



Trade Marks: The Colour of Money?

What's The Topic?

Registering a trade mark confers an exclusive right to use that mark for the selected classes of goods or services. It can be an extremely valuable asset, playing a fundamental role in protecting and exploiting your brands.

Current position

For an application to succeed, a trade mark needs to satisfy various criteria, including that it is not descriptive of the intended goods or services, and that it must have 'distinctive character.' The relevant Intellectual Property Office (IPO) examining an application may consider a trade mark to be inherently distinctive (which may be very likely for, say, a made-up word). If not, an applicant may be able to provide evidence to show that the trade mark has been used sufficiently for it to have acquired distinctiveness in the eyes of the consumers for the relevant goods or services.

Under UK and EU trade mark law, a wide variety of signs can potentially be registered as trade marks so long as they are capable of acting as a 'badge of origin,' serving to distinguish the goods and services of one business from another's. This includes words, names, logos and slogans, but also potentially sounds, smells or colours. However, there is a public interest in not granting a broad monopoly to one business over the use of any particular colour. To register a colour as a trade mark, you need to address this concern by being specific as to the colour you wish to register, and only seeking to register it for a narrow range of goods and services only. (It may become easier to succeed if you seek to register a particular combination of colours.)

What's new?

Monzo, the new online bank, has recently withdrawn an application to register a particular colour a trade mark. It had identified the colour as specifically "Hot Coral Pantone 805 C" (using Pantone's internationally recognised colour coding system) and only sought registration in relation to banking cards and financial services. The withdrawal suggests that the UK IPO did not consider the colour to be inherently distinctive for these goods and services, or Monzo was not able to provide sufficient evidence that the colour had acquired distinctiveness through its use.

PANTONE 805C

Monzo may submit a further application at a later date – presumably when they have been offering services for longer and have a stronger argument that the 'hot coral' colour has acquired distinctiveness in relation to particular financial products and services. In the meantime, they have submitted an application to register as a trade mark an image of bank card in the same pantone 805c colour, but with the word Monzo (in white text) at the top right of the card. This is far more likely to be considered inherently distinctive by the IPO and Monzo is likely to secure some trade mark protection in the near future – albeit only for that particular image of a bank card, rather than a monopoly on the colour generally for bank cards and financial services.

Learning

Colours are notoriously difficult to register on their own as trade marks (note that this is different from trying to register a name or logo in a particular colour: here, we are talking about registering the colour itself). Cadbury recently came unstuck in the UK Court of Appeal in its bid to maintain register a particular shade of purple (Pantone 2685C) in relation to a broad range of chocolate products. However, it is possible. So long as your application is for a specified colour and for a narrow range of goods and services you may be successful, although you may do well to build up substantial brand awareness first and ensure you have clear evidence of this, to show acquired distinctiveness.

If you cannot register your trade mark, all is not lost. You may be able to rely on unregistered trade mark rights to stop others using the mark, if you can show you have goodwill, that someone else is 'passing off' their goods or services as yours, and that you suffered losses as a result. You may also be able to claim infringement of your design rights in the surface decoration of your product packaging, for example.

Also think about

- Unregistered Trade Mark Rights
- Design Rights • Brand & Marketing

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