



A guide to intellectual property for small business owners

Simon Ewing of Russell-Cooke LLP covers what entrepreneurs need to know about protecting intellectual property.

One of the first questions business investors will ask during a pitch is whether the entrepreneur has secured the relevant patents or trademarks for their product.

Often, a start-up business' most valuable assets are those that are less easily identified and cannot be neatly kept safe and secure in a locked cupboard. In many cases what a new venture is offering is a fresh concept or novel way of presenting things. A start-up should think about how it will address its intellectual property (IP) rights from day one, as failure to do so can lead to expensive and lengthy legal battles down the road. For instance, Dragons' Den's success story Trunki, which produces ride-on suitcases for children, was embroiled in a court case regarding the design rights for the product earlier this year.

This article aims to provide a brief guide of the main IP rights that businesses should think about before pitching to investors. IP can be divided into several categories and within a single product there may be multiple rights to consider.

Patents

However unusual or original a start-up may think their invention is, a patent can only be granted to an idea that is novel and has a practical use. The application process itself can be a drawn-out affair needing specialist input from often costly patent attorneys.

If an invention does successfully meet the relevant requirements, however, a patent can be an incredibly valuable asset as it gives the owner a monopoly for 20 years.

For tech start-ups in particular, it is also worth noting that software and process patents are difficult to obtain in Europe (although not impossible). An applicant may have more success in the United States as their process is generally considered to be less stringent.

Trademarks

Applying for a trademark is the logical first step for a business looking to protect its brand. A registered trademark acts as a 'badge of origin' and gives the owner an exclusive right to use that name or logo in respect of the type of goods and services to which it is applied.

A mark must be distinctive and cannot simply describe the goods and services to which it is attached. Also, a business needs to think properly about its branding to ensure it is not sufficiently similar to another name in the same market, which could potentially cause confusion.

Entrepreneurs should decide whether they would prefer a unique name that is capable of being registered but negatively impacts on search engine optimisation, or a more generic/descriptive name which gets better Google results.

Copyright

Copyright is typically associated with protecting artistic works (such as music, film, paintings) but it can also cover software code, website layout, databases and other works. It protects the expression of the idea rather than the idea itself.

The beauty of copyright, at least in the UK, is that it is not capable of registration; the right simply comes into being at the time the work is created. While the work must be original, it does not need to overcome any threshold in respect of its creative merits. Although easy to obtain, copyright is another valuable asset which can last for decades.

Registered design rights

This IP right gives a business the opportunity to register a 3D design and is probably best thought of as filling the gap between copyright and patent protection. Unlike copyright, there is a test of the design's merit which must be overcome. The design must be new and of individual character. If these requirements are met, the right gives the owner 25-year exclusivity in respect of the design.

Confidential information

While not an intellectual property right as such, a start-up's business information may be protected by the law of confidentiality if it is capable of being clearly defined and its availability to the public is limited.

What to do to protect IP

For a new business, there may be a tension between getting the product out in the market quickly and ensuring that its IP is adequately protected before doing so. At the same time, an investor will want to see that they are not putting their time and resources into a business whose best ideas could be stolen before they have been properly exploited.

There are a number of things that do not require a great deal of effort that a business can do at the outset. For example, a trademark application is inexpensive and simple to make. Similarly, a small copyright notice on the website and other key materials will help a business show that it has rights to the content.

A start-up should always consider asking consultants, contractors, suppliers and investors to sign a non-disclosure agreement (NDA) and intellectual property transfer agreement. It would, however, be wise not to rely too heavily on the wording of an NDA as it can often be too late to prevent damage once information has been improperly disclosed.

If a business has a firm idea as to where it is going to be trading from the outset then it should also consider how IP rights can be protected in different territories. If goods are being manufactured in the Far East for example, applying for trademarks or patents in those countries at the earliest opportunity is one way to try and tackle counterfeiting.

No matter where a business operates or which sector a start-up is hoping to break into, it will want to assess its intellectual property at the outset so that it can put in place suitable protection and guard against someone else exploiting their hard work.

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