in brief

Intellectual property - how will you protect yours?

Imitation, it is said, is the sincerest form of flattery; but when it comes to business, this is not always the case. If someone copies your product and makes a profit, not only have they unfairly benefitted from your enterprise and reputation, they have also put it at risk. One way of ensuring your business is protected is by registering your trade mark.

What is a Trade Mark?

A trademark is a badge of origin, which enables your product or service to be identified as originating and associated with your organisation. According to the Trade Mark Act 1994, a trademark is "any sign which is capable of graphic representation and which is capable of distinguishing the goods or services of one business from those of another".

What are the benefits of registration?

Registering your trade mark with the Intellectual Property Office gives you the exclusive right to use your mark for the goods or services that it covers in the United Kingdom and establishes your brand. It is also possible to register your mark across Europe. Once registered, you will be able to exploit your brand and trade mark by assigning, franchising or licensing it.

This will enable you to develop a protectable brand, which is easily recognisable and associated exclusively with your product, service or organisation. In addition, and unlike other forms of intellectual property, a trade mark does not expire; as long as you renew registration every 10 years and it continues to satisfy the relevant criteria, a trademark could last forever.

What happens if someone infringes my registered trade mark?

If you become aware that a competitor is using an identical or similar trade mark for identical or similar goods or services, this may create the likelihood of confusion to the public, which may not only cause you financial loss but damage your reputation and brand.

We have extensive experience of protecting trade marks both by court intervention and dispute resolution. We can help protect your reputation, investment and allow your brand to be foremost in your clients' and prospective clients' minds. Contact us if you are interested in registration of a trade mark or are concerned about the infringement of intellectual property rights.

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Forthcoming events

7, 8, 9 May 2013
Employment breakfasts: The latest on unfair dismissal
21 May 2013
Education forum with Scrutton Bland: Managing Performance

29 May 2013
Green breakfast: How much energy do you use?
For more details on any of these seminars or to register your free place, email seminars@birkettlong.co.uk or visit www.birkettlong.co.uk/events

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Education Law

NEWS AND ADVICE FROM BIRKETT LONG

Updates on education law

Don't forget that from 28 March 2013 the Home Office began to accept only DBS application forms; applications made using the old CRB forms will be rejected and returned. The Home Office had previously stated that the CRB forms could only be used until 28 February 2013, but recently extended this by one month.

On 21 March 2013 the Department for Education issued revised "Working Together to Safeguard Children" guidance. This guidance came into force on 15 April 2013 and clarifies the legal requirements that those organisations working with children must follow. It also keeps 45 working days as the maximum time to complete an assessment of a child's case so that it is possible to reach a decision on the next steps. Watch this space, however, as the Government plans to monitor the impact of the changes and whether the time limit can be abolished.

On 22 March 2013 the DfE updated its advice on school attendance. Revised guidance deals with pupil registers and attendance codes, advice on the school day and year and statutory guidance on education-related parenting contracts, parenting orders and penalty notices. The document will be reviewed again in July 2013.

Also in March the DfE issued updated non-statutory advice on fair access protocols by clarifying the role, obligations and duties of local authorities and schools under the School Admissions Code 2012, and ensuring that any disputes about individual cases are escalated efficiently.

The High Court has decided that the free school transport which the Local Authority must provide under section 508B of the Education Act 1996 does not have to be "door to door". An LA may arrange for an eligible child to be transported to school using a pick up point which could be a reasonable distance from the child's home. As part of this the council could impose a particular pick up point on the parents, which might not be the child's home. (R(M and Another) v London Borough of Hounslow [2013] EWHC 579 (Admin) (15 March 2013)).

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Are children in your school the least of your worries?

Head-teachers, governing bodies and local authorities may sometimes feel that the children in their school are the least of their worries, as they grapple with the demands of a complicated business, often employing dozens of staff in a variety of roles and generally becoming involved in a whole range of employment issues, from collectively agreed terms, to discrimination complaints, to TUPE.

Whilst the employment legal process generally makes no special provisions for schools and colleges, which are subject to the same rules as anyone else, there are nonetheless some interesting cases which are perhaps particularly relevant to the education sector.

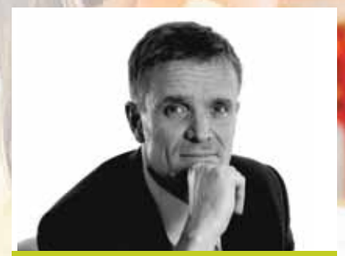
In Hill v governing body of Great Tey Primary School, the claimant was a midday dinner assistant. On finding out about a child being tied up and whipped across the legs by other pupils, she told the child's parents and was suspended. She complained to the press about the suspension and in doing so confirmed what she had told the parents, so was dismissed for breaching her obligations of confidentiality and acting in a manner likely to bring the school into disrepute.

The claimant won her unfair dismissal case on the basis of an unfair procedure but the employment tribunal found that had a fair procedure been followed, the claimant would have been dismissed within two months anyway, and it reduced her award by 80% for contributory fault. However, the claimant has successfully appealed this finding on remedy, which is to be re-determined. We await that decision with interest.

In another case, the governing body of White Cross School found out to its cost that when it made an honest and genuine mistake as to the amount of sick pay to pay to a teacher (who was on sick leave with stress and depression) it still amounted to a fundamental breach of contract, entitling the teacher to resign and claim constructive dismissal. The school had mistakenly interpreted the relevant collective agreement covering sick pay, thinking it covered physical but not mental injuries. However, the school had a "settled intention" not to pay the full contractual sick pay due; the important point was not that the mistake was genuine but that it had acted on its view of the contract, rather than simply asserted it.

Finally, schools and colleges like other employers will, no doubt, be relieved to hear that any action they take in the preparation of a case for trial, including preparation of witness statements, cannot be used as a ground for a claim. In Singh v Reading Borough Council, a former head teacher brought tribunal claims of race discrimination, harassment and victimisation against her by parents, staff and governors at her school. Whilst the claimant was still employed as head teacher, the school served a witness statement on her from the clerk to the governing body. The claimant alleged that the statement contained lies as a result of improper pressure being put upon the clerk by the respondent. The claimant resigned, saying that the witness statement was the "last straw" and then unsuccessfully sought to amend her tribunal claims by adding one for constructive dismissal.

It's never easy out there, but with more schools converting from local authority control to academy status there will come a need for each school to be able to deal with such difficult employment law issues itself.



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Bare essentials

Small claims - the costs issue

On 1 April 2013 there was a change to the threshold for claims in the small claims track. Until this date a small claim was deemed to be one where the value of the claim was £5,000 or less; from 1 April this has increased to £10,000.

The implication is that the cost recoverability rules, which are presently applied to cases up to £5,000, will extend to cases worth up to £10,000. These rules are that legal costs and disbursements are not recoverable from the other side, even if you are successful.

The result is that the benefit of issuing a claim will need to be considered very carefully; unrecoverable costs could quickly exceed the value of a claim.

In the light of the new threshold it will become even more important to consider alternative means of settling disputes at an early stage.

For further information please contact Ian Dawes on 01206 217314 or by email, ian.dawes@birkettlong.co.uk

Meet the team

Emily Brown

Emily heads our education law team at Birkett Long, working with nurseries, schools, colleges and universities, as well as teachers, students and parents.

In addition to specialising in education law, she also undertakes all aspects of employment law, whether contentious or non-contentious. Her background in commercial law and commercial litigation allows her to give practical, expert advice whilst seeing the wider picture for her clients.

She holds education breakfasts for those in the sector and speaks at education events held by others.

Emily is a member of the Education Law Association and the Employment Lawyers Association. She is a governor of Colchester County High School for Girls and is a director and trustee of the Headgate Theatre, Colchester.

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