

Intellectual Property (IP)

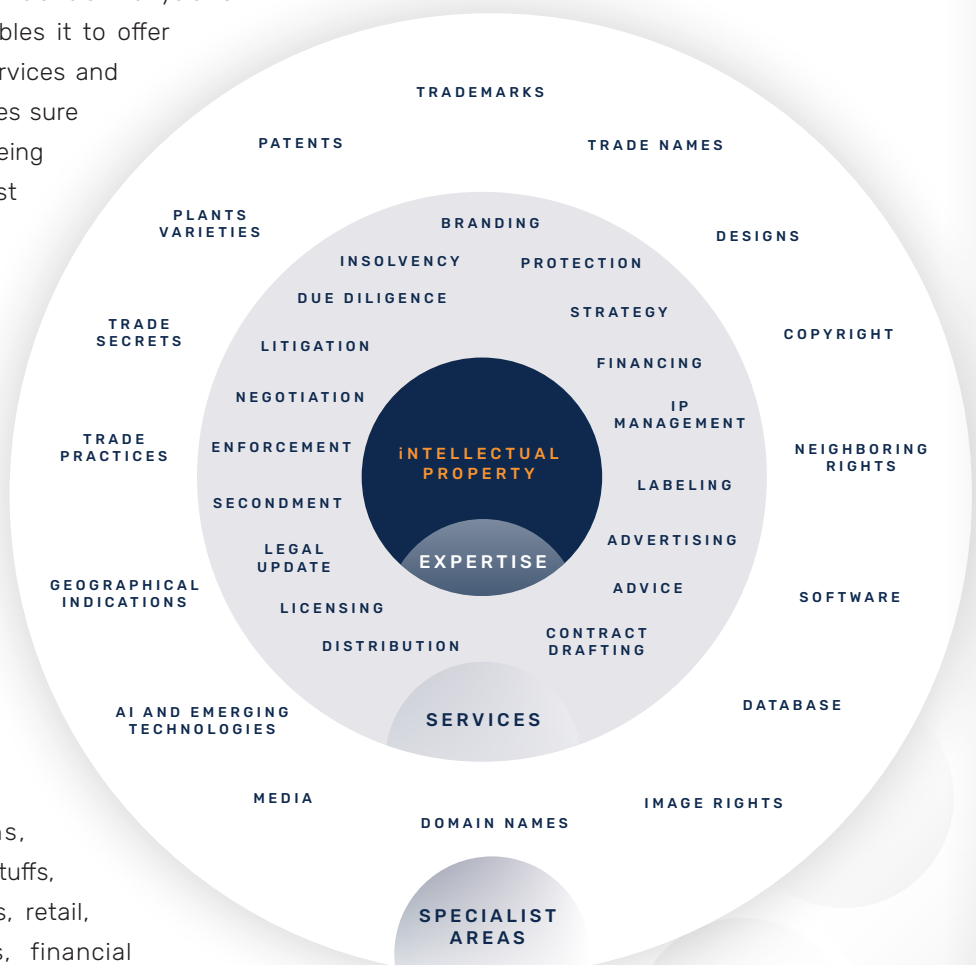
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When tricky infringement issues arise, full-service Belgian law firm Lydian acts quickly and decisively. Its IP team comes stacked with polished professionals and astute strategists, who align themselves as key commercial partners and are unwavering in their dedication. Overseeing the matter, “Olivia Santantonio possesses that sharp commercial acumen that clients actively seek out, and delivers timely, strategic and impressive advice”.

WORLD TRADEMARK REVIEW 2023

A comprehensive, efficient approach

IP issues are extremely diverse and require expertise in many areas of practice. The size of the Lydian’s IP team not only enables it to offer you a full range of services and support, but also makes sure that your question is being handled by a specialist who is dedicated to the specific practice area you need. Lydian’s IP team can provide you with first-class legal expertise, combined with innovative thinking and expert knowledge of your sector of activities (automotive, fashion, art, insurance, public institutions, pharmaceuticals, foodstuffs, ICT, new technologies, retail, media, life sciences, financial services,...).





LYDIAN'S IP EXPERTISE

1. INTELLECTUAL PROPERTY : WHAT IS IN THE NAME ?
2. THE FULL SCOPE OF LYDIAN'S IP SERVICES
3. INDUSTRIES AND SECTORS FOCUS

1. Intellectual Property : what is in the name?

Intellectual property rights encompass a wide range of rights and more particularly : trademarks, designs, copyright, neighboring rights, software, database, patents, plants varieties, geographical indications and domain names.

Trademarks protect the goodwill that your company has built up in its brands and ensure consumers of consistent quality standards. The business value of strong brands cannot be underestimated. It offers a stronger protection than a **trade name**. The latter is the name under which your business trades. The trade name is often the same as the name in your company's deed of incorporation, but it can also be different. A business can, for instance, use different trade names for different activities.

Design protect the way a product looks, its appearance. If the design has a technical function or the appearance of the product comes naturally as a result of the function that it performs, then a design right may not be suitable and a protection by a patent might be more appropriate.

More and more industries use **patents** as a protective shield in their ongoing drive to obtain or maintain a technological advance over their competitors. R&D activities and innovation have an increasingly global impact and companies try to value their immaterial assets on a larger scale.

Since patent protection implies a disclosure of the invention, Lydian's IP team understands that **trade secrets** and **know-how** represent often an alternative and an essential commodity for many businesses, the protection of which needs careful and balanced planning.

Beside patents, there is also a similar IP right for breeders allows to obtain a protection for new **plant variety**. Such right that is less known might be very useful for the agricultural world.

Depending on the geographical origin and qualities or reputation that are due to that origin, your product can also be protected by a **geographical indication** (GI).

Creativity in the various forms of literary and artistic expression (like international trade in motion pictures, music, publishing), software and databases has grown steadily over the last number of years. These creations can be protected and properly rewarded by **copyright, neighboring rights, software or database protection**.

Finally, **domain names** enable consumers and potential customers to enter into contact with businesses over the internet.

2. The full scope of Lydian's IP services

Lydian provides a full array of intellectual property legal services to help your company during the whole lifecycle of your products, services and IP rights by notably obtaining, managing, exploiting and enforcing your IP rights whatever your commercial field.

a. Building your brand

Lydian's IP team is here to help you build your brand and take your business to the next level.

Together with you, Lydian's IP team will devise **tailor-made strategies** to best protect your corporate image and brands and achieve your goals in the **real, digital or virtual world** (metaverse, NFT...). In that respect, we do not only provide services regarding trademark registrations as explained hereafter but also advice on the selection of the **trade name** and **domain names** in order to secure and strengthen the branding.

Lydian can offer you all the services relating to the registration of trademarks with the assistance of external service providers if needed to be more efficient and less expensive :

- Performing anteriority searches,
- Filing within Benelux or in various countries,
- Assisting in case of possible provisional refusal ;
- Assisting in case of possible opposition proceedings,
- Performing a renewal of the trademark registrations.

In a second phase, Lydian's IP team further assists its clients with possible monitoring activities, portfolio management, defense in case of IP infringement (see below **f**), contract drafting (see below **e**) in view of the exploitation of the rights and further building of a brand in advertising campaigns (see below **d**).

b. Protecting your creations and innovations

Whether it is dealing with trade secrets, know-how or applying the latest copyright, design or patent legislation, Lydian's IP team is here to give the best advice for your creations and innovations.

We can **advise** you **on the protection and eligibility requirements** for copyright, trade secrets, design, database, patent rights and plant varieties and **identify** which IP rights are the most relevant for your products or services.

Lydian's IP team can help you **establish ownership** of IP protected creation or invention and identify ways to generate added value for your business.

Lydian's IP team can also assist you to **determine the best strategy to protect an invention**, namely to keep it secret and consider a protection via trade secrets and / or to file a patent application in one or various countries (in the latter case with the assistance of external patent attorneys).

We can assist you to **develop** all the necessary **policies** and procedures **to preserve and protect your trade secrets** and know-how, beginning from the initial creation of an idea (possible filing of a e-deposit) through its development and commercialization while ensuring the detection and prevention of trade secrets theft.

c. Helping you launch your products and services

Bringing new products and services to the market requires a deep **understanding** of the **regulatory environment** in which they are obligated to be designed, manufactured and sold.

Lydian can assist you during all steps of the process from the design to the launch of your products and services.

We are frequently asked to provide **advice** and **review** of **product labelling and packaging** (mandatory, customary information, warranty, **repair** or **recycling** obligations, language, support...) by companies seeking to introduce their new products and services into the Belgian market. These questions might be challenging given the fast evolving legislation in terms of product liability, **sustainability**, **digital** and green transition and circular economy.

Lydian's IP team can assist you with the launching of your products or services **offline** (on your own or via a **distribution** network) or **online**.

In today's internet-based society, more and more transactions happen indeed via the **internet and e-commerce**. This raises numerous questions with regard to the probatory force of e-mails, **electronic signature**, the consequences of concluding contracts with consumers or undertakings via the internet,...

Lydian's IP team deals with these matters on a daily basis by, for example, by drafting and reviewing general **terms and conditions**, disclaimer, terms of use...

d. Helping you promote your products and services

Lydian's IP team's practice encompasses the full range of areas linked to the launching and marketing of products and services, including advertising as well as lotteries, contest and gambling.

Would you like to publish an **advertising campaign** on the internet, social media, TV, newspapers, magazines, the team can provide you with the following services :

- **Pre-publication advice and clearance** to check that your advertising
 - is **not misleading** or does not **compare** unlawfully the products of a competitor,
 - does not violate any **guidelines** or **code** specific to your **sector** or a specific category of **public**,
 - complies with the rules applicable to **influencers** and **image rights**...
- **Drafting and review of contract** with content owners, advertising agencies, actors, artists, publishers, TV and radio broadcasters, as well as TV providers and internet companies.

We are aware that an advertising campaign is for sure not the only way to promote your products and services. The marketing of your product or service can occur via your website – eshop, product placement or metaverse, NFT or the organisation of **contest** for instance.

Lydian's IP team's can off course advice you as well on the rules applicable to **product placement**, the emerging regulation on **metaverse** & NFT and on the different regime applicable to lotteries, contest and gambling.

e. Drafting your contracts

Lydian's IP team assist you in drafting, reviewing and negotiating all the necessary agreements for the **creation, exploitation, financing** and **transfer** of your intellectual property rights.

More particularly the team can assist you in **negotiating** agreements of all types, like for instance:

- Non disclosure agreement,
- Joint venture agreement,
- R&D agreement,
- IP and confidentiality provisions in employment agreement or consulting agreement,
- License (and manufacturing) agreement,
- Distribution agreement,
- Publishing agreement,
- Co-existence agreement,
- Complex broadcasting agreements with collecting societies and broadcasters,

- Production financing,
- Subsidies / grant agreement
- Pledge agreement,
- Transfer agreement.

We are used to negotiate tricky provisions like on the ownership of the IP (back and foreground) rights, scope of use, consequences in case of early termination of the agreement, insolvency, liability, warranty, remuneration and validity of the IP rights.

For some of these agreements, Lydian's IP team will work in (close) collaboration with other departments like employment, finance and corporate.

f. Defending your interests in case of dispute

In order to best defend your interests, Lydian IP team focuses on **determining** together with you from the outset what would be **the most suitable litigation or negotiation strategy**, taking into account legal analysis but also commercial and business priorities.

Lydian's IP team has experience in assisting clients before all **judicial courts** (civil and criminal) and **arbitral tribunals** in Belgium, including in summary, injunction proceedings, attachment proceedings, and proceedings on the merits, both before the First Instance Courts and the Courts of Appeal as well as before the **administrative authorities** such as the Benelux Office for Intellectual Property, the European Union Intellectual Property Office and WIPO (for domain names).

We assist you in all domestic and multi-jurisdictional matters relating to :

- the **enforcement** of your **IP rights** (custom surveillance),
- the offline or online **infringement** of your **IP rights** including against **intermediaries**,
- **cybersquatting**,
- **conflicts between trade names** (or other (earlier) rights) and **trademarks**,
- the **validity and revocation** of your **IP rights**,
- the **theft** of your **trade secrets** or know-how,
- **unfair competition practices** and advertising disputes including notably misleading advertising,
- a refusal of a **right to reply** and possible defamation or breach to the reputation due to the publication of a press release for instance.

Lydian's IP team comprises experienced Dutch and French-speaking litigators who can handle cases before the Belgian courts in their native language.

Clients appreciate its pragmatic and (non) aggressive approach whenever it is needed or demanded.

In addition to being skilled litigators, we are also experienced negotiators and we always strive to achieve the best possible result for our clients and **to settle** quickly if such solution is more appropriate. In most cases, we send first cease and desist letters or take-down notices before starting a proceedings.

3. Industries and sectors focus

Lydian's IP team assists many of the world's leading technology companies as well as SMEs from diverse industry sectors.

Lydian has assisted, amongst others: automotive manufacturers, luxury, fashion, and consumer goods as well as online retailers of various consumer goods, advertising agencies, social network operators, (large) pharmaceutical companies or companies active in the life sciences sector, foodstuff, public (national, regional or European) institutions, media, authors, insurance, financial services and telecom operators.

Lydian's IP team also closely follows the latest developments in terms of **sustainability** and **new technologies** such as **Artificial Intelligence**, metaverse, **NFTs** and Smart Contracts. They are rapidly evolving and gaining momentum, and this evolution can bring unique opportunities and challenges for your business also in terms of IP rights and protection.

Lydian's IP team is at the forefront of this burgeoning space and can help you understand how current laws and regulations apply to these technologies and navigate all the legal issues presented by new technologies.

Our team can also provide you with practical advice on how to maximize the opportunities presented by new and emerging technologies while avoiding the issues caused by the rapidly evolving legal landscape.

"The team has the necessary knowledge and the know-how to transfer it well. Files are always followed up closely and timings are respected."

LEGAL 500 - 2023

A team with experience

Lydian's IP team is well-equipped to handle various challenges and changes that may arise in the field of Intellectual Property. Each member of the team has their own area of expertise, covering a wide range of topics such as trademarks and patents, copyright and design, trade secrets and know-how, IP litigation, licensing, internet, e-commerce, software, domain names, media, and advertising. With their extensive experience in every aspect of IP law, they are true experts in their field and have established strong relationships with relevant authorities at both European and local levels. In addition to their legal expertise, the team regularly shares their knowledge and insights by publishing legal materials and delivering presentations related to IP law, including webinars and seminars.



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[Full biography](#)

Bastiaan Bruyndonckx has expertise in various areas related to technology contracting and procurement. This includes outsourcing, electronic communications (telecom), and e-commerce. He is also specialized in intellectual property law, which covers topics like trademarks, domain names, copyright, software rights, technology transfer arrangements, and R&D collaborations.

Bastiaan is well-equipped to handle complex IP issues that can arise in the context of data and technology projects and transactions. He also has extensive experience in software-related transactions, such as large software licensing, development, and implementation projects. Additionally, he advises on projects related to new technologies and innovative use of data.



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[Full biography](#)

Olivia Santantonio is widely experienced in all fields of Intellectual Property. Her clients are primarily international, from the luxury, automotive, life sciences, technology and insurance sectors.

Olivia is specialised in IP, brand protection, dispute resolution of trade practices and in distribution law (franchising). Olivia assists also her clients in the procurement and litigation aspects of trademarks protection. She also drafts and reviews transfer and license agreements concerning all intellectual property rights.

Highlights of our recent experience

Defence against IP infringement by independent resellers in the automotive sector

Assisting a world-famous German luxury car manufacturer against car dealers located in Belgium that offer for sale unauthorised replicas / recreations of its models. We advised our client on the chances of success of obtaining the cessation of the infringement of its copyright, design and trademark rights. Based on our broad knowledge of European and Belgian case-law about use of IP rights by independent car resellers as well as our experience in similar recent cases for our other famous Italian or US manufacturers, it was for us easy to provide an accurate and practical advice. We tasked a bailiff to secure evidence against the infringers and sent a cease and desist letter. We sent cease and desist letters and quickly obtained the cessation of the infringements in most cases but are sometimes obliged to go to Court and request payment of damages

Copyright licensing and NFT

Assisting a famous Belgian artist and author of comic strips in the review of a NFT contract that he intends to sign with a Belgian platform in order to safeguard sufficiently its copyright and provide for a fair remuneration.

Protection of a new blockchain technology

Advising a Belgian company on the intellectual property protection and commercial aspects of a new blockchain technology for use in the real estate customisation sector. The client has

requested Lydian to assist it with (i) protecting its intellectual property and trade secrets and (ii) setting up and documenting the commercial model and contracts underlying its new service model integrating blockchain.

Advertising and image rights

Assisting the largest fast-food chain in the world, in the development of booklets offered in all its restaurants in Belgium and retracing the career of 4 Red Devils. Lydian drafted a release form for the official publishing house of the Red Devils in order to secure image rights and safeguard all necessary intellectual property rights.

Brand protection and portfolio management

Assisting on a regular basis a major Italian luxury fashion house in the filing of complex Benelux trademarks and the extension of the protection of the same trademark internationally.

Opposition and cancellation proceedings

Assisting one of the leading meat distribution companies in Germany in opposition and cancellation proceedings regarding similar and older trademark application and registration before the Benelux Office for Intellectual Property. In order to avoid proceedings (and the associated costs), we try to settle but in vain. We have then launched proceedings and the adverse party tried to delay these proceedings as much as possible by requesting proof of use of the trademarks of our client.

Descriptive seizure – design infringement

Assisting a famous Belgian furniture designer and his company specialized in the manufacture and commercialization of high-end furniture in a design infringement case of a world famous design that won numerous prizes worldwide and is sold worldwide. We filed a unilateral petition (descriptive seizure) before the President of the Commercial court of Brussels seeking the appointment of an expert to gather all relevant information about the infringement since it was clear that the infringer would not voluntarily disclose information about the quantity of counterfeited goods manufactured and sold. We then accompanied the expert and our clients during the descriptive seizure that took place by surprise at the infringer's premises in Belgium. As no settlement could be reached and on the basis of the expert report, we introduced an action on the merits. We request the acknowledgment of the infringement, the destruction of the counterfeit tables as well as damages.

Patent license and supply agreement

Assisting a passionate team of healthcare improvers in the Benelux area with the review and drafting of a template license and supply agreement for the outsourcing of the production of pharmaceutical products (protected by patents and trade secrets) developed by our client.

Negotiation and restructuration of a distribution network – use of trademark for after sales services

Assisting a well-known Japanese car manufacturer in the restructuration of its distribution network in Belgium and Luxembourg by negotiating the financial and organisational aspects with the general distributor and the dealers active in Belgium and Luxembourg. These organisational aspects also relate to the use of the trademarks of the car manufacturer during and after the restructuration by the distributors and the particularity that, although the sales of vehicles stopped end of 2021, the maintenance services have continued. Our client has strict guidelines on the use of its trademarks, but under the applicable EU case law it must tolerate the use of its trademarks even after the restructuration to some extent for the after sales and second hand vehicles offered by the previous distributors.

Due diligence – purchase of IP assets

Assisting a French private equity fund managing a portfolio of over 5 billion EUR, during the acquisition of the majority stake in Wilink Insurance and Elitis Insurance (including the acquisition of Real Life), operating in 15 offices in Belgium and having a network of more than 130 insurance brokers. Wilink is well known for insurance and financial services throughout Belgium and Luxembourg. The trademark aspects of this transaction were very sensitive and resulted in very long and intensive negotiations between the parties involved. We managed to find a solution.

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