

# Lock down your IP

How to protect your IP and what to do if you are accused of infringement yourself **Interviewed by Lisa Murton Beets**

**T**he first and most important thing a company can do to protect its intellectual property (IP) is to identify it.

“A business cannot protect its IP assets if it is unaware of the existence and significance of those assets,” says Robert G. Schuler, director and chair of the Intellectual Property area at Kegler, Brown, Hill & Ritter. “An IP audit is one way a business can identify its IP assets and ensure that proper steps have been taken to protect those assets.”

Schuler also says it's important to educate your work force on the basics of intellectual property. “It does a business little good if the only ones who are aware of the company's IP assets are those in upper management. More importantly, an educated work force is less likely to infringe another company's IP, putting their own company at risk.”

*Smart Business* asked Schuler for tips on protecting intellectual property.

## Why do businesses struggle with identifying their intellectual property?

Companies struggle for two primary reasons. First, when talking about intellectual property, you're talking about intangible and quite often very abstract rights. It's one thing to know how many widgets you have. It's quite another thing to know how many copyrights or trademarks you may be using in the business, because that requires an understanding of what is subject to copyright or trademark protection.

Second, quite often the decision makers at a company are not on the front lines; they're not actually in the room when various inventions are conceived or when marketing campaigns are developed. They may not be aware of the key IP that is being developed. This disconnect between employees and decision makers can result in a failure to take the proper steps to protect intellectual property and, accordingly, a loss in value to the business.

## What areas are commonly overlooked?

It really depends on the business. If your company is heavily focused on technology research and development, you are more likely to be focused on patent or trade secret protection and may not be as focused on issues relating to



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trademark and branding. Conversely, if your company concentrates on marketing, you may be focused on trademarks and may overlook the value of other key IP assets, such as your trade secrets and know-how.

If I were to pick one category that is most often overlooked, or undervalued, it would be the business's trade secrets, which comprise the truly confidential information and know-how that gives a business its competitive advantage. The law requires that you take reasonable steps to keep the information secret, and, if there is ever a dispute, the court will scrutinize the steps you took. So someone within the organization needs to be aware of the business's trade secrets and ensure that appropriate measures are in place, which includes the use of non-disclosure agreements and appropriate IT security.

## How can a company identify its intellectual property?

The first step is to have an intellectual property attorney do an audit to identify your IP assets and the steps you have taken to protect them.

The audit can usually be done within a few hours for a small company or within

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a day or two for a larger company.

Reach out to the attorney early on and he or she can identify who in your company will need to attend the meeting and let you know what those people will need to bring to the meeting.

Make sure all the right people are meeting with the attorney. If R&D is involved, have the head of the division there; if marketing is involved, have the person familiar with all marketing efforts present.

The attorney can also suggest best practices to help a company identify and 'mine' its valuable IP assets more easily going forward, which can include training, invention disclosure forms, and appropriate clearance and review procedures for marketing collateral.

## How can a company protect its assets?

With respect to trademarks and copyright, if they are important to your business, you need to register them — period. Doing so will significantly enhance your ability to protect them.

In regard to new inventions, processes, and designs, talk to a patent attorney. If they are subject to patent protections, the patent can give you exclusive rights for a certain amount of time and the benefits can be immeasurable.

You also need to think globally. Make sure you've taken the proper steps to protect your trademarks in key foreign jurisdictions in which you conduct business. In regard to patent protections, be sure your patent attorney is aware of all countries in which you are making or selling your products so that a proper strategy for protection can be put in place.

## How should a company proceed if it is accused of infringing on someone else's IP?

The most important advice is this: Get experienced legal counsel involved immediately. If the attorney can put together a well-reasoned, researched response out of the gate, you'll maximize your opportunity to avoid costly litigation. <<