

IP Starter Pack

FOR FOOD & DRINK BUSINESSES





**The reason you started
your business was to
bring your foods and
drinks to market so
the largest possible
number of people can
enjoy them.**



The legal side is probably the last thing on your mind! The only thing is, the legal side has a vital part to play in giving you the best possible chance of success.

Within the food and drink industry the legal side impacts every aspect of your business.

It protects your recipes, formulations and production processes, your brand, your products' appearance and your packaging. It will support your preferred revenue model. It will make sure you don't misrepresent yourselves in your labelling or advertising.

It will also minimise the likelihood that your products are misused or even counterfeited by competitors, a very real threat for every popular food brand.

IP will also strengthen your pitch immeasurably if you are looking for investment.

Maximising your appeal to potential investors involves presenting a credible and cohesive business plan underpinned by a strategy capable of delivering your plan. This delivery will require IP in some shape or form.

Our specialist food and drink team has worked alongside producers at every stage of their life, from some of the best-known names on our shops' shelves to the innovative and ambitious start-ups shaping the next generation of products. The reason so many food and drinks brands come to us is simple; we can take care of everything.

Unlike most other firms, the trade mark, patent and design attorneys and IP solicitors in our multi-

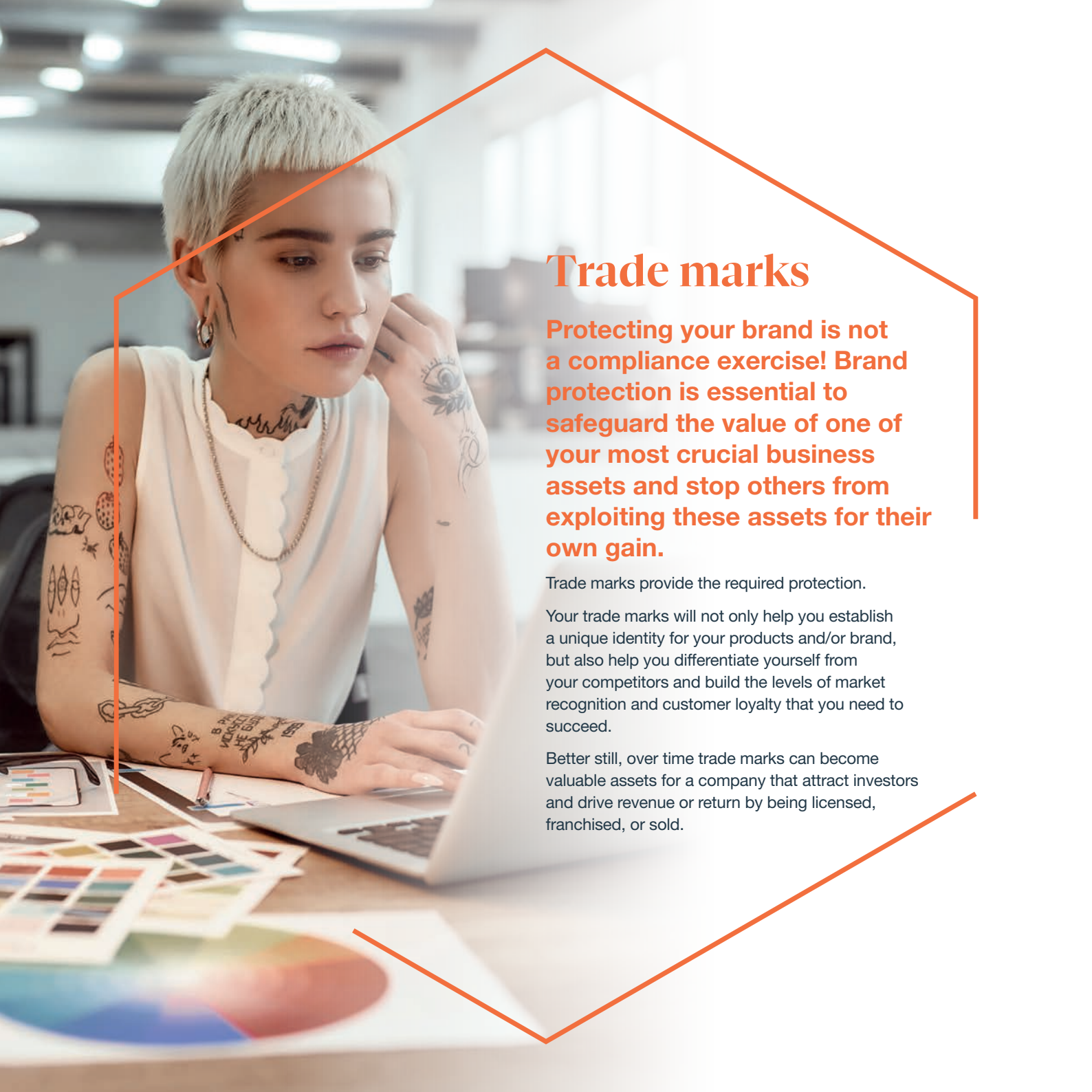
disciplinary team work seamlessly to make sure everything you need to achieve your commercial goals is in place.

Better still, as food and drink specialists, they can apply their industry expertise to their legal advice so the advice you receive is tailored to the nuances of your business and your market.

In this starter pack, we will explain the different IP rights and how they are used to identify, protect, exploit, and enforce the different parts of a food and drink business.

While they may look self-contained, a quick look back at your business plan will immediately show just how interrelated they are. To give yourself the best possible chance of maximising the value of your ideas, that's how you need to tackle them.





Trade marks

Protecting your brand is not a compliance exercise! Brand protection is essential to safeguard the value of one of your most crucial business assets and stop others from exploiting these assets for their own gain.

Trade marks provide the required protection.

Your trade marks will not only help you establish a unique identity for your products and/or brand, but also help you differentiate yourself from your competitors and build the levels of market recognition and customer loyalty that you need to succeed.

Better still, over time trade marks can become valuable assets for a company that attract investors and drive revenue or return by being licensed, franchised, or sold.

As the owner of a food or drink brand, what are your key trade mark considerations?

To establish and protect your brand identity, you will need to:

1. Choose a mark that is both distinctive and unique.
2. Choose a mark that is memorable and easy to recognise to give your brand the best chance of standing out from your competitors'.
3. Avoid a mark that is either generic or descriptive, as these are challenging to protect.
4. Make sure a similar mark isn't already in use by conducting a clearance search. The last thing you want is to launch a brand that is quickly embroiled in an infringement dispute.
5. Consider which classes you need to protect your mark in. It is often advisable to register food and drink brands in all the relevant classes, not only as a food or drink but also potentially in classes relating to (for example) restaurants, retailers, or merchandise.
6. Consider which countries you need to obtain trade mark protection in if you are planning to trade internationally.
7. Use your mark consistently. Leaving it unused can lead to you losing your rights.
8. Protect your packaging. Elements of your packaging (for example, the design or the colours you use) can be protected by trade marks, but this may require you to use a combination of trade marks and industrial designs together.
9. Have a plan for ongoing monitoring of your market to spot any potential infringements of your brand.
10. Be prepared to enforce your brand if it is threatened in any way.

How can we help?

Our expert branding team can help you at every stage of the brand protection process, from performing clearance searches and registering your rights to setting your brand strategy and managing your portfolio. We can also actively monitor the market for potential infringements using our best-in-class online brand protection product, iProvidence.

If you find yourself in an infringement action, our multi-disciplinary team of trade mark attorneys and IP solicitors will find the best way to either enforce your rights or defend you against any claims made by your competitors.

Potter
& Clarkson





Designs and Copyright

Protecting your designs and get up is crucial to establishing and protecting a food and drink brand's visual identity on our increasingly crowded shelves.

Unique and attractive packaging is essential in the food and drink industry. It's one of the main things that captures a consumer's attention.

However, if you lose control of what makes you stand out, you can easily lose your appeal not to mention the customer base you've fought so hard to win if other manufacturers employ confusingly similar packaging.

As the owner of a food or drink brand, what are your key design considerations?

To protect the unique elements of your products' appearance, you will need to:

1. Identify the specific unique design elements that are integral to the overall appearance of your products' packaging or presentation.
2. Maintain a record of the design development process, including sketches, prototypes, revisions, and other documentation. These will serve as evidence of the design's creation and uniqueness should a dispute arise.
3. As with all intellectual property, make sure that you own the rights you generate and rely upon – and that you can document this.
4. Determine whether these elements meet the criteria for copyright or design rights protection.
5. Consider the type of design protection which subsists in or is required for each element. This will vary depending on the aspect in question.
6. Work out when you need to progress protection. This can vary from jurisdiction to jurisdiction just as much as between the different types of rights in designs.
7. Assess what protection you will need in the different geographic markets you intend to sell your products in.
8. Be aware of the renewal requirements associated with your rights. Failure to comply can result in the loss of your design rights.
9. Monitor the market for potential infringements of your design rights so you can take the required enforcement action if necessary.
10. Integrate your design rights protection into your overall intellectual property strategy to ensure your products enjoy the strongest possible IP protection.

How can we help?

Many of our food and drink team are product designers as well as qualified attorneys. This is why we are so passionate about smart, innovative, groundbreaking design whether that relates to your packaging, the shape of your bottles or the finished appearance of a food product.

We can explain all the options you can employ to protect the most important aspects of your products' appearance using registered or unregistered design rights, utility models, or design patents. We will also help you with clearance to make sure the designs you wish to protect are available to use.

If you find yourself in an infringement action, our multi-disciplinary team of design attorneys and IP solicitors will find the best way to either enforce your rights or defend you against any claims made by your competitors.



Patents

Consumer tastes are changing, and food and drink companies are working hard to keep pace by developing new products.

If you are using innovative new methods to produce your food and drink products - something that is particularly prevalent in niches like healthy eating, veganism, alcohol free drinks - you may wish to consider patenting your ideas to protect them from being used by your competitors.

Patent protection is a failsafe way to protect your most valuable innovations.

Patents safeguard the unique and inventive processes, methods, formulations, or technologies used in food and drink manufacturing, stopping others from replicating, or profiting from your innovations without permission.

As such patents can play a crucial role in helping build your competitive advantage whilst preserving your market exclusivity, increasing your business' value, and even opening new revenue opportunities through licensing or collaboration.

As the owner of a food or drink brand, what are your key patent considerations?

To protect the innovation involved in the production of your products with patents, you will need to:

1. Check what you have is actually patentable. Recipes or basic food items are generally not patentable. Novel methods, specific formulations, or certain technologies used in food processing, packaging, or preservation could be.
2. Assess the uniqueness and inventiveness of your product or production process. If you are going to use patents, your invention must be novel, non-obvious, and have utility.
3. Check for prior art (existing products, patents or publications) to ensure your invention is not already disclosed or patented.
4. Agree a filing strategy - when and where would be best to file your patents?
5. Keep your inventions confidential before implementing your filing strategy. Public disclosure will have a disastrous impact on the patentability of your invention.
6. Budget for the legal fees.
7. Actively monitor your market for potential infringements and be ready to take the required enforcement action if you identify potential infringements.

How can we help?

The patent attorneys in our food and drink team are here to help you at every stage of the protection and commercialisation of your innovations. From identifying inventive concepts and confirming patentability (or finding a better alternative) to setting a filing strategy that compliments your business plan.

Working closely with the IP solicitors in our team, our patent attorneys are ready to enforce your rights or defend you against any infringement claims made by competitive patent holders should a dispute arise.



Trade Secrets

Some of the world's most valuable trade secrets - including KFC's blend of herbs and spices and the Coca Cola recipe - are the reason for a product's success. However, despite their importance, trade secrets are all too often the forgotten component of a company's IP portfolio.

This is usually because businesses don't completely understand trade secrets. They know that they exist and know roughly what they are, but they're not sure how to audit, protect and safeguard them. They need to learn. Trade secrets are probably more important to food and drink businesses than any other sectors given trade secrets can be used to protect recipes, formulations, production processes not to mention market and consumer data.

Trade secrets, whilst being reasonably cheap to implement, can be both a cost-effective route to protecting your business' and hugely valuable trade secrets remain protected for as long as they are kept secret.



As the owner of a food or drink brand, what are your key trade secret considerations?

If you would like to protect the recipes, formulations, processes, and other confidential information behind your products with trade secrets, you will need to:

1. Identify and document the specific information that qualifies as trade secrets within your company.
2. Implement robust internal policies and procedures to maintain the confidentiality of your trade secrets.
3. Educate your employees about the importance of trade secrets and how your company maintains the confidentiality of this hugely valuable information.
4. Maintain detailed records documenting your trade secrets - including when they were created, who has access, and any changes or updates - in case of disputes.
5. Incorporate confidentiality and non-disclosure clauses into all your collaboration and supplier agreements if your partners/suppliers will gain access to your trade secrets.
6. Employ secure storage systems, encrypted databases, restricted access controls, and other technologies to protect your digital trade secrets.
7. Conduct periodic risk assessments to identify potential vulnerabilities in your trade secret protection measures and immediately address any vulnerabilities identified.
8. Have a process for enforcing your trade secrets if you uncover unauthorised use, disclosure, or misappropriation of your secrets.
9. Understand and comply with the local trade secret laws and regulations in the different countries you sell your products in.

How can we help?

The attorneys and solicitors in our dedicated food and drink team understand all the different aspects of protecting trade secrets. The team can help you identify and record your secrets, create and implement the required policies, training and documentation and take the required enforcement action should your secrets be compromised.

To make the process of identifying and protecting your trade secrets as straightforward as possible, we have brought all this knowledge together in Safeguard.

Safeguard is a fixed price/fixed outcome audit that has been specifically designed to help clients identify, assess and understand the trade secrets they have and how best to protect them. You can find out more here.





Commercial agreements and disputes

In addition to drafting, prosecuting, and defending/ opposing the various IP rights, our food and drink team is completed by our specialist in-house IP solicitors.

Our solicitors are experts in drafting and negotiating the IP-related agreements you'll need to develop, capture, scale-up and maximise the commercial value of your products. This is absolutely vital to food and drink businesses as there is so much interaction with suppliers, distributors, retailers, and other partners in the industry.

In addition, licensing – or, more specifically, the royalties licenses earn - offers manufacturers a highly attractive additional revenue stream.

As the owner of a food or drink brand, what types of commercial agreements should you be considering?

You should always underpin your IP rights with the legal security of a carefully drafted contract. The agreements you will need will depend on your business plan and business model, but could include:

1. Supplier Agreements outlining the terms of business you agree with your suppliers.
2. Distribution and/or Wholesale Agreements outlining your terms for distributing products to retailers or wholesalers.
3. Licensing Agreements outlining your terms for licensing your product or brand to another entity in return for royalty payments.
4. Confidentiality Agreements and provisions to protect any confidential discussions with third parties, as well as preventing (for example) employees or third parties from disclosing commercial information.
5. Promotional, Marketing, Co-Marketing and Sponsorship Agreements outlining your terms for promoting and any other commercial efforts to sell your products.
6. Assignments, transferring IP rights from third parties (for example, designers) you have engaged to help with developing your food and drink product.

How can we help?

Our IP solicitors specialise in providing food and drink businesses with legal expertise to help minimise the many risks that could impact the IP rights that hold the lion share of the value in their businesses.

Between them, they will ensure you afford your IP the best possible protection, meet the relevant regulatory compliance requirements (including food safety and labelling), negotiate, and draft the commercial agreements you need to interact safely with your suppliers, distributors, retailers, and partners and negotiate and draft license agreements to open new revenue streams.

If you are planning to expand internationally, our global network is on hand to guide you through the local legal considerations you will need to address in different jurisdictions.

In the event of a dispute, our experienced litigators will find the best way to enforce or defend your position anywhere in the world, whether that is going to court or using alternative dispute resolution methods to spare you the cost, strain, and potential reputational issues of litigation.



For more information, visit
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