

# PROTECTING YOUR IDEAS

Just because you thought of it doesn't mean you own it. Well at least that's what Australian manufacturers' of sheepskin boots discovered when they tried to use the words 'UGG' or 'UGH' to describe their product.

The terms UGH-BOOTS and UGH was originally registered in Australia as a trade mark by an Australian. Both trade marks were then sold to the American based company UGG Holdings in 1996.

As the owner of these trade marks, UGG Holdings has threatened to take legal action against Australian exporters and United States importers of sheepskin boots who may be using the terms UGG and UGH in trade marks, as descriptions of their goods or in relation to internet activities.

This example highlights the importance of not only registering the ideas you produce and consider to have commercial value, that is your intellectual property (IP), but to also be aware of the potential conflicts when infringing on the intellectual property rights of another.

So what is IP? It refers to creations of the mind which in business terms are the ideas created by your business. It includes things such as inventions, symbols, names and images and extends to literary and artistic works such as novels, films and paintings.

Protecting your business's IP is important to protect your competitive advantage in the market as well as ensure your company's financial value into the future.

An effective IP protection strategy needs to be determined and put in place. There are different methods to protecting your IP depending on your business objectives and requirements.

Here are some key ways to protect your business IP:

## 1. Trade Mark

Trade marks are important in business as they distinguish your goods and services from others in the market place. A trade mark can be a word, phrase, number, logo or picture. It helps your customers identify the quality and reputation associated with the goods and services bearing your trade mark.

## SOME KEY WAYS TO PROTECT YOUR BUSINESS:

- Trade Mark
- Patent:
- Copyright:
- Confidentiality/Trade secrets

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By registering a trade mark it gives you the legal right to use, license or sell the goods and services it is registered for.

Imagine if successful brands like Coca Cola or McDonalds did not trade mark their product. It would leave them exposed to other traders taking commercial advantage of the branding reputation they've acquired.

Before you apply for a trade mark you must verify that your trade mark is eligible for registration and that there is not already an existing one registered that may be similar to yours.

The trade mark must be used in relation to the goods and services it is registered for and it must stay in use or you risk losing it.

If your trade mark is not used for a period of three years, a competitor can apply to have your trade mark removed from the Trade Mark Register.

## **2. Patent:**

If you have developed a new product or process, a patent gives you the legal right to exclude anyone else from marketing or manufacturing your invention for the life of the patent.

Failing to patent an invention turned out to be a valuable lesson for Kambrook. In 1972, Kambrook developed the electrical power-board which became the basis of their growth and success as a major producer of electrical appliances. Unfortunately, Kambrook did not patent their power-board and ended up sharing the market with competitors instead of reaping royalties they would have otherwise enjoyed had they patented their invention.

There are two types of patents in Australia;

- a standard patent provides long-term protection and control over an invention for up to 20 years
- an innovation patent is a relatively fast, inexpensive protection option, lasting a maximum of 8 years

Patents provide effective protection of an owner's invention however in return, the owner must share their know-how by providing a full description of how their invention works. This information becomes public and can provide the basis for further research by others.

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### **3. Copyright:**

Copyright laws protect written or artistic expressions found in things such as novels, poems, songs or movies. A copyright protects the expression of an idea, but not the idea itself. The owner of a copyrighted work has the right to reproduce it, to make derivative works from it (such as a movie based on a book), or to sell, perform or display the work to the public. You don't need to register your material to hold a copyright, but registration is a prerequisite if you decide to sue for copyright infringement. A copyright lasts for the life of the author plus another **70 years**.

### **4. Confidentiality/Trade secrets**

If you develop a formula, pattern or device that results in an advantage over competitors it could be classified as a trade secret. To protect the secret, a business must prove that:

- it adds value to the company;
- that it is, in fact, a secret; and
- that appropriate measures have been taken within the company to safeguard the secret, such as restricting knowledge to a select handful of executives or putting in place confidentiality agreements to stop employees from revealing it.

Coca-Cola, for example, has managed to keep its formula under wraps for more than 117 years.

Secrecy does not stop anyone else from inventing the same product or process independently and exploiting it commercially. It does not give you exclusive rights and you are vulnerable when employees with this knowledge leave your firm.

Proving a breach of confidentiality under common law can be complex and is potentially more costly than defending registered rights.

Understanding and implementing the right strategy to protecting your IP is a valuable investment for your business.

To register protection of your IP you need to lodge an application with Intellectual Property Australia, the Federal Government organisation responsible for granting rights in patents, trade marks and designs.

However, registering your IP rights in Australia does not provide you with international protection. You need to submit a separate application either for the country you are seeking IP protection in or an international application that would cover you in a number of countries noted on the application.

This is particularly significant if you do business over the internet. As you are entering a global marketplace, you need to be aware of the potential risks you are exposed to.

Say for example you sell goods on the internet under your Australian trade mark in another country. It turns out that your trade mark is similar to a trade mark owned by a business based in that country. That trade mark owner is entitled to then sue you for infringement of their trade mark.

When trading overseas, you should seek professional advice on the best ways to protect your IP as well as avoiding or minimising the risks of IP infringement.

More information

- See IP Australia's website

***If you need assistance with any of the issues raised in this article, talk to us today.***

The above is an extract from the publication "Your Knowledge" a newsletter service we have subscribed to as an additional resource.

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