

How to obtain Key Copy Protection

Security and protection advice regarding copying of keys



dhf Best Practice Guide: Key Copy Protection

Security and protection advice against unauthorised copying of keys

Introduction

In order to copy a key, it is first necessary to obtain a suitable key “blank” onto which the individual combination can be copied. Many generic key blanks are readily available to locksmiths and key cutters countrywide, making obtaining key copies very convenient, but with that convenience comes an obvious risk to security. For some installations, that risk is unacceptable and there is a need for key copy protection.

One way of preventing unauthorised copying is for a lock manufacturer to restrict the availability of suitable key blanks. This, of course, is only possible if the lock manufacturer can prevent anyone else manufacturing the blanks without his permission. This legal protection for a particular key blank can, in principle, be obtained by the use of the law relating to “Intellectual Property”. It is essential to understand what can, and cannot, be achieved in this way in order to know whether or not the copying of keys for a particular type of lock can be properly controlled. This guide aims to clarify this complex area of law in order to allow claims about security and protection against unauthorised copying to be properly evaluated.

Understanding Intellectual Property

Trademarks, Design Registrations and Patents are Intellectual Property (IP) and each have their unique place within IP law.

Trademark Protection

A trademark is a recognisable mark that is used to link a product or service to a particular source (e.g. a company), usually by means of a word, phrase, logo, symbol or any combination thereof. Trademarks do not cover the functional aspect of a product. Trademark protection can last indefinitely and allows the consumer to identify the quality of the goods or services thus generating what’s called “good will”. Trademark law is designed to protect the owner’s good will which they generate through use of their mark. Good examples of this would be Nike and Apple and the use of their names and logos.

Trademarks are important as they give the consumer the assurance that the products being purchased are genuine and of the expected quality. However, the functionality of a product, such as a key, has no legal protection under trademark law.

Design Registrations

A design registration is a right given to the visual appearance of a product for a period of up to twenty-five years. It is concerned with the shape, configuration, pattern, ornamentation and look of an

article. The purpose of the right is to deter a party from copying the look of your product.

Design rights are used by suppliers to link a product to a particular source. They allow customers to identify the originator of a product.

Like trademarks, a design cannot be registered if the features of the shape are purely functional. Therefore, design registration provides no legal protection against key copying.

Patent Protection

A patent is a right given for an invention to prevent others from making, selling, using or importing a particular product or process for a period of up to twenty years. For an invention to be patentable, it must be new, useful and non-obvious. Patents are wholly concerned with the functional aspect of a product or process. A good example of innovation meeting the “new, useful and non-obvious” criteria to achieve a patent is Dyson’s Dual Cyclone technology used within its vacuum cleaners.

Patents are important as they provide their owners with the assurance that legal protection against unauthorised use of the invention will be maintained throughout the lifetime of the patent. In the case of key copy protection, the function of a key is covered within patent law, where a cylinder lock system has patent protection on either a combination of its key and cylinder mechanism, or on the key only.

Dubious Claims?

“Unlimited trademark protection”, “lifelong trademark protection”, “lifetime trademark protection which protects against illegal duplication of keys”, “key profile with trademark protection for lifelong, legal key protection”, “Trademark on the keys for unlimited protection”, “The key profile is protected by a registered trademark” - these are all actual examples of claims that have been made by some suppliers of cylinder locks when promoting their products. The issues are twofold: firstly, of interpretation and understanding of the information, and, secondly, the use of trademark registrations.

Interpretation and Understanding

If we look at an actual claim noted previously: “Trademark on the keys for unlimited protection”, the clear implication is that keys enjoy protection, presumably from unauthorised duplication, for an indefinite period of time. This further implies that it is the trademark that prevents the key from being copied. However, as noted above, a trademark cannot protect a functional element; in this case the cross-section of the key, and therefore the trademark does not in fact protect the key from being copied. In reality, anyone could lawfully

manufacture key blanks that were functionally interchangeable with the originals, provided that they avoided copying any non-functional elements of the trademark. Therefore, this claim is misleading.

Looking at another actual claim: “The key profile is protected by a registered trademark”. The party’s key has their specific trademark formed into the cross-section of its profile (otherwise known as the shank, which is the part inserted into the cylinder lock), which implies that the trademark provides protection against the key being copied. Again, because the cross-section of the key profile is a functional element and, as noted earlier, functional elements are not covered by trademark law, the presence of the trademark in this case does not provide legal protection against the key being copied. As with the previous example, this claim is also misleading.

It is probable that only someone with a comprehensive knowledge of trademark law would see through these statements and realise the actual meaning of what is said, rather than the implied meaning of superior key copy protection.

Use of Trademark Registrations

As already discussed, the purpose of a trademark is to be a recognisable mark that links a product or service to a particular source. In the case of keys, if a party adds their trademark on the key head it will clearly indicate the source of the key. If the party adds their trademark on the cross-section of the key for the sole purpose of indicating the source of the product, then this is also acceptable and within the boundaries of trademark law. When the trademark on the cross-section of the key is used in marketing to suggest that it prevents the copy of keys, this then becomes a misuse of the trademark, as a trademark cannot be used to protect a functional element; in this case a key’s operation in a cylinder lock. The use of a trademark in this instance adds no value to key copy protection, and further serves to suggest why such claims are misleading.

Case Law

In 2016, a case went to Court in Düsseldorf, Germany, where the claims of a party’s trademark on a key profile were challenged. The party in question had made claims around the key profile on one of their cylinder lock systems; in this case, a key shank cross-section with the trademark “SSG” running through it. The court found the company guilty, basing its decision on competition law as their advertised claims were misleading and that the trademarks did not provide the protection implied.

The company was ordered by the court to remove all claims relating to trademarked key profiles from their advertising as they were deemed untrue and misleading as key copy protection is not provided by these trademarks. In 2017 the company appealed the court’s decision and failed to overturn the judgement.

The judge defined that in cases of this nature, the penalties which can be incurred carry a fine of up to €250,000 and up to two year’s imprisonment per occurrence.

This case confirms that using trademarks to protect key profiles is a misuse of trademark right, and that any claim around key profile protection using trademarks is misleading. The impact to the consumer is that key profiles claiming protection against unauthorised copying based on trademark protection alone, in reality are vulnerable.

Patent Protection The Informed Choice

For the reasons noted above, the only enforceable protection under IP law for a key or key/cylinder combination is a current patent.

When reviewing a product and the copy protection claims made for it, the following questions must be asked:

1. Is key copy protection being offered?
2. Is the product patented?

Is key copy protection being offered?

It is essential to understand the nature of the key copy protection claims and the process for managing this. The following questions are relevant:

- What forms the basis of the protection? - This should be a patent
- What management process exists to take enforcement action as necessary to prevent unauthorised key copying?

Is the product patented?

Having established that the product is patent protected, additional points to consider are:

- When was the patent filed? - The patent can last for up to 20 years from filing.
- Is there a current patent in the country where the product will be used?

IMPORTANT

Only satisfactory answers to the above questions can confirm the validity of a claim of key copy protection.

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This Best Practice Guide has been produced by **dhf** (Door & Hardware Federation).

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