventive step



Industrial applicability





# Inventive??



# Patent - Protection in Ireland

Via Irish Patents Office



Via European Patent Office (EPO)  
(38 Contracting States to EPC)



Via (WIPO) Patent Co-operation treaty  
(PCT) (148 Contracting States to PCT)





# Famous Patents Cases

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- Rubik's Cube
- 1991 Polaroid v. Kodak \$873 million
- 2012 Apple v. Samsung \$890 million
- 2013 Pfizer v. Teva & Sun Pharma \$2.15 billion



# What is Copyright

Copyright is a property right, given to authors/ creators of literary or artistic work such as music, songs, films, books, computer programmes, etc.

Relates to the expression of an idea, not the idea itself





# Copyright Protection

- There is no copyright registration system in Ireland.
- Automatic right - the Author (original creator of the work) is the owner.

Protection not absolute: must prove copying has taken place (can sometimes be difficult)



E.g. © **Copyright Joe Blogs 2015**



# Copyright and Business

Use of a TV or Radio in a public space must be paid for – royalties!





# Copyright case study: Who owns selfies?







# Trade Secrets

- A **trade secret** is a formula, practice, process, instrument or compilation of information which is not generally known.
- Can give its owner an actual or potential advantage in business, (e.g., formula for Coca Cola®)
- Cost to acquire/maintain: None
- Time to acquire: immediate
- Duration of protection: perpetual as long as secret is maintained.



Google's algorithm is its version of a secret recipe: how it mixes the information of a website's relevance, number of visits, inbound links, anchor tags, user's location, and other factors, in order to provide the search results best tailored for each user.



# Famous IP Cases

- **Marvin Gaye** (Got to give it up) v. **Robert Thicke** (Blurred Lines)
- **David Bowie & Queen** (Under Pressure) v. **Vanilla Ice** (Ice Ice Baby)
- **Sam Smith** (Stay with me) v. **Tom Petty** (I won't back down)
- **Music sharing websites – Napster, The Pirate Bay, Grokster**
- **Mattel Inc.** (Barbie) v. **MGA Entertainment Inc.** (Bratz)
- **National Biscuit Co.** v. **Kellogg Co.** (Shredded Wheat)
- **Michael Baigent & Richard Leigh** v. **The Random House Group** (The Da Vinci Code)
- **Adidas America Inc.** v. **Payless Shoesource Inc.** (3 Stripes)
- **Lucasfilm Ltd.** (Star Wars) v. **High Frontier & Committee for a Strong, Peaceful America**
- **S. Victor Whitmill** v. **Warner Bros. Entertainment Inc.** (Tattoo)



## Famous IP Cases

- **J.K. Rowling v. Steven Vander Ark (The Harry Potter Lexicon)**
- **KFC “Family Feast”**
- **The Associated Press vs. Stephen Fairey**





# One product – many IP Rights

## Trade marks

- Company name, Logo
- Product name
- Shape

## Patents

- Function of the cap

## Copyright

- Text
- Graphics



## Designs

- Overall form of the bottle
- Arrangement and shape

## Trade secrets

- Blend of honeys, know-how kept "in-house" and not published



# What should I do?

- Ask yourself **if you have IP** or if you intend to use IP owned by others.
- If your business is based on **an invention**, take care about disclosure or publication.
- **Look before you leap** –undertake searches of patent, TM and design databases .
- **Consider your market.**
- Consider the **life cycle** of the product.
- Consider the **costs**.
- Reflect IP in **business strategy** and planning.

TRADE SECRET



PATENTED





# What the judges are looking for.

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- Have you identified any IP in your enterprise?
- Have you considered what you can do with it?
  - Is it worth protecting - Can I commercialise it?
  - How do I go about protecting it?
  - How much does it cost?
- It is ok to have considered your IP and decided not to do anything with it.
- Is my enterprise infringing anyone else's IP?



# Contact Us

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**Website:** [www.patentsoffice.ie](http://www.patentsoffice.ie)

**Email:** [patlib@patentsoffice.ie](mailto:patlib@patentsoffice.ie)

**Phone:** LoCall (1890) 220223  
or (056) 7720111  
(open from 9:30am to 5:00pm)



# Thank You

# Any Questions?