

Press Release

Intellectual Property. A cautionary tale. What can happen even when you think you have done everything to protect your product.

Ever had a great idea or an invention and then worried about how to stop someone stealing that idea? Just how do you go about protecting it? Getting patents, registering trademarks, proving copyright. There is a lot to do. And then when you've done all that how protected are you? Well just recently we have found out.

Whilst on a cycling holiday in Hungary where very little English is spoken and the writing is difficult to decipher: each evening after we had struggled to communicate in a local restaurant and got yet another surprise meal we would sit down to play cards and think: "if only we had some pictures to point at to help us communicate."

Back home we came up with the idea of putting the two things together. Communication pictures and symbols on a regular pack of playing cards. A simple dual use product. Something to play with and something to point at.

Someone was bound to have thought of it already we surmised as is so often the way with a good idea. Extensive research failed to find one. We had ourselves a unique, simple and original concept.

Much research, testing, drawing and playing on the computer later and we had designed our pack.

We called it iNCOMMUNiCARDO. Now to business. Neither of us had set up or run a business like this before. We were determined to do as much as we could ourselves.

Through Business Link we got lots of very useful and amazingly: free help. We drew up a business plan and in December 2007: we formed a company: Fat Uncle Stuart Ltd, registered a domain name www.incommunicardo.com for our website, created and trade marked a name and logo and sent copies of our cards to ourselves in the post to provide official dated evidence of copyright.

Getting a registered trademark is a good idea and gives you legal protection in the country you are registered. You may want to get registration in more than one country. The best place for information about all this is the IPO website.

So far so good. Everyone kept telling us to get it patented. Where do you start with that? The best place to start this process is the Intellectual Property Office or IPO. They have great website.

What can you patent? In a nutshell to be eligible to apply for a patent, a product must satisfy the following:

- Is your invention functional or technical?
- Is your invention new?
- Is there an inventive step?
- Does your invention have an industrial use?

iNCOMMUNiCARDO did not satisfy these tests so we moved on to Copyright. The law of copyright and its related rights in the UK is found in the Copyright Designs and Patents Act 1988

To satisfy Copyright a work must:

- Be a work, in other words, Copyright does not protect ideas for a work. It is only when the work itself is fixed, for example in writing, that copyright automatically protects it.
- Be original.
- Copyright applies to any medium including: written, theatrical, musical and artistic works as well as film, book layouts, sound recordings, and broadcasts.

“Copyright material is usually the result of creative skill, significant labour and/or investment, and, without protection, it would often be very easy for others to exploit material without paying the creator.”

Copyright is infringed where either the whole or a substantial part of a work is used without permission, unless the copying falls within the scope of one of the copyright exceptions.

iNCOMMUNiCARD seemed to satisfied Copyright.

As Copyright is an automatic right, you don't have to apply for it, however we had already taken the time honoured precaution of mailing copies of all stages of creation if the work to ourselves.

And so IP was dealt with, or so we thought. We had our cards printed and in March 2008 went live with our e-commerce website. We approached and sent samples to various retailers. In October 2008 we embarked on a four month world tour to promote our cards.

We fully expected if we became successful that criminal “knock off” copies would appear about which we would probably be able to do very little. Ours might be a good product but even good things only get copied if there is money to be made otherwise why bother?

However in March 2009 we became aware that another website, registered in the UK, was selling a product that for all intents and purposes directly copied ours and claimed it was unique!. Someone had “ripped us off”!

Sure they were using a different name and different pictures but anyone we showed the actual cards to thought they were our cards. Not long after this we discovered that this same product was retailing online through a UK based adventure travel and travel clothing store. The very same store that we had approached to sell our cards and who had initially shown an interest before pulling out. Coincidence?

So how protected are we? Well having now engaged an IP lawyer it turns out like many things in law: only as deep as our pockets. What seemed all very clear at the start turns into the murky vagaries of legal maybes and strong possibilities.

The other party is not likely to want to settle it like gentlemen or they would have not copied you in the first place. So we will probably end up using the court system with the usual advice is that these sorts of cases can be very lengthy and costly and there is simply no way to easily assess whether it will go in your favour.

We wonder why when there is no certainty in the success of the product that they bothered to go to all that trouble to copy us when they could have simply bought ours or come to an easy and cheap licensing agreement?

The only people that might make any significant money out of our product at this time is, as seems always to be the case: the lawyers.

We are currently in negotiations and hope to come to some agreement. Imitation is the sincerest form of flattery and the more the merrier we say.

Below are some useful websites.

www.businesslink.co.uk

www.incommunicado.com

www.ipa.gov.uk