



MANAGING YOUR IP

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Overview

"Innovation is the key to success". In today's competitive world, for a business, "to protect the innovation might be the key to survival".

Innovation can be in the form of an original idea, a design or even a unique process. Both, the right and left part of the brain are capable of generating YOUR Intellectual Property (IP). These brain cells need to be protected from cloning. Plagiarism is a menace in today's world, and your IP needs to be shielded from the same.

Being one of your business' invaluable assets, to gain / maintain a leadership position in the market, you need to safeguard your IP, especially from your competitors. Giving a legal shape to your IP rights is one such route. You can then put a value to your IP, license it, or even transfer it.

Non Disclosure Agreement (NDA), Copyright, Trademark, Patent, are some of the ways to protect your IP rights. It is de rigueur to assess your potential market, and accordingly seek IP rights in each of the countries, where in you feel the need to protect your Intellectual Property. Seeking IP rights can be a time-consuming and expensive process, depending upon various factors. It would be best to seek advice from an attorney / legal-representative specializing in protection of IP assets.

Also, before seeking IP rights, make sure you check that you are not contravening (committing a breach) upon someone else's IP rights; someone who could have already sought the IP rights for that apparently proprietary knowledge that you possess.

You need to capitalize on your IP. Your Intellectual Property Assets enhances your net worth, and can be used in a multitude of ways to add on to your profits. It can even serve as a security to seek a loan. And always bear in mind that your (potential) investors would prefer investing in a business that has its IP assets well managed and protected.

Don't let your IP squander away. Don't lose it to your competitors. Seek appropriate protection. Keep a track of the market and especially of your competitors, so as to ensure that they do not infringe your IP rights.

Identifying your IP

More often than not, any business, in any industry, has some form of IP assets that the originator capitalizes on. It is imperative that you identify the Intellectual Property that you possess. IP can be in many forms. Some examples include:

- A customized software program / code / product
- Packaging, labeling, color, smell of a product
- A unique name, logo, or punch line

Protecting your IP Assets

Depending upon the type of IP asset, you should maintain good records to prove that you are really the creator / originator, when and how you created that IP asset, and other idiosyncrasies specific to that IP. IP assets can be safeguarded in a multitude of ways.

Due to the nature of business, many of your partners, vendors and employees would know your trade secrets. Confidentiality agreements amongst all the parties involved in the business, in the form of signed "Non Disclosure Agreements (NDA)", ensures that all such proprietary material and information shall be safeguarded and protected. Such tangible material, information, documents, trade secrets, know how, processes, et all, need to be clearly marked and identified, as being confidential or proprietary. The NDA does not apply to information in the public domain, lawfully obtained from any third parties, of lawfully in the recipient's possession prior to the business engagement.

Some of the materials like white-papers, code are protected by copyright law. You can "Copyright" these by putting a © mark to specify that these tangibles is your original authorship / craftsmanship, i.e. your copyright. Though not required, these copyright material can be registered in the Copyright Offices, without searching whether it is protectable or not. Have clearly marked sections, in various forms of IP material, stating the terms and conditions for its use. Also, it is imperative that you recognize any IP that you are using.

"Patents" can be obtained from the "Patent Offices" of respective countries to protect your inventions, innovative technology, unique processes.

Similarly, "Trademarks", TM, like logos, names, can be protected by filing for registration in the Trademark Offices, of respective countries.

Product designs, packaging, labeling; the shape, colour, smell of a product; and other such forms of non-functional elements are grouped into a form of IP asset, called "Trade Dress". These IP assets might have distinct rules for protection, though on similar lines to the trademarks.

Swift time to market and constant development/ enhancement of your IP can be a key business strategy that could help you to gain a leadership position in your niche market, and deter competitors to replicate your IP soon.

To protect your IP assets, it would be best to seek advice from an attorney / legal-representative specializing in protection of IP assets.

Capitalize on your IP

You need to make the most of your IP. Like any other asset, by using it appropriately, you can profit from it and enhance your net worth. Your Intellectual Property Assets differentiate you from other players in the market.

Intellectual property could be a significant constituent of many a businesses. Businesses protect the same through the legal route and put a value to their IP. You might then opt to either use it exclusively to gain / maintain the competitive edge and leadership position, or license it to other interested parties.

Infringements Checks and Legal Action

Any breach of confidentiality agreements; unauthorized use of patents, trademarks, trade dress; calls for a legal action. Such infringements are protected through "Trade Practices" laws and regulations.

An appropriate action could be in the form of a telephone call, or a written objection known as "cease and desist" letter. You should apprise the other party that you own the said IP rights and hence it can be used only after prior permission / license is obtained. You may opt to offer licensing alternatives, threaten a court injunction or litigation. To avoid inconvenience, make sure that you file the litigation in a court in your vicinity.

Before taking any action, seek advice from the legal-representative. And don't hesitate to do your own "due diligence" on the attorney.

Some other Sources of information:

- Yahoo site:
<http://www.site.yahoo.com/tech-coast/protandmanyo.html>
- IP Australia:
<http://www.smallbiz.nsw.gov.au/export/Legal/intellectualproperty.htm>

Disclaimer:

This information is not designed to provide any professional advice. It merely intends to facilitate the reader appreciate the need to recognize Intellectual Property assets and protect them. Neither the author nor Simext Technologies Private Limited shall be liable for any consequential, incidental, indirect or special damages arising out of any action taken by the reader based on this article, regardless of whether the reader has been advised of the possibility of such damages.

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