Entrepreneurs and Intellectual Property: Avoid These Thirteen Mistakes to Protect Yourself (Part 1 of 3)

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In this three-part article series, we will share with you the intellectual property (IP)–related mistakes that we regularly see with startups. We hope you will find it useful for your business.

Happy reading!

Part 1 of 3: Mistakes concerning IP in general

Mistake #1: Believing that IP issues don't affect you

Some companies don't put too much thought into intellectual property considerations, either because they feel they don't have any intellectual property worth protecting, or because they simply don't want to go through the trouble of obtaining such protection.

While refraining from obtaining IP protection might, in rare instances, be a viable business decision, that does not mean that your company should ignore IP considerations altogether. This is because of the existence of third-party intellectual property rights.

As an example, if your business sells or uses technology that has already been patented by a

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competitor, or your business uses a trademark that is confusingly similar to that of a competitor, then said competitor may be able to sue you for infringement, regardless of whether or not said infringement was deliberate.

This is why it is always important to consider third-party IP rights, regardless of the nature of your business activities, and regardless of whether you intend on obtaining IP protection.

Mistake #2: Believing that IP will cost you too much

Many business owners think that intellectual property is too expensive to warrant spending money on when their company is just starting out.

However, while obtaining intellectual property rights can sometimes be an expensive process, it is important to remember that investing in your company's IP rights is just that: an investment, one that can result in the creation of a valuable asset for your company. This can include a trademark registration for a brand that, over the years, will become incredibly popular, or a patent for a highly sought-after piece of technology.

In fact, if properly protected, a company's intellectual property assets can easily become more valuable than any physical asset. And just like any other valuable asset, it will increase your company's worth and make your business all the more appealing for potential investors.

Mistake #3: Hoping for the intervention of the "IP police"

Some entrepreneurs believe that once they have obtained an IP right, the government will be the one to enforce it with their competitors. This is unfortunately not the case.

It is up to you, as an IP owner, to monitor the market and ensure that your competitors don't infringe your rights. Should you fail to do so, you'll be leaving the door wide open to those who would wish to imitate your products and services.

In addition, you even risk losing some of your previously acquired rights. For example, your trademark could become non-distinctive—meaning you would no longer be able to protect it—if you were to fail to react and let a third party copy it. Reacting to every single situation isn't necessarily called for, but each case should be examined in order to determine what consequences third-party use might have on your rights as a holder.

Should you discover, in your market monitoring, that a third party is imitating your intellectual property, talk to your IP advisor or lawyer. They can help you decide on an effective first approach to take, either on your own or through them. Said approach might involve asking the third party to cease its activities, claiming compensation for prejudice caused, requiring that certain modifications be made to the use, and/or negotiating a coexistence agreement or a license with or without royalties.

Mistake #4: Believing that you won't be able to "defend your IP"

We sometimes hear entrepreneurs say that securing IP rights isn't worth their while, as they won't

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be able to “defend their IP.” They essentially believe that the only purpose of holding IP rights is to sue competitors who imitate their products and services, which they necessarily believe is very expensive.

The result is that they fail to protect their innovations and let their competitors appropriate their products and services. Without IP rights, it is true that they have little recourse.

In reality, a lawsuit is usually the last option to use against competitors. Many other steps can be taken before resorting to a lawsuit. As is the case for other IP owners, holding IP rights may allow you to:

- Significantly discourage competitors from imitating your products and services by clearly indicating that you hold IP rights; and

- Negotiate agreements with your competitors who would like to imitate or who are already imitating your products and services.

Remember that only a small minority of IP disputes are resolved in court; all other disputes are resolved out of court quickly and at relatively little cost.

Mistake #5: Launching your product or service on the market and waiting to see if it will be a success before obtaining IP protection

Some entrepreneurs, preoccupied with saving money, launch their new products or services on the market and wait to see if they are successful before protecting them with IP rights. This constitutes a serious mistake, because some IP rights may no longer be available. More specifically, once a product or service is launched, the possibility of protecting it by patent or industrial design is no more. Note that some exceptions apply, particularly in some jurisdictions that allow grace periods.

If you are considering protecting one of your products or services by patent or industrial design, you should start the protection process ***before*** you launch your innovation on the market. However, said protection process doesn’t need to be completed in order to begin marketing your product or service.

Conclusion

Lavery’s intellectual property team would be happy to help you with any questions you may have regarding the above or any other IP issues.

Why don’t you take a look at our Go Inc. start-up program? It aims to provide you with the legal tools you need as an entrepreneur so you can start your company on the right foot!

Click on the following links to read the two previous parts. Part 2 | Part 3

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