

Legal protection for coats of arms

Could a 500-year-old law affect your trade mark?

Usually, the go-to protection for a logo in the UK is a registered trade mark. But what about when a logo consists of a coat of arms?

The College of Arms founded in 1484 is the official authority regarding heraldry in England, Wales, Northern Ireland and the majority of the Commonwealth. All grants of arms made by the College of Arms are made under Crown authority.

As a commercial company, for the official fee of £19,850 you can apply for your very own coat of arms. Once you have submitted your application the Earl Marshal will decide on whether you are eligible for approval. There are no fixed criteria facilitating this decision making, but the College of Arms states that “awards or honours from the Crown, civil or military commissions, university degrees, professional qualifications, public and charitable services, and eminence or good standing in national or local life” are all taken into account.

If and when the Earl Marshal approves an application, he will issue a Warrant to the King of Arms. The King of Arms will then start the grant procedure which begins with designing the arms. Although the King of Arms has full discretion over the design it is stated that he will take the wishes of the applicant into account as fully as possible.

When granted, the form of the arms will not be governed by the painting of the arms but by the verbal description of them in the text known as the blazon, which accompanies the painting.

Companies who have received their official coat of arms include, Tesco and Marks & Spencer.

Once granted there are appropriate ways in which an official coat of arms should be used. For example, if a company were to be granted a coat of arms, it would be inappropriate for an employee to wear the company’s arms. Instead, a separate application (accompanied by a separate fee) can be made in order to obtain a corresponding badge. This is a heraldic device of its own and is to be used by others wishing to show connection or allegiance to the owner of the arms.

The owner of an official coat of arms can, of course, use them in the course of trade as they see fit.

It is possible to gain a registered trade mark for a coat of arms.

The trade mark registry will no longer automatically deny an application which contains or consists of a coat of arms. The law regarding the examination of trade mark applications changed in 2009, applications are not refused by the trade mark registry on the basis that there exist prior rights. These prior rights include those granted by the College of Arms.

In these circumstances, the trade mark registry will suggest the applicant contacts the College of Arms because the trade mark may be subject to the laws of arms. The Trade Marks Act 1994 states:

“Where such a mark is registered, nothing in this Act shall be construed as authorising its use in any way contrary to the laws of arms.”

The application will proceed through to publication regardless of any ongoing communications with the College of Arms. However, if this correspondence results in the discovery of identical or similar official arms the application will be refused under rule 10 of the Trade Mark Rules 2008.

“Where having regard to matters coming to the notice of the registrar it appears to the registrar that a representation of any arms or insignia as is referred to in section 4(4) appears in a mark, the registrar shall refuse to accept an application for the registration of the mark unless satisfied that the consent of the person entitled to the arms has been obtained.”

Unlike in the event of an earlier trade mark registration, the trade mark registry will not inform the owners of the official arms when similar or identical ones are used in a trade mark application. This means that a watch service would be necessary in order for the owner of such rights to be informed of any misuse.

As an alternative to a watch service, the owner of the coat of arms could register their coat of arms as a trade mark. This would then give them the right to be notified by the trade marks registry when a mark is applied for which is similar to their arms.

When opposing a trade mark application based on earlier registered rights the application also has to be for identical or similar goods and services to which the earlier mark is registered. This is the main difference between an official coat of arms granted by the College of Arms and an unofficial coat of arms registered as a trade mark. The owner of the official coat of arms can oppose any mark likely to be mistaken for their arms under section 4(4) of the Trade Marks Act 1994, regardless of the goods and services.

“(4) Provision may be made by rules prohibiting in such cases as may be prescribed the registration of a trade mark which consists of or contains –

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*(a) arms to which a person is entitled by virtue of a grant of arms by the Crown, or
(b) insignia so nearly resembling such arms as to be likely to be mistaken for them,
unless it appears to the registrar that consent has been given by or on behalf of
that person.”*

The court which acts on the law of arms in England, the Court of Chivalry, no longer sits. The law of arms remains part of the law of England but is difficult to enforce. Court of the Lord Lyon, the official authority of heraldry in Scotland, can and does act against the misuse of heraldic arms.

US president Donald Trump encountered the Court of Lord Lyon back in 2017. The Trump coat of arms commonly used in the US actually belongs to Joseph Edward Davies. Trump changed the Latin motto INTEGRITAS to TRUMP and has registered this as a trade mark in several jurisdictions. When Trump came to use the coat of arms in Scotland however, he faced being prosecuted for unauthorised use of arms. He subsequently purchased a redesigned coat of arms and registered that as a trade mark a few years later.

For protection of your coat or arms or any other queries concerning your coat of arms, please contact:

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