

SPECIAL REPORTS

Small businesses must lock it or risk losing it

In the day to day struggle to survive, small or medium-sized enterprises often make the mistake of failing to insure that their business and domain names are protected under trademark law.

"Regardless of whether the business is a publicly-listed ASX company or an SME, the key to maintaining a competitive advantage is protecting the intellectual property of the business," says Shaun McVicar of Freehills.

"IP should be seen as a strategic tool that is used to give a company an identity and a presence - a unique difference - and that provides it with a competitive edge."

Intellectual property is anything produced by intellectual, creative or inventive endeavours and is legally recognised as property. It can be inventions, literary or artistic works, symbols, names, images and designs.

For an item of IP to be legally recognised as valuable it must be separable, protectable, transferable (can be sold) and enduring in nature.

"A lot of SMEs are simply oblivious to the issue of IP until it's too late and they lose their IP rights or find they're infringing on the rights of others," says McVicar.

"The most common area of misunderstanding is trademark law and the misconception that registering a business name is all the protection that's needed. But unless that business name is also protected by a trademark, the goodwill and reputation of that brand can be taken by another company. In my area of work I see it happening a dozen times a day."

There are some steps to identify and protect intellectual property: conduct an IP audit; establish ownership and legally protect the IP; value it and record it on the balance sheet; establish an IP register and update it; commercialise the IP and; enforce breaches of law.

Trademark infringement is common and some lawyers see it happening a dozen times a day, writes **Ann-Maree Moodie**.

"No matter what type of business you are in, you are going to be dealing with intellectual property issues in one form or another," says patent attorney, Chris Baxter of Baxter IP.

One of the risks for a business is to breach the IP owned by another organisation. This is easy and often unintentional because of the easy access to information through the internet. But copying and distributing materials without permission is an infringement of copyright.

Copyright protects the original expression of ideas (but not the ideas). Typical items automatically covered by copyright include original works of art and literature, music, films, sound recordings, broadcasts and computer programs.

For business, it's important to note that "literature" also includes newsletters, magazine and newspaper articles, direct mail, annual reports, training manuals, company brochures and market

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research reports - sources of information often used by companies to evaluate their strategic, marketing and sales positions.

A database that has taken time and effort to compile, such as a database of clients, can also be protected by copyright law.

The Copyright Agency Limited (www.copyright.com.au) licenses businesses to be copyright compliant by allowing copying and distribution of a range of published materials

Sleep easy

- Establish ownership and legally protect the intellectual property.
- Value it and record it on the balance sheet.
- Commercialise the property and enforce breaches of the law.

without seeking individual permission.

A more complex - and expensive - area of IP law concerns patents on business methods. The most controversial business method patent covers Amazon's "one click" approach to online sales. The system allows customers to enter their credit card number and other information once and on follow-up purchases - the customer just has to click the mouse once to complete the transaction.

Amazon sued and won its case against Barnes & Noble, which had introduced a similar online Express Lane check-out system.

Many software programmers are unhappy with Amazon's patent protection because they feel it restricts the free flow of online business.

While a provisional patent application can be made on the IP Australia website for around \$100, a more thorough patent application, including a proper search, through a patent attorney, costs \$3000 or more.

A budget of \$50,000 is recommended if filing for patent protection overseas.