

# White Paper

Dispelling the Myth:  
Misleading Claims Around  
Key Copy Protection

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## Introduction

When reviewing your current locking system or considering a new one for your premises, what are the essential requirements for your facility?

Examples of such requirements could be:

- Locks which meet the required performance expectations
- Locks which can be master keyed allowing for controlled access throughout your site
- Locks which can be serviced/maintained by local specialists



The criteria for making the right choice can vary from region to region and from building to building, depending on the specific needs.

An important requirement which is often overlooked is that of the keys supplied with a cylinder lock system, and the availability of additional keys thereafter. With many cylinder lock systems, additional keys can be legally obtained without your knowledge, however, legal protection against unauthorised key duplication does exist by means of patent protection. This should be considered during your risk assessment.

How important is key copy protection to you?

In this white paper we dispel the myth around parties' claims of so-called 'lifelong trademark protection on key profiles' with regards to key copying, when compared to legally enforceable patent protection.



# 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 are Nike and Apple, and their 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 25 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 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 20 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 requirements 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 a combination of its key and cylinder mechanism and/or key only.



## Understanding the 'Myth'

"Unlimited trademark protection", "lifelong trademark protection", "unlimited 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 above:

"Trademark on the keys for unlimited protection", it is reasonable to presume that keys enjoy protection, probably from unauthorised duplication for an indefinite period of time. This comment is misleading as it suggests that the trademark prevents the key from being copied for an unlimited duration. As we have discussed above, a trademark cannot protect a functional element, in this case the cross-section of the key, and therefore the trademark does not protect the key from being copied. Therefore, this claim is misleading.

Looking at another actual claim noted above: "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 therefore 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. Therefore, the use of a trademark in this instance adds no value to key copy protection, and further serves to suggest why such claims are again misleading.

## Validating the Facts

In 2016, a case went to Court in Düsseldorf, Germany, where the claims of a party's trademark on a key profile was challenged. The party in question ISEO Deutschland GmbH, who 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 ISEO Deutschland GmbH guilty, basing its decision on competition law as their advertised claims were misleading and that the trademarks did not provide the protection implied.

ISEO Deutschland GmbH were 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 ISEO Deutschland GmbH 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 validates 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 and are solely reliant on trademark protection actually have no protection from unauthorised key copying.



## Patent Protection – The Informed Choice

If key copy protection is a requirement when specifying a key and cylinder lock system, then a solution with a current patent is the only way to validate that the system you are looking to implement has legally enforceable protection.

When reviewing your current locking structure or considering a new cylinder locking system for your premises, it is important to ask the following questions:

1. Does the supplier offer key copy protection?
2. Is the product you are looking at patented?

Does the supplier offer key copy protection?

It is essential to understand what the supplier's key copy protection claims are, and their process for managing this. The following questions should be asked:

- What forms the basis of their protection?
  - This should be a patent
- What management process is supported to ensure your protection against unauthorised key copy protection?

Is the product you are looking at patented?

You need to ascertain whether the product you are considering is patent protected and relevant to your needs. Points to consider:

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

Once you have established this information and qualified the validity of the key copy protection offered, you're then in a position make an informed decision to meet your needs.



## Conclusion

We have identified and explained the myth surrounding claims of indefinite trademark protection on key profiles. As seen, claims of indefinite trademark protection on key profiles is not only misleading, but also offers no legal value. The only way to ensure key copy protection is by using key and cylinder lock solutions which have legally enforceable patent protection.

Are you protected? Does the key and cylinder lock system you are using or looking to specify have patented key copy protection?



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8808806 | 4/2019 | Subject to change without notice.