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from the IP and Technology Unit

## Trade Marks—not to be sniffed at!



The “smell of ripe strawberries” has failed to join the rarefied group of olfactory signs in the EU Community Trade Mark Register. It was rejected on the grounds that the written description was not precise enough. There is no generally accepted international classification of smells that could identify the mark, unlike colours and musical notation. The Court noted that different types of strawberries produce different smells and that the “smell of ripe strawberries” could mean any one of several smells.

It is difficult to see how this differs from the UK’s first trade mark for a smell which was granted in 1996 for rose scented tyres and now belongs to Dunlop. It is described as “a floral fragrance/smell reminiscent of roses as applied to tyres”. One would have thought that the same argument that different roses produce different scents would have applied here too and that such a description does not enable the smell to be precisely identified.

What is clear is that trade mark applications for smells rarely succeed. An application to register the scent of one of the most famous perfumes in the world, Chanel No 5, was also unsuccessful.

Sounds are a little easier to register and one of the most widely recognised sounds which is registered as a trade mark is the “intel inside” sound which belongs to the Intel Corporation and is described by way of musical notation.

Colours can be registered as trade marks being the subject of an international classification “Pantone”. We have mentioned in a previous Brief Update “The Colour of your Money” that the colour

registered as a trade mark by Orange Personal Communications is Orange Pantone 151.

Most businesses take the simplest approach and register words and logos. This is often inexpensive and straightforward and gives very good protection for the money and time invested.

For example, with a mark which is registered, you will find it is easier to licence its use to others **and** to raise proceedings for trade mark infringement against third parties using an identical or similar mark to yours in connection with identical or similar goods or services.

Registered trade marks are also useful when seeking to put a stop to the use of your trade mark as part of the domain name or operation of a website which may be seeking to divert business from you or which is derogatory.

Once registered and provided it is renewed every ten years, with relatively modest costs, a trade mark can last for ever and, in this sense, is unique amongst intellectual property rights.

If you are wondering if registering a trade mark might be a good course of action for your business contact:

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