

# TRADEMARK PROTECTION AND BRAND PROTECTION

## PROTECT YOUR RIGHTS – DEFEND YOUR RIGHTS



### Why brand protection or trademark protection is necessary

Effective brand protection or trademark protection by a trademark law attorney is worth real money. Counterfeits and imitations of successful products affect the turnover of original manufacturers and damage the reputation of established brands. In addition to the damage caused by counterfeits, damage caused by the illegal sale of grey market goods (parallel imports, stolen goods, etc.) is also increasing.

The statistics of the customs authorities show 5,164,841 seized goods with a value of EUR 224,448,048 for the year 2019. Brands are affected in almost 90% of all cases.

/ GENERAL OVERVIEW			
	2017	2018	2019
Number of attacks	21.506	37.698	36.324
Quantity of values seized	3.295.621	5.066.261	5.164.841
Value of goods seized	196.164.572	196.696.943	224.448.048

(Source: German Directorate General of Customs, Intellectual Property. Statistics for the year 2019)

The counterfeiting of products such as medicines, cosmetics, clothing, car parts, etc. also poses considerable risks for consumers and exposes the companies concerned to the risk of being held liable for damages or warranty claims.

Plagiarists are competitors of the original manufacturers. They

offer the seemingly „same“ products, albeit regularly in poorer quality. In doing so, they deprive the trademark owners of their business and profit opportunities. Unlike the original manufacturers, product pirates do not have to invest in research and development or in marketing measures. Copycats also do not run the risk of failure, but rather choose to imitate products which have already been successfully introduced on the market.

It is by infringing the property rights of the original manufacturers that product pirates gain these advantages.

However, intermediaries such as operators of sales platforms or payment systems also earn money from the distribution of counterfeits and products that infringe trademark rights. We therefore also regularly take action against third parties who enable the distribution of infringing products on a large scale. Defend yourself against product counterfeiting and brand protection infringements! At Kessler Legal, we are experienced in trademark protection, we are lawyers specialized in trademark law and trademark protection.

The services of our law firm for brand protection are wide-ranging, and include all services, from the selection and registration of a trade mark, for example at the German Patent and Trade Mark Office (DPMA) or the European Union Intellectual Property Office (EUIPO), to the securing of evidence and the enforcement of claims for trade mark infringement and enforcement in court.

Your trademarks, brands and trademarks are valuable assets that need to be defended against counterfeiters, copycats and free riders. Success will always attract imitators—if one imitator is defeated, another will take his or her place. Serious brand protection should therefore be pursued steadily and permanently.

### What we can we do for you?

At Kessler Legal, we have been involved in brand protection and combating product and brand piracy for many years. We resort to all legal means to obtain evidence, prevent current infringements, and enforce claims for damages. We are also working on the permanent destruction of distribution structures of counterfeiters, and thus contribute to the prevention of future infringements. The criminal law, civil law as well as the procedure of border seizure, provide a multitude of enforcement and security options, we all master and use against violations of the law.

Consistent legal prosecution contributes decisively to preventing trademark and product piracy or to reducing it to a minimum. Legal prosecution is necessary in order to prevent piracy-related losses in turnover for original manufacturers, and to avert damage to the reputation of brands that have been built up at great expense.

#### Our special areas of expertise in trademark law include:

- Advice on trademark protection for products, plans, ideas, businesses, and companies etc.
- Assessment of absolute grounds for refusal, such as lack of distinctiveness, in relation to clients' trademark proposals

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**BRAND PROTECTION**  
– Trademark research / -registration  
– Infringement / gathering of evidence  
– Border seizure procedures  
– Criminal law / litigation  
– Civil law / compensation for damages

**WE CARE ABOUT YOUR BRANDS**  
As a law office specialized in trademark protection, we comprehensively, efficiently and effectively consult companies in the field of brand protection.

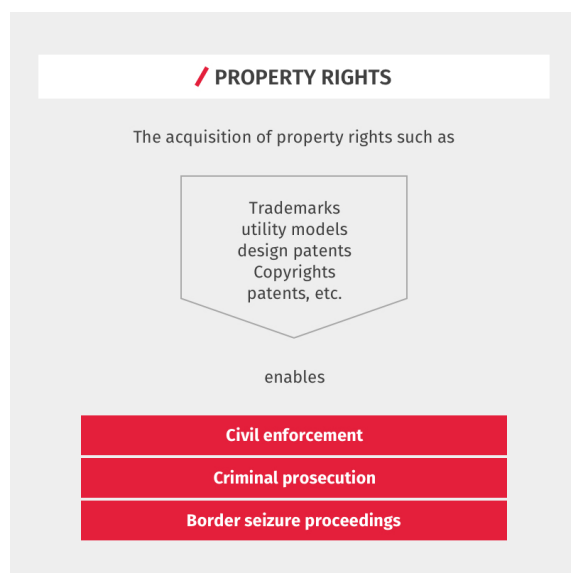
- Assessment of relative grounds for refusal, i.e. checking whether a trademark conflicts with the earlier rights of third parties
- Trademark search, i.e. searching for any existing earlier trademarks of third parties
- Application for registration of trade marks at the DPMA (German Patent and Trade Mark Office) and the EUIPO (European Union Intellectual Property Office); extension of trademark protection to other countries via the WIPO (World Intellectual Property Organisation)
- Opposition proceedings before trade mark offices
- Licensing agreements, delimitation agreements, deposit agreements, etc.
- Prosecution of trade mark infringements using all means of civil, criminal and public law
- Defence against unjustified counterattacks such as warning letters, preliminary injunctions, lawsuits, criminal charges, etc.
- Enforcement of lawful means such as compulsory enforcement at national and international level

## Trademark protection - selection and application of suitable protective rights

The law provides owners of industrial property rights with extensive possibilities for trademark protection and defence against product and trademark piracy: from immediate legal measures to claims for information and damages to claims for injunctive relief with regard to future infringements. The consistent enforcement of legal options can make a lasting contribution to uncovering and dismantling the distribution structures of counterfeiters and to preventing future infringements.

### We help you to select and apply suitable property rights.

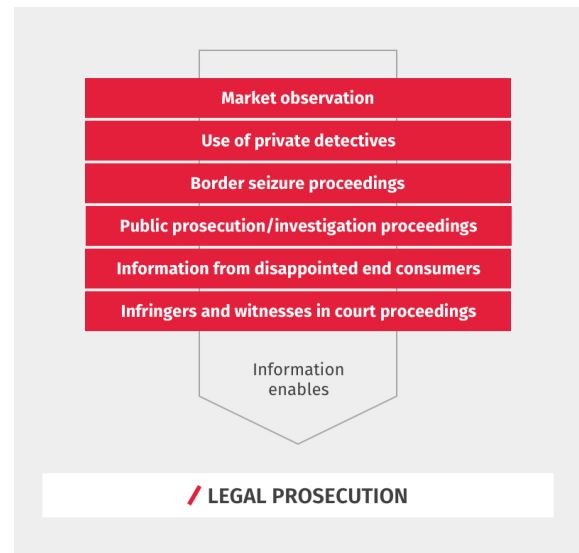
We advise you, for example, in the process of brand development. We carry out trade mark searches, identify and examine protection obstacles, apply for EU trademarks („Union trademarks“) at the EUIPO or at the German DPMA, and extend your protection to other countries. Furthermore, we assess the “copy-rightability” of your product. Finally, we register your designs with the trademark and patent offices.



## Trade mark protection - information as the basis for legal measures

In order to protect your trademark rights, it is crucial to obtain information and secure evidence in such a way that it can be used effectively in subsequent civil and criminal proceedings. Trials in court often fail due to insufficient evidence.

In addition, legal measures often bring to light further information about previously unknown infringers against whom you can also take action.



We work together with various suppliers. You don't have to put a mouse in a cat's mouth.

## Trademark protection – Legal Measures

There are many legal options for acting against product pirates: On the basis of industrial property rights and general civil law, you can assert claims for injunctive relief, information, damages and destruction.

The deliberate infringement of industrial property rights, like a trademark, are punishable by law. Kessler Legal supports you in prosecuting perpetrators and participants in criminal property rights violations using the means of criminal law.

Civil and criminal procedural laws provide you with a variety of enforcement and security options. Border seizure proceedings, in which customs authorities search imports and exports for counterfeits, are also an effective measure for prosecuting product piracy. According to the rules of public law, you can also initiate proceedings against infringing traders to stop them on the grounds of unreliability. Kessler Legal is an ideal partner for the defence of your trademark rights in court.

### IMMEDIATE ACTION

In a first step, you can put a stop to legal infringements by taking swift and unrelenting action.

Kessler Legal advises you on the choice of suitable measures, which always depend on the specific circumstances of the offense.

You can use civil law means to demand that the infringer submit a cease-and-desist declaration or obtain a court injunction to

prevent further infringements.

Especially in larger cases and cases of suspected organised crime, the public prosecutor should be involved. The public prosecutor can initiate searches and order the seizure of business documents and the securing of assets. Criminal law measures can also be coordinated with civil law procedures for trademark protection.



#### UNCOVERING AND DISMANTLING DISTRIBUTION STRUCTURES

By making optimal use of civil and criminal investigation possibilities, Kessler Legal can lead effective strikes against distribution networks of incriminated products. Under civil law, we can compel infringers under to disclose their suppliers and commercial customers, which can lead to the discovery of further circles of infringers.

With the help of financial investigations (tracing of money and goods flows within the framework of investigations into economic crime), you can succeed to uncover extensive sales structures based on dealers, wholesalers, importers and even manufacturers.

#### DAMAGE CLAIMS

The enforcement of claims for damages should at least cover the costs of legal prosecution, and at best also considerably exceed the amounts of damages. At Kessler Legal, we always focus on this goal.

In order to effectively enforce claims for damages, assets of the damaging party can be secured at an early stage. By means of civil-law arrests it is possible to prevent a damaging party from removing existing assets when the first legal measures are initiated. The criminal prosecution authorities also have the option of securing assets. Assets secured in this way can be accessed by the injured party.

#### PREVENTION OF FUTURE INFRINGEMENTS

The relentless pursuit of every trader discovered at every sales level makes trading in counterfeit goods economically unattractive in the long run. Convicted infringers who have already had to sign a cease-and-desist declaration are „burnt children“ who will shy away from the fire in the future. In the event of further offences, they have to expect high contractual penalties or ad-

ministrative fines and, as repeat offenders, with considerably stricter criminal sanctions. A high pressure of prosecution and, in particular, a high risk of criminal sanctions creates a lasting deterrent effect on affected and potential plagiarists. In the best case, this leads to traders refraining from selling incriminated products in the long term.

Success in the fight against product piracy is decisively determined by good cooperation between original manufacturers, their lawyers and other service providers such as market observers and private investigators. Through a coordinated interaction of market observation, private investigations and legal measures, we at Kessler Legal can permanently prevent future legal violations or limit them to a minimum.

#### TRADEMARK PROTECTION / BRAND PROTECTION IS COMMERCIAL CRIMINAL LAW

The deliberate infringement of industrial property rights such as your trademark rights is punishable by law. As your lawyer for trademark protection, we prosecute perpetrators and participants in criminal property rights violations with all possible means of the law. One of our special fields is trademark criminal law. It is important to punish the perpetrators. In many cases, we can gain important insights for civil law proceedings, and often also uncover further violations of the law. In appropriate cases, we therefore recommend to trademark owners to consistently use the means of criminal law against offenders. We show you your options for action, initiate criminal proceedings and protect your rights in criminal proceedings.

#### SECURE EVIDENCE!

To be successful in the fight against product piracy, it is crucial to secure evidence in such a way that it can be used effectively in subsequent civil and criminal proceedings. In criminal proceedings, the investigating authorities can take numerous legal measures to clarify the facts of the case. By tracking the flow of money and goods, „bottom up“ and „top down“ investigations can be used to uncover sales structures based on dealers, wholesalers, importers and counterfeiters.

#### BORDER SEIZURE PROCEDURE

The border seizure procedure is another effective tool against counterfeiting. In order to prevent the import of counterfeits into the EU's internal market, property rights holders can submit applications to the customs authorities so that the customs authorities may stop infringing products and not even deliver them to the recipient.

The enormous successes of customs in apprehending counterfeiters not only show the commitment of customs officers, but also that forgers go on producing, with the aim of bringing forgeries onto the European and German markets.

At Kessler Legal, we initiate applications for border seizure and act as contact persons for the customs authorities. We handle all customs procedures and individual seizure procedures for you - even worldwide.

# Why Kessler Legal is your Ideal Partner for Brand Protection?

## BECAUSE WE ARE VERY **EXPERIENCED**

We have extensive experience in all areas and varieties of brand protection. We have been successfully working for long-standing clients for over 15 years.

## BECAUSE WE PROCEED **DECISIVELY**

We quickly arrive at a proper assessment of the situation and take legal action quickly, consistently and with vigour. We are a well-coordinated team - there are no long and cumbersome decision-making processes.

## BECAUSE OUR WORK IS **TRANSPARENT**

Our work is transparent for our clients: we regularly provide detailed case reports on the current status of our clients' cases, activities to date, pending measures, costs incurred and forecasts of realisable claims. The communication with our partners and opponents is always up to date, and accessible to you via cloud.

## BECAUSE OUR **PRICE-PERFORMANCE RATIO** IS VERY GOOD

Our efficient way of working saves time and money. Client-oriented, efficient and innovative work is what distinguishes Kessler Legal as a law firm for trademark law. Standardised processes and the use of legal technology provide us with a productive working environment. Electronic files and short, fast, digital communication channels are a matter of course for us.

You do not pay for our time, but for custom-fit and individual solutions and results. At the same time, we always keep an eye on the economic efficiency of our actions. We attach great importance to a lean cost structure.