

How to understand and protect the most valuable asset in your business – intellectual property

Wade Pearson

What's the most valuable asset in your business – or your employer's business? You might say expensive buildings, vehicles, machinery or stock. But often the most valuable assets in a business are the ones we can't see or touch – the "intangible" assets. In this article, we'll look at understanding and protecting one of your key intangible assets – intellectual property.

What is intellectual property?

Defining intellectual property (IP) is a tricky job, as there are many different things that fall under this umbrella. Let's briefly look at an example.

Imagine one of those videogames with a guitar controller where you push buttons to play music. Let's call it "Rock Champion". What sorts of IP would the business that owns Rock Champion have?

Well, the business probably has a registered trade mark over the game name (Rock Champion). It may have registered a patent or design that covers the physical controller. The business will also have some goodwill or reputation in the marketplace, along with some brand recognition. The game itself is made up of lines of code, which will automatically have copyright. There are probably also some trade secrets in how the game works, not to mention a bunch of other rights relating to the game and the business. All of these things are types of intellectual property, and they will be worth far more than all of that business's physical assets combined.

Why should you understand and protect intellectual property?

A smart business will protect its intellectual property as best as it can. This means that if someone else copies the controller or the code, the business can theoretically sue them in court to stop them selling copies. A strong IP position can be both a sword and shield – it helps you to stop others copying you, and helps you defend yourself if someone claims you're copying them. In addition, the business can also

hopefully show that it has a strong IP position, to increase the value of the business for sale or investment.

What happens if you don't understand or protect your intellectual property?

I really can't stress enough just how important it is to understand and protect your IP. You probably wouldn't leave your car or house unlocked on a dodgy street, yet some businesses effectively do just that when it comes to IP. This can have catastrophic consequences.

I've seen businesses that sign agreements to unwittingly transfer their core IP to a supplier – this means that business can no longer sell its products or services. I've also seen people who later discover they never actually owned the IP in their main product. This can also prevent a later sale or investment (in one instance, a multi-million dollar sale fell through because the founder had failed to sort their IP out early). In another case, a small business could have sold for a lot more if the founder had understood the true value of the business IP.

IP problems can be anything from a minor annoyance, to a missed opportunity, to the complete failure of the business. Like most legal problems, they're generally easier and cheaper to sort out early on, before the issue gets worse.

How much intellectual property protection do you need?

Protecting your IP is vital, but unfortunately can also become quite expensive. So it's a business decision as to how much protection you can – and should – pay for. Selling handmade candles at a local market requires less IP protection than globally releasing an innovative new piece of software. Having a clear IP strategy will help you understand what to do, when to do it, and how much to spend.

What is an intellectual property strategy?

An IP strategy doesn't have to be complex, expensive or scary. A great first step is to ensure everyone who worked on your project in the early stages has signed something to transfer their IP to the business. This is often a deed of assignment, employment agreement or contractor agreement.

A good IP strategy should then help you understand your:

- Assets (what you have)
- Gaps (what you don't have)
- Commitments (what your contracts do to your IP)

How can you understand and protect your intellectual property?

If you take away only one thing from this article, make sure your business has an IP strategy of some sort. This could be a 20 page document drafted with an expert, or 5 quick bullet points on a scrap of paper. The key here is to be proactive, and to try to understand the IP (and potential IP) in your business and your industry. Ignoring IP is generally not an option.

As a minimum, here are 4 key steps to begin your IP journey:

- Ensure you actually own your IP, and get written transfers of anything you don't own
- Register any "registerable" IP (if it makes commercial sense to do so)
- Share the minimum amount of IP necessary, and get confidentiality agreed in writing
- Read contracts before you sign them, and understand what your contracts do to your IP

One final point – IP can get quite complex (especially if you do business overseas), so don't be afraid to talk to an expert or two.

Wade Pearson is a Senior Solicitor in the commercial team, at law firm Gallaway Cook Allan. This article is general in nature, so don't use it as a substitute for legal advice.