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qLegal Legal Update

We Wear it Well: Fashion Tech and Wearables

In this update, we provide a brief overview of the wearables market, introduce you to some pressing legal issues related to the industry, and have a look at what's ahead.

Fashion Tech and Wearables

The fashion tech revolution has already begun, and with it the development of exciting new technologies. As the market matures, we are moving away from fitness trackers and going into more advanced applications of this technology. With these advances, certain issues arise that could create problems for new businesses wanting to enter this sector. These are issues related to intellectual property protections, which can prevent an entrepreneur from having their ideas stolen, as well as data protection and privacy, which can save them from future legal troubles!

Legal Issues

Data Protection and Privacy

When it comes to fashion tech and wearables, there may be a very large amount of data sharing involved which may include a person's personal data, for example names, telephone numbers, addresses and, sensitive personal data which includes information relating to a person's ethnic origin, political opinions, and religious beliefs. If your company is collecting sensitive or personal data, it must comply with data protection laws.

It is therefore important to ensure that any personal data that your company collects is sufficiently protected in order to help protect your company from any potential liability.

The EU requires that wearables have easily accessible, clearly worded terms of service or privacy policies that explain a company's business practice on the collection, storage and use of personal data and if any third parties will have access to such personal data. If your company is collecting sensitive personal data, the user's express consent is required. This can be done by requiring the user to confirm their consent by ticking an icon before they can use the device (as is common practice). You also need to ensure that your

privacy policy includes provisions which deal with (among other things) the type of data you are collecting, the purposes for collecting such data, who you will disclose the data to, how it will be stored, the users right to access any information that you hold about them and confirmation that your company will implement appropriate technical and organisational measures to protect your data. It is highly likely that the data which is collected will be transferred and stored outside of the EEA on your own servers or to third party servers (such as with Amazon Web Services) which will require your company to comply with additional requirements provided for under EU law.

Protection of Intellectual Property

Copyright is the most significant intellectual property right when it comes to software and graphic works you create can be protected by copyright as artistic work and computer programs (such as the source code and object code) will also be protected by copyright as ‘literary works’ provided that they are all original works. Your copyright in such work could potentially be infringed if a third party copies this work without obtaining your consent. There is also another way to protect intellectual property in the UK. A design can be protected as a Community Design under EU law or as an unregistered design right. You have 12 months from first marketing the design or publicly disclosing it, to register it. It’s likely that there will be a number of people involved in the creation of your ideas and products and it is advisable to ensure that you enter into non-disclosure agreements (NDAs) with all people involved at an early stage. Be very careful of the disclosure aspect, as you may unwillingly disclose it and trigger the 12-month period. We have seen many startups create YouTube “concept” videos of their product prematurely before securing design protection, only to realize too late that this counts as a public disclosure.

Brand names or logos can also be protected by registering them as trademarks which can allow a company to bring proceedings for trademark infringement should a third party use a similar or identical brand name/logo in relation to similar or identical goods and/or services. Unregistered brand names and logos can also be protected provided that they satisfy the requirements necessary to be protected by and bring suit under the common law action of passing off.

Future of Wearables and Fashion Tech

It appears that fashion tech and wearables are getting trendier and more innovative. The positive reaction received from consumers who use these products shows that there is a bright future for this particular market. Despite the innovation and trends, some people have argued that the businesses that produce these products, should assume a practical and pragmatic approach when inventing such products. This is so that the consumer benefits from the use of the technology while looking fashionable. By taking such an approach, the products produced are less likely to be reviewed as fads or ‘gimmicks’, as some fashion techs and wearables have been described.

Another issue is pricing. The prices of some fashion tech and wearables could become expensive, if the technology required to produce it is also expensive. Some inventors have found a way around this pricing issue by collaborating with well-known designers to commercialize their products, thus reducing the initial cost. You should also keep abreast about the changing legal landscape as laws are constantly being modernized to deal with these new technologies, as 20th century laws can't deal with 21st century issues.

*This toolkit was drafted by students from the Centre for Commercial Law Studies, Queen Mary University of London:
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