

5 THINGS YOU HAVE TO KNOW



LEGAL WRANGLING

WHY PROTECTING YOUR IP MIGHT BE THE MOST IMPORTANT THING YOU CAN DO

What's the worst that can happen if you do not protect your company's intellectual property? Worst case scenario – you can lose everything you've worked so hard to build. **BY KYLE TORRINGTON**

IN THE CONTEXT of a cut-throat business world, the naivety of a first-time entrepreneur or SME owner can often lead to dire consequences for the entrepreneur's business. If intellectual property is not adequately protected, ownership in, and to, it can be lost in its entirety, or it was never actually owned at all in certain circumstances. This can leave an entrepreneur with an empty shell of an entity, gutted of its most important innards, no longer able to operate efficiently, effectively, or at all.

This article explores some of the worst consequences of what may happen should a business not effectively protect their intellectual property.

1 Think you own the copyright to the logo, website or app you outsourced? Think again

If you are like most business owners out there with a tech idea, but no ability to bring the technological aspects to life because you are a non-technical founder, you may use the services of an outsourced software development agency. Watch out!

By default, works created from tasks like these are the subject of a copyright, such as the look and feel of a website, or the source code comprising it. In addition, aspects such as logo design, outsourced blog and content articles, as well as technical drawings are all the subject of a copyright which, if outsourced to an independent contractor,

are, by default, owned by the independent contractor.

So what does the above mean? Well, in the case of you outsourcing the development of your new Uber for X concept, should you and your developer ever get into a spat, the developer can effectively hold you ransom as he owns the rights to 'your' software.

This will only change if you make your independent contractor sign a written Assignment of Copyright Agreement, which transfers the rights back to you.

Luckily, Legal Legends offer a free downloadable version of the Assignment of Copyright Agreement, which can be found here:



2 Have you been funded by a government programme? That could mean the government owns the right to your IP.

Although not yet brought into law, should the Copyright Amendment Bill 2017 be enacted in its current form, you will not own the copyright to any of your works which are funded by government. These copyrighted works will be owned by government along with, by default, the Guptas, and a Copyright Assignment Agreement will not change this state of affairs. So, watch out government fundees!

3 What's to stop another entity from using your business name to ride your coattails?

You probably assume that by reserving your company name and registering your company, you own the exclusive rights to the use of your company name. You are wrong!

By securing a company name, all you do is prevent another company from registering a confusingly similar company name to yours. This does not mean that a sole proprietor, partnership or other entity [other than a company] can't utilise a similar name to yours, or that someone else out there who has been using a very similar name to yours for many years, can't continue using it. On the contrary, if that person has registered the name as a trademark, they could potentially force you to change your company name.

So, what is the solution? Ensure that when you register your company, reserve both the

company name and register the name as a trademark.

4 Protect your invention from the dangers of the public domain.

Let's say you've invented a new kind of superconductive metal, or an incredible new propulsion mechanism that could get us to Mars at 99.9% the speed of light, you most likely will have a patentable invention on your hands.

Most businesses do not realise that as soon as a patentable invention is placed in the public domain before it has been registered as a patent, it voids any potential registration as a patent, and hence can be copied by anyone with a brain.

Solution? If you feel you have a patentable invention on your hands, speak to a patent attorney about the possibility of filing the patent before you go to market or make it available to the public.

5 Are your trade secrets at risk?

Although copyrights, trademarks and patents provide certain protective measures outside of any contracts, for all other aspects of intellectual property that cannot find protection in the above, such as trade secrets, you are not protected. This means that going into a meeting and disclosing your Uber for X concept to any person with a keen ear, could result in their copying your concept and using it for themselves.

A trade secret may exist where, for example, you are a master wheel builder of high performance cycling wheels fit for a peloton on the Tour de France. In this instance, your components for the wheels are sourced from suppliers all over the globe. Knowledge and access to these sources by others could result in them exploiting your suppliers and competing with you. Hence, this is your trade secret.

Entering into an agreement with whomever may have access to your trade secrets, binding them to confidentiality and not disclosing such trade secrets, and further binding them to not compete with you, will protect you from exploitation in the long term. **EM**



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