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Q. I run an established gift manufacture and delivery business operating worldwide on an annual basis. Whilst my central workshop and depot is in a location with no intellectual property law, I am worried that intellectual property rights holders may target me in other territories. What can I do?

A. The writer is wise to be wary of intellectual property (IP) laws even though he says that he operates from a country with no such law. In most, if not all, countries it is an act of infringement to import goods which bear or incorporate the intellectual property of others or to import goods which have been made outside the jurisdiction by a process patented within the jurisdiction.

The principal issue to be established is if the writer is manufacturing goods which are protected by patents or designs (registered or unregistered) or if he is applying trade marks to goods without the approval or licence of the owner. If he is, then he is certainly running the risk of being found liable for infringement by importing those goods into a relevant jurisdiction. Whilst it is unlikely that the writer is giving the goods away, even if he were doing so it would still be possible for the rights holders to seek redress due to their lost sales.

Moreover, even if he is purchasing the goods from the right holders he also needs to be sure that the rights holder has exhausted their rights in respect of the purchased goods. For example, have the goods in question been placed on the relevant market (e.g. the EC) by the rights holder. If they have not, there is a chance that the right holder could object to their importation from outside the relevant market.

In summary, there could be a risk of the writer's activities infringing the IP rights of others, in which case it is possible that the rights holders may take legal action against the writer. If the writer were to end up being sued for infringement, then the consequences could be grave for his business, as substantial damages could be awarded against him and he would most likely be enjoined from carrying on any infringing activities.

In the writer's case such an outcome could be particularly disastrous, as it would appear his business is seasonal.

Of course, it is possible to seek a licence from a right holder before commencing an infringing act. Alternatively, the writer could act to remove potential hurdles in a more aggressive way.

It is clear that any case of IP infringement will turn on the specific facts of the case. If such a situation should arise, then professional advice should be sought as soon as possible.

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