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Product packaging is an important marketing instrument. In addition to its purely practical functions, it also indicates a specific entrepreneur as the origin of the product. The outward appearance of the product attracts consumers' attention, affects their decision to purchase, and helps buyers acquaint themselves with a rich market offer. The increasing importance of packaging in competition makes it subject to imitation by competitors. The question is how to protect product packaging given that its creation and fixation in the consumer's mind as 'symbolic' of a given manufacturer involves a considerable financial expenditure.

The protection is based on a number of laws, namely:

1. trade mark,
2. industrial design,
3. copyright,
4. unfair competition.

1. Trade marks

Product packaging can be protected by the trade mark law as a three-dimensional – 3D mark on the condition that it meets the necessary legal requirements to benefit from protection, namely the packaging is distinctive and allows consumers to differentiate the merchandise offered by a certain trader from that of another trader.

For example, product containers (such as chocolate cartons, perfume bottles, etc) can be granted protection as three-dimensional trade marks.

It must be remembered, however, that the signs placed on the packaging (word-only or word-and-graphics) may be subject to protection too. Sometimes slogans, as well as the colour of packaging itself, can be registered as trade marks.

With a trade mark granted, the right holder has an exclusive right to use it to identify his own products. The right holder can also license the trade mark to other parties.

A trade mark can be protected in the territory of one or more states or in the whole territory of the European Union (Community trade mark).

Details concerning trade mark protection can be found in [Trade Marks](#).

2. Industrial design

Product packaging can also be protected by industrial design law. Both two-dimensional and three-dimensional packaging can be protected as designs.

What is eligible for protection as a design is the outward appearance of the product, on the condition that it is 'new' and has an 'individual character'.

A design is considered 'new' if prior to the date of the application for the registration no identical or similar design was made publicly known. For example, if the designed bottle shape or a jar shape or a graphic design of a box are not 'identical or similar' to those already on the market.

A design has the feature of 'individual character' if an 'informed user' has a different general impression when making a comparison to previously available designs. Products (or their parts) that cannot be seen during their regular use are not eligible for protection. Characteristics of a

product's appearance that result merely from its technical functions and mechanically connected units (so-called must-fit) also fall beyond the scope of protection.

If a design meets the indicated requirements, it can be registered in a national Patent Office and be protected under the legislation of that state.

It is also possible to apply for protection as a registered [Community design](#). It is worth remembering that in the EU territory, designs can also be protected without registration as unregistered designs, the duration of protection being three years.

Details concerning design protection can be found in [Designs](#).

3. Copyright

Packaging can be protected under copyright as long as it meets the conditions on which protection of works depends, i.e. if it is original (is a manifestation of creative work having an individual character) and fixed in a specific form. On the other hand, the label, which is one of the important parts of the product packaging can also be protected by copyright. This is possible on the condition that the arrangement (combination) of elements (such as graphics) has a creative character (that displays originality and individual character). Copyright protection may cover graphics placed on the packaging, short poems, or reproductions of artistic works (or their parts).

Protection of packaging (including the label on it) that can be considered a work in the meaning of the copyright, does not depend on the fulfilment of any formal requirement – especially registration. It starts when the packaging is created.

An author's economic rights protect the exclusiveness of the work use and disposal (deriving economic benefits from it). These rights are transferable (they can be traded under agreements signed with the author), and in most countries they expire 70 years after the author's death.

Details concerning copyright protection can be found in [Copyright](#).

4. Unfair competition

The freedom to use someone else's economic achievements that are not protected by exclusive rights (e.g. as a design, trademark) is subject to constraints set forth in national regulations governing unfair competition. It is often the only basis for granting legal protection to an interested party (when the party's packaging has not been granted protection trade mark or design protection or does not qualify as a work under copyright law). Unfair competition regulations forbid unfair actions by/between manufacturers (entrepreneurs) competing in the market; such actions are deemed tort. In some cases, copying someone else's products (packaging) constitutes an act of unfair competition when, for example:

- it could be misleading as to the competitor's offer, i.e. it may mislead customers as to the identity of the manufacturer or origin of the product, or
- it has a parasitic character, that is utilises another's ideas, reputation, or labour input without his authorisation (e.g. in Germany, Switzerland, France).

In addition, it does not need to be an exact copy of the packaging. It is sufficient for packaging (originals and their copies) to have a certain degree of similarity that an average customer could not recognise which one is the original and which one is the copy.

The issue of unfair competition law relating to product package copying is not regulated in depth by the EU legislation.