

Intellectual Property

Intellectual Property (IP) is becoming more and more recognised as a valuable asset and growth strategy for small business. IP can be the result of creative endeavours such as new and groundbreaking products, innovative technological processes, or simply unique industry know-how. The secret to making the most out of your IP is to identify, value, protect, manage and effectively utilise your IP as a business strategy.

Identify Your IP

A starting point in managing your IP is to develop an IP register. By doing this you can readily identify your IP and strategically incorporate it into your business strategies.

Items in an IP register may include:

- business name and logo;
- research and development outcomes;
- unique products, services, processes, applications; and
- unique design of products/packaging.

In identifying your IP make sure you determine:

- the ownership of the IP - only the owner can apply for IP protection;
- that your ideas are new - search the patent and trademark database available from the IP Australia website at www.ipaustralia.gov.au, as well as other sources, to confirm that your ideas are new;
- the value of your IP; recognise this in your balance sheet;
- how you can earn a return on your IP; include such income in your business plan.

Value Your IP

IP is a valuable business asset which must be managed and protected like any other business asset. Protection is obtained mainly through secrecy, patents, trademarks, registered designs and copyrights. This is not to say that all IP requires formal protection. It becomes a business decision to determine whether you should protect your IP based on your business strategy and associated costs.

Using IP in Your Business Strategy

There are a number of ways IP can be exploited to make commercial gain and add value to your business.

When integrated into business strategies IP can build competitive advantages by creating a legal monopoly in the market, generate extra revenue through licensing arrangements, or even maintain a unique competitive edge by protecting business image and goodwill.

Examples of how IP can be used as a business strategy include:

- forming a monopoly over a protected product/process/technology;
- licensing your exclusive rights of a brand/design - such as through franchises or through royalty arrangements;
- maintaining your position in the market through distinctive business name/logo;
- maintaining a competitive edge by gaining exclusive rights over an efficient process;
- developing an exclusive image of your brand/product/business through registered trademarks;
- entering into joint ventures through supply of IP;
- increasing the value of your goodwill by protecting your registered trademarks.

The benefit of incorporating IP into your business plan is obvious. However, if not properly protected your IP could be abused by other businesses. To ensure the success of your business strategies:

- maintain the secrecy of your IP until protected - often IP protection is denied if your IP has become exposed to others in the absence of confidentiality agreements;
- be first into the market and continue innovating to stay ahead of imitators and competitors.

Protect Your IP

Protecting your IP gives you exclusive legal rights to commercially exploit the intellectual property over a prescribed period.

With the exception of copyrights and circuit layout rights, where legal ownership arises automatically, IP must be formally registered to gain legal ownership. Formal registration of IP can be made through IP Australia. It is also advisable that you seek professional assistance.

The most common legal protection of IP includes patent rights, registered trademarks and designs and copyrights.

1. Patents

Patents may be applied for to protect inventions such as a new product, innovative machinery and equipment, or a new process. A standard patent provides valuable protection for 20 years over a new technology. This enables a business to benefit from the technology and reap significant long-term gains.

Specific patents can also be applied for in relation to computer-related inventions, plants, micro-organisms, related biological material and their use and genetically manipulated organisms and business schemes.

2. Trademarks

A registered trademark entitles you to the exclusive rights to use, license or sell your trademark. You may register almost anything, including a word, phrase, letter, number, sound, shape, logo, picture, aspect of packaging and even a smell. This type of protection is useful in protecting business names, product names, logos, mottos or even an animated character.

3. Registered Designs

Design registration is an effective way of protecting the appearance rather than the functionality of a product. By gaining exclusive rights over new designs businesses can market an exclusive image on the market.

4. Copyright

Copyright protection arises automatically for the originality of artistic and literary works, computer programs and engineering drawings.

To emphasise a copyright, a © symbol plus the date and business name may be used.

5. Other Protection

Other types of protection available include plant breeder rights and circuit layout rights, which apply in specific circumstances.

Manage Your IP

Having developed, protected and utilised your IP to your advantage, it is essential that you manage your IP as well. Failure to manage your IP may result in decreased effectiveness of your IP or even infringement of your protection. Here are some tips:

- Develop an IP strategy, highlighting the development and use of IP and its application to the business plan.
- Develop an infringement strategy that ensures you continually monitor infringers, such as importers that may infringe your protection.
- Although not necessary, get into the habit of marking your IP with the registered trademark, copyright or other symbol. Ensure you use the correct symbols.
- Continue to use trademarks, designs, etc to build goodwill and increase the market value of your IP.
- Determine whether you need more than one type of protection to gain full legal rights.
- Assess whether international protection is also required. Registration of your IP in Australia does not give you international protection.

Useful Contacts

Please visit our links section on our website for a list of useful contacts.

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