



The shape of trademarks to come!

Trade Marks can take the form of words, logos, colours, slogans and shapes. A registered trade mark means that a business has rights in the mark and can prevent others using or registering the same or a similar mark. Furthermore, the proprietor of a registered trade mark can take action for infringement. For this reason the Registrar with responsibility for registering trade marks will carefully consider all applications and reject those that do not meet the criteria for registration as set down by legislation.

In order to qualify for registration a trade mark must have some distinctive character and must not be exclusively descriptive of the goods or services the business is providing. A recent European case illustrates the difficulties businesses can have in obtaining registration of their "mark". Dyson, the manufacturer of bagless vacuum cleaners, had filed a trade mark application for vacuum cleaners. The application contained two drawings of vacuum cleaners; one in the upright range and the other in the canister range. The drawings were accompanied by the description "a transparent bin or collection chamber forming part of the external surface of a vacuum cleaner". The UK Trade Marks Registry had rejected the application on the grounds of lack of distinctiveness and that it served to designate the kind and intended purpose of the product. The High Court similarly thought that the marks lacked a distinctive character and were descriptive of Dyson's vacuum cleaners but had referred the matter onto the European Courts on the issue of whether the marks could have acquired a distinctive character through use.

The European Courts came at the case from a different stance altogether and determined that Dyson was actually seeking to protect a concept rather than a mark. The protection Dyson was claiming was not limited to a particular shape of a collection container. To allow registration would entitle Dyson to object to any competitor marketing vacuum cleaners with a transparent collection bin irrespective of its shape. Had Dyson applied to register a particular shape of a collection container as a trade mark rather than just the idea of incorporating a collection container per se it might have been successful.

David Wilson is a partner in Worthingtons Solicitors