Exporting Intangible Business Assets

Seizing Opportunities in Trade Agreements

SPEAKER:

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Intellectual Property & International Trade

- Intellectual Property plays a pivotal role in international trade
- Addressed in several trade agreements
- E.g.:
  - WTO-TRIPS Agreement – minimum standards for IP protection, enforcement mechanism & dispute settlement
  - CARIFORUM-EC EPA – Chapter 2 on Innovation and IP

What is Traded?

- Tangible assets – products & services
- Intangible assets – IP & associated goodwill

Intangible Assets

- Very often more valuable than physical assets – up to 70% market value of a business

Intangible Assets

- Top Brands for 2011

– *Brand*	*Brand Value*
– Coca-Cola	72 M
– IBM	70 M
– Microsoft	59 M
– Google	55 M
– GE	42 M
– McDonald's	35 M

Source: interbrands.com

What is Intellectual Property?

- Legal term referring to:
  - » **Industrial Property** e.g. patents, Trade Marks, industrial designs, geographical indications, integrated circuits, New Plant Varieties, protection against unfair competition
  - » **Copyright and Related Rights**
  - » **Territorial –** protected within national borders

Types of Intellectual Property:

- **Trade-marks**: words, symbols or designs used to distinguish goods and services of one enterprise from that of another in commerce

- Protects your brand image, tradename etc.

Types of Intellectual Property:

- **Geographical Indications**: Identifies a good or service as originating from a specific geographical origin & which possesses some unique qualities or reputation that is due to the place of origin

Types of Intellectual Property:

- **Patents**: protect new inventions or improvements to an existing invention
- **Industrial designs:** protects visual 3D features of a useful article, such as shape, configuration and pattern

Types of Intellectual Property:

- **Copyrights and Related Rights:** protects artistic, dramatic, musical and literary creations

- **Integrated Circuits:** protects the 3D electronic circuit designs used in technology

Types of Intellectual Property:

- **Plant varieties**: Provides for the protection of new varieties of plants
- **Trade Secrets:** Protects confidential information which has commercial value

Protecting IP in Export Markets:

Key Considerations:

- IP is critical component in an export strategy
- All tangible products will have some form of IP associated with them
- Essential to conduct an IP audit of all products and services being exported

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Protecting IP in Export Markets:

Key Considerations:

- Ensure your IP is protected nationally
- Effect registration with foreign IPO in the country where you want to export prior to exporting
- Product pricing, brand recognition & brand value in export market (GIs, well known trademarks)

Protecting IP in Export Markets:

Key Considerations:

- Adaptation of product design, packaging & trademark for the export market
  - E.g.
    - Irish Mist in German translates as Dung/muck
    - Chevy Nova – no va means “it won’t go” in Spanish markets
    - Pepsi’s slogan “Come alive with the Pepsi generation” in Taiwan translates as “Pepsi will bring your ancestors back from the dead”

Protecting IP in Export Markets:

Key Considerations:

- Ownership of IPRs should be addressed with partners as well as terms & conditions of use

- Exhibitions & trade shows in export market – care must be taken to not make a public disclosure without protecting your IP within a specified timeframe

Protecting IP in Export Markets:

Key Considerations:

- Make full use of confidentiality and NDAs especially in relation to trade secrets

- Recordation & Taxation issues related to licensing and assignment of IPRs

Protecting IP in Export Markets:

Key Considerations:

- Recall that IP protection is territorial and protected for limited timeframe
- Be cognizant of applicable law in contracts
- Laws and procedures for protection of IPRs can differ among jurisdictions e.g. duration of protection of CR

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THANK YOU

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