

The Value Of Intellectual Property In The Digital Economy

Many SMEs are unaware of what intellectual property actually means.

That is not surprising given that IP as a subject has only become a hot topic with the rise of the digital economy. As we move away from the industrial age to a digital one, our assets are increasingly intangible, and intellectual property is the area of law that deals with intangibles.

Traditionally, IP was regarded as an esoteric area of law, relevant if you had a patent to protect, or were from certain “IP rich” industries. However, nowadays any business with ambitions to grow or exit, needs to take account of IP at an early stage. We all tend to develop assets like websites, content, and know how, and become known under an identity that attracts customers to buy our goods and services. These intangibles contain the value of our businesses, and they are forms of property just like land.

So, it is important if you aspire to be a successful business, to make sure you can own these intangible assets which hold the value of your business, and most importantly, that you ensure you are not stepping on anyone else’s toes in the use you make of elements like names, logos, copyright materials and more..

IP strategy

An IP strategy is essential to plan how and when to do due diligence and protect your intangible assets because among other things, these assets enable you to differentiate yourself and stand out from your competitors. It’s possible if you are infringing on someone else’s rights that you actually don’t have an asset at all, and are exposing yourself to liability. So, it is essential to do some checks at an early stage.

The barriers to entry for entering most areas of business have largely broken down nowadays, leading to increased competition. Consumers are spoiled for choice when seeking out virtually any service. The net result is that some businesses flourish whilst others fall by the wayside.

So, it is important to plan your due diligence and intangible asset protection. This is how you will be able to maintain your differentiation, and protect your revenues. The time to do this is when you start your venture, although at that stage when you have yet to establish yourself, you might take fewer steps to protect your position, than later once you are successful.

Some businesses will be more successful than others

The fact is that some businesses will be more successful than others. So, to some extent, the IP protection you might put in place in the early days depends on your confidence.

Many theories have been hypothesised as to why some businesses succeed whilst others fail. A number of common threads emerge in relation to successful businesses:

- They tend to establish themselves after careful planning, budgeting and market research;
- They have a solid understanding of their market and consumer habits;
- They are adaptable and willing to adjust to changing conditions;

- They are aware of business risks and actively take steps to mitigate them. And
- They have more skills and experience in actually running a business.

The first three points arise out of a combination of knowledge and experience of having worked in a particular sector. There is no substitute for understanding a market and its risks

According to the Telegraph more than half of all businesses fail within their first five years.

As is explained in Shireen Smith's book, Intellectual Property Revolution, a common reason why businesses fail may well be due to inadvertent infringement of intellectual property rights, or failure to take an essential step to protect IP that's key to success in a particular business model.

Intellectual property in business

Many business owners may be unaware of the potential pitfalls of failing to properly consider intellectual property at an early stage. There are two aspects to intellectual property. On the one hand you need to make sure you are not treading on anyone else's toes when using IP. And on the other hand, you want to secure exclusive rights over some IP in order to be well placed to scale your business.

In its simplest form, IP can be summarised as:

- Your brand identity (trade marks)
- The things you invent (patents)
- The appearance of things you create (designs)
- The content you create (copyright)
- Your secret recipes, know how, and technical skills (confidential information)

Intellectual property rights restrict competitors from exploiting and benefitting from your IP, and enable you to reap the benefits of your ideas, such as the uniqueness of your identity and offerings.

How does IP benefit business?

The benefits of intellectual property vary between the different types of IP.

Designs, patents and trade marks are monopoly rights, meaning a person who registers one of those rights is able to prevent all others from infringing the clearly defined scope of that monopoly. Copyright does not provide a monopoly over created content, but prevents other businesses from copying it for their own benefit.

The net result of this is income. Customers associate businesses with their brand identities and recommend certain businesses to their friends and colleagues. This increased footfall leads to greater turnover.

Similarly, a patent owner will be able to prevent all others from manufacturing the invention, meaning customers will have to purchase from the patent owner to obtain the product which the invention spawned. Alternatively, the patent owner may seek to licence the manufacture and sale to a third party, but the net result is the same; the patent owner will profit, whether through direct sales or licence fees.

So, owning IP rights increases your options for exploiting the asset. You can choose whether to take action if someone encroaches on your rights based on whether your commercial interests are threatened.

Getting it wrong

Getting it wrong in the IP sphere can be costly and embarrassing for an established business. The consequences for an SME might be disastrous enough to destroy the business before it has realised its full potential.

For example, the owners of well-known footwear company Dr Martens were embroiled in a copyright dispute with the designer of the company's logo which went as far as the Court of Appeal. The dispute concerned ownership of the logo, with Dr Marten's arguing it had commissioned the logo and should therefore own the copyright. The designer, however, argued the contract between them was not sufficiently clear to provide for this outcome. The time, cost and effort incurred by the dispute could have been easily avoided if the right contractual provisions were in place at the outset.

Microsoft was also caught out when it was forced to rebrand its Skydrive cloud storage service when broadcaster Sky successfully argued that use of the name infringed its rights. Microsoft was forced to rebrand the service to Onedrive at considerable effort and expense even though it had registered a trade mark. This outcome could also have been easily avoided if the company had carried out due diligence clearance searches before settling on the name.

Of course, the likes of Microsoft can afford to make these mistakes. The impact on a small business of having to rebrand could be catastrophic.

Conclusion

Failing to understand how IP impacts your business from an early stage could cause problems down the line, and reduce the longer term value of your business.

So, make sure you do due diligence checks on IP you intend to use, and be canny about your intellectual property. Take advice, and think of it as an investment rather than a cost.

By putting in place an effective strategy to secure ownership of your assets, and to get ahead, and promote your business growth you will be far better placed to reap the rewards of your success.