

Introduction to Trade Marks in Photography

Trade mark protects any sign or symbol that is capable of distinguishing goods or services as emanating from a particular business or source, and is represented graphically.

Photographs of people tend not to be distinctive. The photograph does not indicate the trade source.

Celebrities as Trade Marks

Photographs of people can be registered as trade marks. Amongst the different requirements are that the image must be distinctive in the sense that it would be taken by the general public as an indication of trade source.

A number of celebrities have been registered in the United Kingdom as trade marks. Included are Damon Hill; Alan Shearer; Eric Cantona; and Marilyn Monroe.

Marilyn Monroe's trade mark is a photograph of her skirt blowing up in a scene from the film 'Seven Year Itch'.

Damon Hill's trade mark is a photograph of him in his racing helmet showing his eyes.

'Simple' photographs such as portraits are not automatically excluded as trade marks, e.g. Alan Shearer.

Eric Cantona's trade mark photograph is rotating his 'simple' photograph by 90 degrees to make it more distinctive.

Photographs of a trade mark

Photographs which include a trade mark may infringe the owner's rights if:

- a.** the photograph represents a trade mark that affects the trade mark as a guarantee of origin;
- b.** the photograph in using the trade mark, misrepresents the source of the photograph as being that of the trademark owner in the sense of passing off the photograph as the goods or services of the trade marker owner.

Trade marks of buildings

Trade marking of buildings is relatively uncommon in the United Kingdom. Whereas in the USA and Europe, a large number of buildings are registered as trade marks.

Usually, they take the form of black and white line drawings of the building. In the UK the Houses of Parliament is registered as a black and white line drawing trade mark for HP sauce, as are the Empire State building and the top of the Chrysler Building in the US. The more famous the building the more unlikely it is that a single photograph would be an effective trade mark.

However, a visually distinctive photograph or photographs of building may be registerable.

The Guggenheim Museum in Bilbao, Spain is a registered trade mark building inclusive of Frank Gehry's architecture and the manufacturer's signature titanium cladding. Photographs can only be used editorially and not for advertising and/or merchandising.

The information in this document does not constitute, or is a replacement for legal advice.