

# **SME CONFERENCE 2010**

**“Managing Intellectual Property: Valuing your Ideas”**

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## **What is Intellectual Property?**

Intellectual Property refers to creations of the mind, inventions, literary and artistic works and symbols, names, images, and designs used in commerce.

Intellectual property is divided into two categories: Industrial property which includes inventions, trademarks industrial designs and geographic indications and

Copyright which includes literary and artistic works such as novels, poems, plays, films musical works, artistic works such as drawings, paintings, photographs and sculptures and architectural designs.

## **What kinds of intangible assets might constitute intellectual property?**

Intangible assets that might constitute IP include but are not limited to the reputation of a business, the use of contracts to protect the IP assets of the business, confidential business information, customers' lists, sales tactics etc.

## **Do small businesses really have IP?**

Yes, every single small business has IP. The IP is in the brand of the goods and services that are provided, which should be protected with a registered trademark under **The Trade Marks Act 1999**, and there are over forty classes in which this registration can be done.

The way the product looks is another example of IP **The Designs Act of 1937** recognizes 16 classes in which designs may be registered and therefore protected

The process or way of doing something is another example of IP that a small business may have and the provisions of **The Patent Act of 1857** allows you to apply for a patent to protect an invention or a process.

The one method of IP that you are probably most familiar with is **copyright** that may be used to protect not only songs but also works as mentioned previously literary and artistic works such as novels, poems, artistic works such as drawings, paintings, photographs and sculptures and architectural designs. **The Copyright Act of 1993** allows for automatic protection once you have fixed the work, that is reduced it to a tangible form.

If you are producing an authentic Jamaican product and using traditional knowledge to create that product or good then you may have a possibility of registering that product under **The Protection of Geographical Indications Act 2004**.

### **How much can intellectual property be worth?**

An example of the worth of intellectual property is through the earning of royalty income through trademark licensing. The acquisition of a character license by Warner Brothers (yes I know it's not an SME) however the creator could perhaps have been described as a small enterprise. The license was divided up among several of its business partners and licensees. "Hasbro got the rights to distribute trading cards and youth electronic games; competitor Mattel would make toys, another company got the rights to make 'interactive candy';

Electronic Arts, the California software entertainment company was licensed to make computer and video games and Coca Cola secured other rights to the marketing of the first Harry Potter film. The genesis of all of this was the Copyright held by the author of a children's book series JK Rowling.

Harry Potter is now a licensed trademark and the rest is history.

### **How can a small business protect intellectual property across jurisdictions? Is it only about patents?**

Patent protection like trademark and industrial design protection is limited to the jurisdiction where you obtain the protection.

**The Madrid Protocol** allows for protection of trade marks in several countries, also under the **Patent Cooperation Treaty** protection may be obtained in countries that are signatories to the treaty and designated by the applicant.

Under the CARIFORUM EPA there is a best endeavour clause indicating that Jamaica will become signatory to these treaties by the year two thousand and fourteen (2014).

## **What are the costs and timelines involved?**

**Copyright** costs nothing, we do recommend that you do the poor mans copyright which entails sending a copy of the duly signed and dated copy of your work back to yourself through registered mail. On receipt, you retain in a safe place to be produced as evidence if the work is infringed.

**Trademarks**, the registration process from application to registration may take between seven and twelve months and will cost just under ten thousand Jamaican dollars to register in one class, however the fee is payable in installments. Initially you will need three thousand five hundred dollars to commence the process. \$1000 for each additional class

**Designs**, the process to obtain a Registered design will take approximately three months and costs \$1500 for registration of one design in one class.

**Patents**, the process takes between nine months and two years and cost less than one hundred Jamaican dollars.

It must be stated that during the process of registration you are free to use your IP as the step of registration in the absence of opposition to same means that you are most likely to be granted the exclusive right of exploitation.

## **How do lenders and venture capitalist value intellectual property?**

**This response is an extract from an ACCA technical paper on IP and the practicing Accountant January 2010**

### **The Cost Method**

“This involves looking at the cost incurred in developing or creating the IPRs and what it might cost to recreate the IPR or to develop a similar product or service. This method appeals to sellers because it seems fair to them that they should receive at least as much as they have spent on developing the IPRs, but it is unsatisfactory for buyers because the costs incurred in the creation of IPRs have no bearing on the income that they generate in the future or the amount the buyer will have to spend to get the product to market.”

### **The market value method**

“In theory, a business owner should be able to value IPRS by looking at sales and licenses of similar rights. This method is, at least, objective and fair to both parties, In practice it is often difficult to use because it is difficult to obtain information about other transactions, few transactions are sufficiently similar to allow a valid comparison, and one is unlikely to know whether, for instance, a lower royalty was agreed because the buyer/licensee bought some other advantage to the seller/licensor.”

### **The Income or economic benefit method**

“The thinking behind this method is that IPRs are worth only what they will generate in future. It essentially involves looking at the future income that an IPR might generate and the cost of generating that income over the life of that IPR. The result is then discounted to allow for risk and the cost of money, the end result being the net percent value.

In practice it is often difficult to estimate the economic life of the IPRs and factors such as the strength of the IPR the size of the potential market, the nature of the competition and the cost of registering and defending IPRs all need to be taken into account.”

### **What can small business and their accountants do to maximize these valuations?**

Conduct an IP audit. Determine what IP assets you own. This is necessary to identify, monitor and value your IP assets to ensure that you are making the most out of them. Your assets include confidential information, trade secrets, trade names, trademarks, domain names, industrial designs, copyright, and patents.

Do you have a franchise, license and distribution agreements, publishing rights, computer software, management expertise?

Have you registered where possible your IP assets? Are they registered only in Jamaica?

Do you own the IP assets that you are using? Can you prove ownership?

What contractual agreements do you have with your employees? Are they allowed to use the information that they obtained immediately upon leaving your employment? (DB&G example)

### **What are the attitudes of small business clients and their accountants towards IP and IP protection?**

The experience of our Office has been a mixture of recognition of the importance and ignorance of the benefits to be obtained by IP protection.

Some SMEs recognize the importance of protection to be able to exploit their assets and others adopt a wait and see attitude or unfortunately seek to obtain protection after they have lost the ability.

You cannot protect an invention or process once it has been revealed and the same is true for an industrial design.

Someone else may register your trademark before you do... then you will have to prove that it was yours.

### **How can negative or passive attitudes be overcome?**

The attitudes can only be overcome by disseminating and sharing information, of the benefits that may be or have been obtained through the effective use of IP as a significant asset of the business.

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Sources:

World Intellectual Property Organization website.

ACCA Technical Paper January 2010

Idris, Kamil **Intellectual Property A Power Tool For Economic Growth**