



CONSULTANCY FOR THE DEVELOPMENT OF A CASE STUDY
OF THE PROTECTION OF A BUSINESS' INTELLECTUAL
PROPERTY

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Introduction

In almost every country worldwide there has been significant focus on intellectual property rights (IPRs) and the role these play in economic development.

IPRs are exclusive rights which means that the rights holders alone determine how these rights are used and by whom. It is this exclusivity which makes them a particularly valuable business asset as through the commercialisation and enforcement of these rights, rights holders can prevent or limit competitors' activities in the marketplace. For example, your competitor cannot use the same name for their product and cannot use your invention or design unless you give them permission to do so through the grant a licence.

IPRs are legally protected for creations of the mind and cover a very broad field which includes:

1. Trademarks – names, signs, logos and other forms of distinguishing the goods and services of one business from another e.g. Red Stripe
2. Patents – technical inventions, e.g. the Diesel engine
3. Industrial designs – the aesthetic appearance of products e.g. the design of the i-Phone
4. Geographical indications - names and signs used to indicate that a product or service originates in a territory and has specific, unique qualities because of its place of origin, ingredients and/or production techniques employed e.g. Scottish whiskey
5. Copyright –artistic and literary creations e.g. a John Grisham book

It is important to understand IPRs are a form of property and can be treated similarly, that is, these rights can be sold, licensed, transferred and in some jurisdictions used as security. Financially they are business assets just as land, machinery or capital except they are intangible in nature.

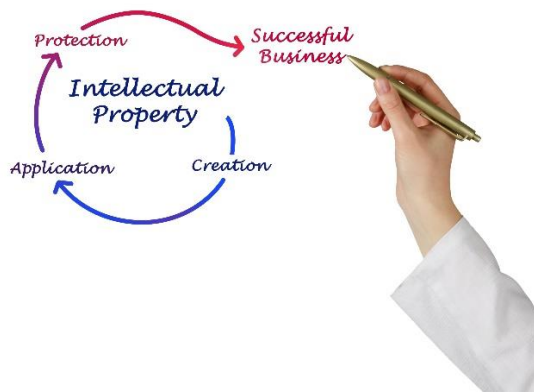
If you have invested in developing your product the ability to limit competitors can give you a major competitive advantage in terms of being able to build your brand and to establish market share.

Problem Statement

Technological changes have reduced product life cycles and the level of investment required to enter markets, coupled with the internet which has enabled a revolution in global distribution, mean that companies are able to offer similar products at comparable quality and cost. As a result, they face intense competition and as a consequence must invest more in innovation and creativity in order to distinguish their products and services, develop their brands and stand out in the market. As these creative investments are primarily intangible in nature, they rely on IPRs for protection. Nonetheless, in the Caribbean the use of IPRs by businesses for competitive advantages has been disappointing despite most regional governments having recognised the increasing importance of IPRs and ratified many of the key international treaties and even though most legislation meets the minimum standards required internationally. Most IPR registrations particularly in terms of patents and trademarks are on behalf of international rights holders, compared with their Caribbean counterparts who for the most part try to avoid the use of IPRs due to a lack of understanding, appreciation

about their value or perceptions about the costs involved.

Nonetheless, if regional products and services are to be globally competitive, business people must move with some urgency to incorporate intellectual property strategies in their overall business strategy. This includes assessing and registering rights in key markets and effectively commercialising and enforcing these rights to add value through brand development and technological advances as well as to improve their competitive position.



Credit: <http://www.startupbuildupsellup.com/wp-content/uploads/IP-selling-a-business.jpg>

Goal and Scope

In light of the current situation, the Caribbean Export Development Agency (CEDA) understands that “intellectual property is an important business tool that must be integrated into an entity’s business strategy”. It is necessary for businesses to develop an appreciation for intangible business assets similar to that for traditional tangible assets and to achieve this CEDA has commissioned the creation of a business case study to build stakeholder knowledge of the importance of identification and protection of a business’ intellectual property. This business case study has a specific focus on

the role of intellectual property (IP) protection in brand development. It focuses on Marie Sharpe’s Fine Food Limited which is a well-known Belizean agro-processor which has made a name for itself as a manufacturer of a line of pepper sauces using the local habanero pepper. The company is a fine example of a successful family-owned business which has been able to establish a good reputation at home and abroad for its products and a growing market. But it has not been easy, and a number of stumbling blocks were encountered. We look at how the firm was able to overcome these challenges, exploit its opportunities, learnt from its lesson and retain the position it has attained.

Risks

If IPRs are not used as integral business tool by regional entities the following risks will arise:

1. More limited growth prospects - The growth of regional products in international markets will be stymied or even blocked by competitors;
2. Brand theft and misuse - Regional brands which have achieved a good reputation in the marketplace may lose their position where competitors imitate or misappropriate that reputation;
3. Collapse of innovation - The level of creativity and innovation in the region will decline as businesses are unable to secure the necessary rate of return on investment as the price premiums which reward brand development will not exist.

The Importance of Intellectual Property in Brand Development

Branding, Marketing and Advertising

First, marketing, advertising and branding are distinct. Marketing is the umbrella term which covers both branding and advertising and is defined as the process of developing, promoting, selling and distributing a product or service to a specific audience. On the other hand, advertising is the repeated communication to consumers to sell your products or services. In this case study we will focus specifically on branding, and touch on some aspects of marketing as well.

What is a brand?

In common language, “brand” may mean the visual and verbal elements such as the logo or trademark and slogan which a company uses to differentiate its products from those of competitors.

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Credit: http://www.youngmarketingconsulting.com/wp-content/uploads/2016/06/color_bubbles.png

In other cases, the idea of a brand is wider in scope referring to a group of elements including the marketing collateral such as product design and advertising visuals.

Another definition of a brand extends beyond the visual and verbal elements and marketing collateral and includes the entire organisation speaking to the organisational culture and business strategy which differentiate it in the market place. This is referred to as an “organisational brand” and an example is Apple which has a reputation of being an aggressive innovator known for the technological superiority of its products, having a corporate culture which encourages creativity and “thinking outside of the box” and worker friendly environment

Goodwill

In all cases the key underlying objective in brand development is the achievement of goodwill for the company. Goodwill is the value gained from the good reputation among consumers for its products, customer service, high quality etc. It is a company’s goodwill which aids its long-term sustainability and the maintenance of market position.

Many of the elements which make up a company’s brand are actual protectable by intellectual property (IP) rights. This is one of the primary reasons why a company should consider IP issues early in the development of its business plan especially in terms of its branding strategy.

Types of Intellectual Property Rights

Trademarks



Credit: <http://www.qualitypoultryproducts.com>

A trademark is a representation used to distinguish a product or services of one business from the other in the marketplace.

A trademark may be:

- a name, including personal names
- word,
- phrase,
- design,
- numerals,
- letters,
- the shape of goods or their packaging,
- sign or logo

A trademark must be:

- (1) capable of being represented graphically and
- (2) distinct, that is, it must not be descriptive, so for example, you cannot use "Apple" for "apples". Generally, trademarks which are made up (or fanciful) names are the most distinguishable (and easier to register), such as, Xerox.

Some mistakenly believe the incorporation of a business is the same as the registration of a trademark, but that is not true. Business registration does not confer the exclusive rights of a trademark. The company registration only serves to establish the business. This is the same with a registered domain name which does

not offer protection for use of the name as a trademark.

However, in terms of a strategy to build a strong brand identity, you want to ensure that you own: the company name, the domain name, the social media handles in addition to the trademark. This will limit the possibilities of confusion. Therefore, when you are thinking of a name for your business or product, first check to ensure that it is available in all the above areas and seek to register all simultaneously or as soon as possible. Furthermore, to further limit the possibility of confusion, once it is affordable, close variations to the name are also registered.





Rights Conferred by a Trademark

A registered trademark confers exclusive rights which means that for the territory for which they are registered no-one else can use the same trademark or one that is similar enough to cause confusion among consumers for the same goods or services without the permission of the trademark owner.

Trademark Registration Process

The trademark process takes approximately six months in Belize. It involves a search to avoid duplication; application for a unique trademark to be recognised for certain classes of use, in specified territories

Table 1 Trademark Registration Process

As soon as you have identified a trademark the search should start	1 - Search 	Search for availability of trademark: A trademark is usually granted to the first person to apply for the trademark and this means that you should have a search done to ensure that no-one else is using the same or very similar trademark and you should also search online where the name maybe already used as domain name which will be a problem when you seek to set up your online presence.
Application is stamped within 1 week of filing. Examined within 2 months of filing date.	2 – Application 	<p>A registered trademark is obtained by the filing of an application with the relevant office. In Belize, this is the Belize Intellectual Property Office (BELIPO) and it costs BZ\$425.00 for one class.</p> <p>The application form for a trademark must provide:</p> <ul style="list-style-type: none"> • the name and address of the applicant, • the goods or services to which the trademark will be applied, • graphical representations of the trademark and, • whether it is already being used. <p>The effective date of registration of the trademark is the date of application.</p>
Within 12 weeks of first publication of application.	3 – Publication 	The pending trademark details are published to make potentially interested persons to comment.
Within 6 months of filing date.	4 – Registration 	If there is no opposition from the public, then the applicant may successfully complete registration of the trademark.
You must renew within 6 months of expiration.	5 - Renewal	The registration is initially for 10 years and can be renewed indefinitely for subsequent 10-year periods.

Creating a Unique Trademark – Key Issues

To complete registration, a trademark has to be truly distinct in the territory where protection is being sought. Below are some key things to consider when preparing to apply for a trademark.

Table 2 Key Issues in the Registration of a Trademark

1	Trademark Classes	Trademarks are registered by classes, which are defined by an international classification system - the Nice Classification (http://www.wipo.int/classifications/nice/en). For example, sauces and condiments are registered under class 30. A product or service may be registered under multiple classes depending on the use or planned use of the trademark. The cost of each additional class registered with BELIPO is BZ\$75.00. You can register up to 5 classes in one application in Belize.
2	Territory	A trademark is registered on a territorial basis, that is, you can apply for a trademark solely for Belize. This means that where you are trading in other countries for each of these where you want to protect your trademark you will need to apply for registration in each.
3	Use	In some countries, you must prove that you have been using the trademark within a specified period in that country otherwise the registration maybe cancelled. In Belize, the period is five years.
4	Colour	The trademark can be registered in black and white without limiting use in colour. The key considerations are the overall impression given, whether the addition of colour would change that impression and whether the colour represents a distinctive aspect of the trademark. In these instances, you should register the colour version.
5	Generic Names	To maintain the registration of the trademark indefinitely, the trademark must remain distinctive and not become generic so for example, Kleenex, JetSki, Aspirin, Velcro and Bubblewrap which are generally used for similar products. You should always apply the registered trademark symbol® on your products or services. You can also apply the symbol™ which indicates to the public that the name, sign, symbol etc. is being used as a trademark prior to registration.

Trademarks in Your Export Strategy

Where the company wants to export then it is important to consider registering the trade mark in the markets of interest. This is important because a competitor who recognises the potential value of your product in the market may very well register the trademark as theirs and you will not be able to stop them. In this case, since a trademark registration is territorial in nature, a trademark application must be made in each country (export market) and the relevant fees paid. As with the national trademark searches have to be done to make sure the trademark is not already being used in that country.

By signing the international convention called the Paris Convention for the Protection of Industrial Property¹, Belize has secured the benefit of “priority” for persons first file a trademark application. “Priority” last for six months date from the date of application, and allows the Belize applicant limited exclusivity in another Paris Convention signatory country because it prevents a third party from seeking to register the same trademark in the second country during the six-month period and gives the Belize applicant time to submit an application abroad.

Although Belize is not a member, there is an international system called the Madrid system² which allows for a single application

to be made for multiple countries. Although this does not guarantee you will be granted the trademark in each country, it does save money.

Get Up or Trade Dress

For companies seeking to develop and protect their brand, there is also protection for the “get up” or trade dress. That is, the visual elements and appearance used to establish recognition among consumers, in addition to trademarks and design. This type of protection applies to the overall appearance of your product packaging, décor and design which are distinctive enough so that there is an association developed among consumers. Unlike a trade mark or design which protect specific aspects, get up and trade dress address the overall appearance.

An example would be the “get up” of Tiffany’s and the appearance of its packaging. In Belize, as in the rest of the Caribbean, there is no statutory right for “get up” but protection maybe achieved through the use of a combination of industrial design and trademark protection for the various elements.

In the USA, there is a protection for trade dress (get up) under trademark legislation once it is distinctive and consumers associate it with the company. Protection is obtained through the filing of a trademark application which includes the elements of trade dress

¹ The Paris Convention for the Protection of Industrial Property 1883 is one of the oldest for the protection of intellectual property and covers patents, trademarks, industrial designs, trademarks, geographical indications, utility models and unfair competition.

² The Madrid System for the International Registration of marks is a cost-effective process for

the registration and management of trademarks globally. Not only can you file a single application and pay a single set of application fees covering 116 countries, you can also modify or renew trademarks using this system. The legal basis of the system is the Madrid Agreement Concerning the International Registration of Marks of 1891, as well as the Protocol Relating to the Madrid Agreement (1989)

you are seeking to protect. The same protection offered to a trademark owner applies.



Credit:
https://image.ec21.com/image/brandjewel/simg_GC05380861_CA05437284/Jewellery-Packaging-Sets--Jewelry-Box--Bag--Pouch-Custom.jpg

Industrial Designs/Design Patents

Although there is generally more focus on trademarks, a company can own multiple intellectual property rights, often providing various levels of protection in different ways for the same products or services. One of those rights which could be useful is the industrial design, called the design patent in the USA. This is used to protect the appearance of a product but does not include any aspect which concerns the technical aspects related to how it functions. In other word, it only applies to the aesthetic aspects.

The rights granted are exclusive which means that the owner can prevent others from using the same design by making, selling, importing or exporting products bearing the design. It does not matter if the

An example of a bottle with an aesthetic design feature.



Credit:
<https://thedrinkshop.s3.amazonaws.com/images/products/main/14284/14284.gallery.jpg>

design was copied or coincidentally, the third party came up with the same design.

Industrial Design Registration Process:

1. Cost: In Belize, the cost of registering an industrial design is BZ\$325.00 and each additional design is BZ\$50.00, where there is a series of designs for a line of products.
2. Duration of Registration: The registration lasts five years and it can be renewed for an additional five years. Although the right in the design is only for a maximum of ten years, during this time, awareness among consumers of the product should have developed.
3. Application form: To obtain a registered design you need to complete an application which provides information on the identification of the applicant and a graphical representation of the design.

Novelty: The design must be new meaning that it has not been previously disclosed in any form to the public.

Passing Off

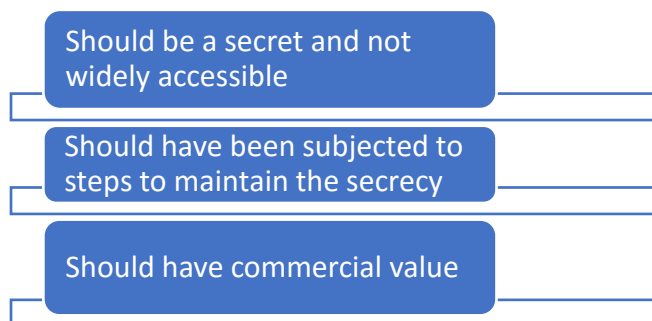
In some countries there is unfair competition legislation which seeks to protect against deceptive business practices that causes economic harm to other businesses or consumers without the need to have a registered IPR. This is particularly useful if you do not have a registered trademark or industrial design but still need legal recourse where a competitor seeks to take unfair advantage. However, Belize does not have this type of legislation but you can still rely on “passing off”.

If someone decided to “pass off” their product or service as yours then there is the possibility to take legal action. To bring an action of passing off you will have to:

- (1) prove that you have goodwill, that is there is a quality associated with your
- (2) products or services based on their reputation with consumers which, has been damaged by the
- (3) misrepresentation of your competitor.

You should note that a passing off action can be expensive, and it may be difficult to meet the burden of proof for example, establishing goodwill.

To be considered a secret, the information:



Trade secrets/Confidentiality

Although not an IPR, trade secrets must be given due consideration as a form of protection of the company’s intangible assets. The information which is kept secret can be any business secret which confers a competitive advantage: a new technology, new processes, market entry plans or a recipe.

Unlike most forms of IPRs trade secrets do not rely on registration or formalities and once the information is maintained as a secret, the protection can continue indefinitely. In this regard it certainly represents an economical choice. Some countries such as the USA have legislation for trade secrets but in Belize and many

other common law territories protection is provided under the law of confidence.

If there is an unauthorised disclosure the above must be proven if the court. However, the above requirements can be met by using non-disclosure agreements with staff and third parties to whom some disclosure is necessary.

It is important that you bear in mind that unlike with IPRs this form of protection does not provide exclusivity so that if a competitor independently develops, for example, a process which is the same as yours, you cannot prohibit them from using the process.

The Management of Intellectual Property Rights

The Ownership of Intellectual Property Rights: Employees

The IPRs in the creations and innovations of employees may by law be owned by the employer in so far as these activities fall within their job description. For example, the Belize Industrial Designs Act Cap 254 provides,

s. 4(5) “Where an industrial design is created in execution of a contract of employment, the right to the industrial design shall belong, in the absence of contractual provisions to the contrary, to the employer”

Where employees create products or develop innovations through activities which fall outside the scope of their job description, they may be able to register intellectual property rights and claim ownership of the work. So care should be taken to specify IP ownership with employees in contracts. Key factors to take into consideration other the job description are:

1. Did the employee create the product on the job?
2. Did the employee use the employer’s facilities and materials?

Even if the employee did not create the product on the job it may be useful to consider the situation from a position of fairness when the product adds value or if it is not a product but an improvement to operations for example, it reduces costs, then it would be worthwhile to compensate or otherwise recognise the employee’s contribution.

In this regard, ideally all companies should have an intellectual property policy to provide clarity as to how the various situations are assessed. Furthermore, it is good practice and in some countries a legal requirement, that all employees are provided a written job description which should be reviewed and amended from time to time to reflect what employees actually do.

An Example of How to Address IP Issues with Employee Innovations

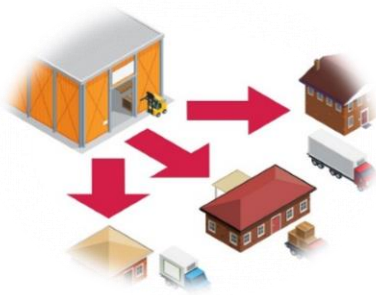
An example is where an employee, who is employed as an engineer designs a piece of machinery to meet some specialised need of the company. He works on this during his regular work hours and uses the company’s resources to make the new machine which is successfully deployed by the company allowing it to manufacture a new line of products. These products eventually become the leading product of the company. It is reasonable to take the position that the engineer was simply doing his job but given the increased sales and presumably, revenue, it would be equitable to financially and otherwise recognise the engineer’s contribution.

Another issue which arises based on the above example would be to consider the wider economic value of the machinery which might be subject to legal protection as a technical invention if it meets the requirements for a patent. The commercial potential of these types of innovations should also be carefully considered by companies as there may be opportunities to license the technology to other companies and thereby create another source of revenue.

Independent Contractors, Consultants, Interns and Others

Other than employees, you will also have to consider agreements with independent contractors, consultants, interns, web developers and others. In all instances, unless specifically agreed otherwise, a written agreement stipulating the full transfer of rights in any creations and inventions to the company should be executed. Without this transfer of rights, you may find yourself in a situation where, for example, content is created for a company document or website or a logo, but the copyright is owned by the person contracted. In these cases, the company may face challenges when it later decides to make changes or to otherwise use the work as the permission of the rights holder will be necessary.

Distribution Agreements



Credit:

<http://www.allcanadian.com/images/distribution.jpg>

Distributors sell products for manufacturers in a specific territory. These agreements can be exclusive where the distributors only distribute a specific product or non-exclusive where the distributor may sell competing products. There are a number of advantages to be had in a distribution agreement such as easier market entry strategy, particularly in

an exclusive agreement as the distributor has:

- Familiarity with the market
- A network of retailers and,
- Incentive and will invest in the promotion of the product

A good distribution agreement is based on mutual dependence in the relationship as success will benefit both parties.

Problematic issues which may arise and should be anticipated in the contract are:

1. A third party may compete with the distributor
2. Upon termination of the distribution contract the distributor may access another supplier for the products and continue to distribute them
3. The distributor may affix labels and sell counterfeit products
4. On the other hand, the manufacturer may decide to enter the market and compete with the distributor

Intellectual property rights are relevant as before entering the distribution agreement the manufacturer should have a contract and systems in place to:

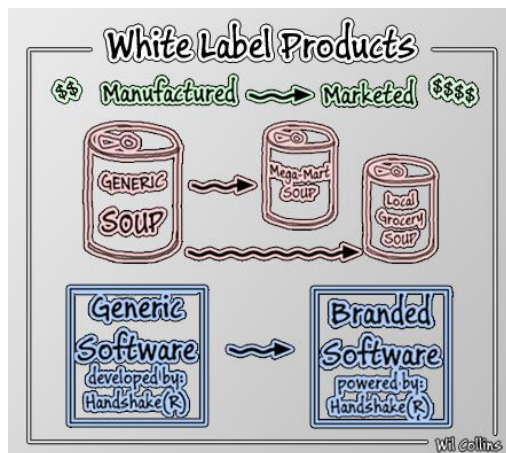
1. Monitor the territory to know how the products are entering in the territory
2. Ensure they own the rights in the trademark (and any other relevant IP) in the export territory and have a (trademark) licensing agreement which stipulates the terms and conditions under which the distributor can use the intellectual property;

3. Clarify the ability, or not, of the manufacturer to enter the market directly
4. Give the distributor a contractual right to enforce the licensed rights on behalf of the manufacturer and an obligation of the manufacturer to assist the manufacturer in the pursuit of any legal claims so that the manufacturer's interests are protected.

Using your Brand to Expand Your Market

White and Private Labels

For manufacturers one way of expanding your market is using “white” and “private” labelling. Due to the increased interest by consumers in niche, speciality products there is a demand by retailers to have products which they can place their own branding. This allows the manufacturer to increase sales and not have to undertake the costs of marketing and distribution especially in new markets while the retailer has an easy, less expensive and speedy access to product.



Credit: <http://www.handshake20.com/wp-content/uploads/6a00e54f92340888330168e5bd7eec970c.jpg>

However, this strategy requires that the manufacturer can satisfy the demand of the retailer. The manufacturer retains the intellectual property rights in the product, so it would continue to safeguard its recipes and process, but the retailer would apply its trademark and identity so that consumers associate the product as one of the retailer.

Trademark Licensing

In comparison to the strategy of using white or private labelling, a registered trademark owner can license the trademark allowing them to make and distribute products bearing the trademark in exchange for royalties, that is a percentage of all sales. The trademark licence can take various forms:

- Exclusive licence where the licensee (the party licensing the trademark from the trademark owner-the licensor) is the only entity which can manufacture the product bearing the trademark. The licence can be limited to a specific product or geographical location.
- Non-exclusive licence where trademark is licensed for use by multiple entities
- Sole licence where the licensee and the licensor are the only parties allowed to use the trademark

A trademark licence can offer a number of advantages to the licensor as it allows for:

- (a) faster market expansion where the licensee has knowledge of the market,
- (b) access to a distribution network and marketing capacity;
- (c) increased brand awareness and

- (d) you can increase your revenue streams not only from the sale of the original product but where the trademark is used for merchandising for example, on tee-shirts.

For licensees, it offers a speedy route to market and the advantages of a strong trademark. If you are going to consider the use of a trademark licence then you will need to have the ability to establish quality assurance systems to ensure that licensees maintain your standards. Otherwise, rather than strengthening the brand, they may damage it. You will also have to be able to monitor the use of the trademark for unlicensed uses and infringements and where necessary to enforce your rights.



Background – About Marie Sharpe's Fine Food Limited

In order to illustrate the actual impact of IPRs to the development of the company's brand, this case study has been developed using Marie Sharp's Fine Foods Limited, a Belizean company.

Company Mission Statement:

At Marie Sharp's Fine Foods Ltd. we are committed to producing safe and wholesome food products. Our goals are continuously improved product quality, good presentation, customer satisfaction, greater profitability, and an awareness of the social well-being of our workers, farmers, community, and a commitment in protecting our environment

The company started quite by chance in the late 1970s when Mrs. Sharp, who owned a farm, Melinda's Estates, responded to a request to plant habaneros for a local maker of pepper sauces. She grew over 1,000 pounds but the client only needed 50 pounds and so there was a substantial excess. Rather than letting these go to waste, Mrs. Sharp crushed the peppers and began to experiment making pepper sauces using a variety of local ingredients. She then

distributed these to family and friends who provided their feedback on the various concoctions. Based on the responses which were particularly favourable to some of the recipes, she decided to take the plunge to begin manufacturing commercially and Marie Sharp's Fine Foods was started in September 1981, although under a different trading name. As she already had a full-time job she had to work at night and with no manufacturing facilities, she would blend at home and have one employee bottle the product during the day.

Since then the company has grown significantly becoming fully mechanised and now has 50 employees and 10 farmers. The 10 farmers are employed the Melinda's Estates maintaining the farm where manufacturing inputs in addition to pepper, coconuts, tamarind, pineapples and carrots are grown. The company plays an important economic role in the economy beyond those persons it employs by developing a mutually advantageous relationship with local farmers. Ninety-two percent of all the company's sales and costs incurred are from the manufacture of pepper sauces, jams and jellies makeup 6% of sales and seasonings and juices the remainder. Only 5% of the peppers required are available from Melinda's Estates and the remaining 95% are sourced from 50 farmers in Southern Belize. The company provides loans/advances to these who pay off the debt through the supply of peppers. This is an important source of financing as most farmers lease their farmers and are unable to secure loans from banks. Other expenses are vegetables, bottles, labels, labour and the maintenance of machinery.

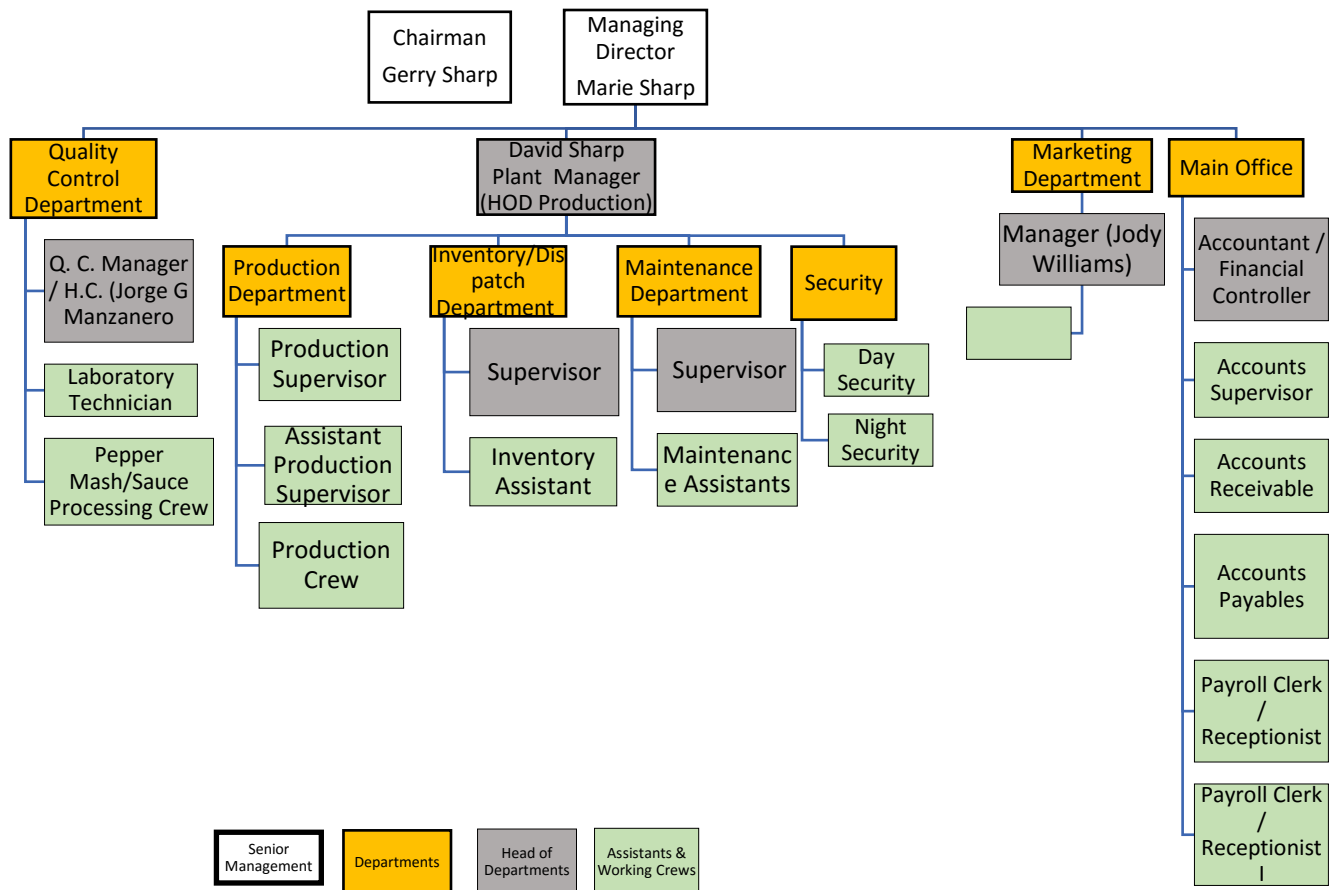
Most of inputs are sourced locally but some vegetables are sourced from Mexico or

Guatemala due to variabilities in supply. In the case of peppers, these are only sourced locally due to what is considered to be the uniqueness of flavour. However, this evaluation of the uniqueness is based on taste tests only as there has been no scientific testing. In terms of packaging material, most is sourced from outside of Belize. To maintain high quality and consistency of products but also to meet the food safety requirements locally and internationally, quality assurance procedures are emphasised, and the company is Hazard Analysis and Critical Control Points (HACCP) certified and also complies with the International Featured Standard (IFS) Food standard and plans to be IFS certified by the end of 2017. There is also a system of traceability that traces inputs from farm to table.

Marie Sharp's mainly manufactures pepper sauces (92% of sales), with relatively small product line of jams and jellies (6% of sales) and the remainder seasonings and juices. The company's product line has grown from around 25 products at the start to over 300 products today. Marie Sharp's is a major player in Belize, manufacturing 60 containers of pepper sauce annually of which 25 are sold locally and 35 are exported to India, Taiwan, Japan (where it is distributed through the MacDonald's chain), South Korea, Australia, Russia, UK, Germany, France, USA, Canada, Central America and Mexico. Japan is the leading export market commanding sales of 2 40-foot containers per month (each container contains 4000 cases) while for the USA 1-1/2 containers are shipped monthly. It is expected that the USA will become the leading export market overtaking Japan by 2018 due to the increasing sales through online platforms in particular Amazon.

The current organisational structure of Marie Sharps' is shown below:

Figure 1 Organisational Chart - Marie Sharp's Fine Foods



Belize Pepper Sauce in the International Market



Photo Credit: Damon Dahben/The Huffington Post

Pepper sauce falls within a wider tariff code HS 21.03.90 “Sauces and preparations thereof; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard” and in the commercial market is considered a specialty food. That is, a high quality, unique product that is distinct in origin, processing, demand or supply.³ The specialty food market is therefore attractive to some retailers because products can sustain premium pricing; however, some CARIFORUM pepper sauce processors may be challenged to maintain and expand supply. There is great scope for expansion of Caribbean exports of hot pepper sauce to meet increasing global demand, which is estimated to be 9.3% annually over the last decade, yielding a US\$1 billion market for hot pepper sauce.⁴ This compares to the wider

market for spices and culinary herbs at US\$4 billion⁵ and expecting to increase to \$6.5 million in the near future in response to drivers from the home cooking, food service and novelty interest market segments. Belize has been increasing its own contribution to this market with exports outpacing international growth trends, jumping from export earnings of BZ\$1.2 million in 2010 to BZ\$2.7 million in 2014, or 125% growth over the period.⁶ Exports to the U.S. and Europe have a competitive edge as they enter those markets under preferential terms of the U.S. Caribbean Basin Initiative and the CARIFORUM-EU Economic Partnership Agreement.

Primed for Success

There have been several success stories across the CARIFORUM Region, such as: Susie’s Hot Sauce, from Antigua and Barbuda, which exports throughout the Caribbean, Europe and the United States;⁷ Baron Foods, Saint Lucia; Grace Kennedy Ltd. and Busha Browne of Jamaica; Shisado of Suriname. Generally, sauce producers across the region are not only getting into the hands of consumers through food service locations, retail distributors and wholesalers which may/may not lead to repackaging, but also through online distribution platforms, such as Amazon.com.

The online e-commerce presence immediately propels Caribbean pepper

³ U.S. National Association for the Specialty Food Trade

⁴ Caribbean Export Outlook, 2016-2017. “Examining the Region’s Export Performance.” Pamela Coke Hamilton

⁵ International Trade Centre 2017. “Spices.” Available at: <http://www.intracen.org/itc/sectors/spices/>

⁶ Market Pointer, Hot Sauces to Canada, June 2015

Available at: https://issuu.com/beltraidemarketing/docs/market_pointers_-_hot_sauces_from_b

⁷ Caribbean Export Development Agency. “Success Story – Susie’s Inc.” Published: 12 Jun, 2013

Available at: <https://www.carib-export.com/success-stories/susies-inc-success-story/>

saucers into the international market depending on the reach of the platform and geographical block that it website may be subject to. Online presence also gives the pepper sauce visibility and persons can search for the product online after trying it or hearing about it. However, even with an online presence some effort is required to translate to ease of being discovered in a large and competitive market, so a strong marketing effort is still required. Online presence also amplifies and accelerates the need for intellectual property protection in more markets.

Key Strategies Used to Establish Brands in International Markets

Product

If you have ever wondered what makes pepper sauce hot, look to the peppers. There is actually a heat index using Scoville Units (Table 1 below). Marie Sharpe's Habanero peppers top the list, as does the popular Scotch Bonnet pepper, and contrast with milder yet popular varieties such as Jalapeno. So the pepper sauce product is distinguished by the intensity and flavour of the main pepper used and the mix of complementing flavours used to create a unique taste experience. If the source of the location itself is unique, then there is potential to claim for the recognition of a geographic indications which could be another strong brand promotion feature.

⁸ Ambergris Today Online. "Marie Sharp's Belizean Products Highlighted at World Largest Food Show." October 28, 2013. Available at: <https://www.ambergristoday.com/content/stories/2013/october/28/marie-sharps-belizean-products-largest-food-show>

Promotion

Apart from meeting the basic health and labelling requirements of entry into foreign markets, the quality of pepper sauces can be validated by reviewers and awards. Establishing international brand recognition requires significant investment in product placement, effective distribution systems, and participation in international food shows and awards. Marie Sharpe has been working the circuit, and participated in the Caribbean Kitchen Pavilion at the ANUGA Food Show in Germany in 2013⁸ the largest food and beverage show, with the support of Caribbean Export Development Agency and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). The nurtured relationship for that market paid off for Marie Sharp when the company won two gold awards for their hot sauces from the Beware line in Germany.⁹

Private lists ranking top hot sauces also freely abound, though premium rankings and market information is available for purchase. For example, Thrillist.com's top ten ranking features USA and Mexican brands: Cholula (Jalisco) Crystal (Louisiana), Franks Red Hot (Missouri), Huy Fong Chili Garlic (California),

⁹ Lovefm, 2017. "Marie Sharp wins awards in Germany." By Ava Diaz-Sosa. Updated July 13, 2017 Available at lovefm.com/2017/07/13/marie-sharp-wins-awards-in-germany

Table 3 Pepper Varieties and Degree of Hotness

Scoville Units	Chile Varieties And Commercial Products
100,000-500,000	Habanero, Scotch Bonnet, South American chinenses, African birdseye
50,000-100,000	Santaka, Chiltepin, Rocoto, Chinese kwangsi
30,000-50,000	Piquin, Cayenne Long, Tabasco, Thai prik kee nu, Pakistan dundicut
15,000-30,000	de Arbol; crushed red pepper; habanero hot sauce
5,000-15,000	Early Jalapeño, Aj Amarillo, Serrano; Tabasco ® Sauce
2,500-5,000	TAM Mild Jalapeño, Mirasol; Cayenne Large Red Thick; Louisiana hot sauce
1,500-2,500	Sandia, Cascabel, Yellow Wax Hot
1,000-1,500	Ancho, Pasilla, Española Improved; Old Bay Seasoning
500-1000	NuMex Big Jim, NuMex 6-4, chili powder
100-500	NuMex R-Naky, Mexi-Bell, Cherry; canned green chiles, Hungarian hot paprika
10-100	Pickled pepperoncini
0	Mild Bells, Pimiento, Sweet Banana, U.S. paprika

Source: Caribbean Export Development Agency, 2004¹⁰

Tapatio (California), Tabasco Original (Louisiana), Texas Pete (North Carolina), Valentina Salsa Picante (Mexico). ¹¹While there appears to be unyielding demand for hot sauces, finding a reputable and well-positioned distributor can play a pivotal role in new market penetration and visibility in that new market. Information on credible distributors can be found through paid food importers and distributor's databases, referrals, or business match-making facilitated by business support organisations.

Place

Marie Sharp's location in Belize provides the company with unique geographical advantages as Belize is pest and disease free for several menaces found in other countries; this affords steady production levels of high quality inputs to sauces. The Central American location also places Belize at a convenient transportation nexus in the heart of the Americas.¹²

¹⁰ Final Report Market Research Caribbean Regional HRD Program for Economic Competiveness (CPEC)/ Caribbean Export Development Agency (CEDA) Hot Pepper Project Phase I Market Research on the Viability and Export Potential of the Regional Hot Pepper Industry, June 2003 Revised May 2004

Available at <https://www.carib-export.com/login/wp-content/uploads/2009/08/Final%20Document%20-HP.pdf>

¹¹ Thrillist, 2013. "Power-ranking the 10 Best Hot Sauces on Earth." Published August 13, 2013

<https://www.thrillist.com/eat/nation/power-ranking-the-10-best-hot-sauces-on-earth>

¹² WTO Trade Policy Review, Trade Policy by Sector - Belize

Pricing

A review of the pricing of Marie Sharp's products and competing products on Amazon reveal how the product is positioned in the market:

Table 4 Online Pricing of Hot Sauces

Name	Price (US\$)	Price/oz
3 pack Marie Sharp's Hot Habanero	\$14.95	\$1.00/oz
5 pack Cholula	\$23.89	\$0.96/oz
4 pack SoCal hot sauce	\$23.63	\$1.19/oz
4 pack Tabasco	\$15.69	\$0.79/oz
4 pack Gringo Bandito	\$15.67	\$0.79/oz
4 pack Texas Pete	\$17.25	\$0.72/oz

Comparisons based on multi-packs of the same product and not variety packs

Based on the above, Marie Sharp's, commands a comparatively high price online. However, it was clarified that distributors usually control the prices overseas and it is usually marketed in Asia, the USA and Europe as a gourmet, exotic product from the Mayan mountains and hence command a higher price.

Marie Sharp's Experience with IPRs

Trademarks

Initially, the pepper sauces were sold under the name 'Melinda's' which was also the company name and connect the sauces with their source. Although she understood the need to name the products to distinguish them in the market place and allow consumers to identify it, she did not

appreciate the need to register the name as a trade mark and this was the source of the first major challenge encountered.

Initial interest in entering the US market in 1986 was curbed by the high cost of placement in American supermarkets which was US\$3,000 per product per store. As the demand for the pepper sauces grew, the company entered into an exclusive distribution agreement with an American based company to distribute in the US market. In 1993, the distributor registered the trademark for 'Melinda's' in its name in the USA and was also importing pepper sauce of a lower quality from Costa Rica and using the Melinda's label on it. This had the consequence of damaging the original Melinda's reputation among consumers, but it also meant that Mrs Sharp did not own the rights to use the name 'Melinda's' on pepper sauces in the USA.

Legal action was started but it was testing and during this time, since the rights to the name were owned by the distributor, product could not be exported to the USA by Melinda's and so an agreement was reached where the law suit was terminated and the distribution agreement dissolved. Mrs Sharp had to start over, re-naming the company and the products and re-entering the US market. It was very difficult as during the time it took to re-establish her presence, many other habanero pepper producers entered that market and it took time to build consumer awareness of what were now called 'Marie Sharp's pepper sauces'. The experience cost the company approximately US\$250,000 as it meant that in addition to legal fees, travel to the USA to attend to legal matters and the negotiations, it had to destroy labels, register a new trademark, design and print new labels.

Fortunately, due to the popularity of the product and word of mouth, rather than having to approach retailers, Marie Sharp's was approached by Walmart's which agreed to purchase product. At this time, the Company faced yet another trade mark dispute when competitor Tabasco sought to stop Marie Sharp from the use of a diamond which was used on its label taking the position that this infringed Tabasco's use of a diamond in its logo. In response, the company changed its label replacing the diamond with a heart and the slogan, "*The Whole World Loves Marie Sharp*" which turned out to be very successful. This experience cost the company an estimated US\$5,000.00.

However, in Mexico, the company faced other challenges where in the 1990s the company entered into a partnership with a Mexican manufacturer, which registered the trademark 'Melinda's' and therefore owned in Mexico. The partnership came to an end and the company continues to use the trademark Melinda's on pepper sauces.



Credit: https://http2.mlstatic.com/salsa-de-chile-habanero-melindas-148ml-D_NQ_NP_3647-MLM4562270356_062013-O.jpg

More recently, the company discovered that a Guatemalan company has registered the trademark "Marie Sharp's" there although it does not yet use the trademark. Marie Sharp's exports to Guatemala and the distributor there is concerned that the trademark owner may seek to enforce its rights to prevent the sale of products which infringe its rights. This illustrates the importance of not only registering your trademarks in export markets but once actively monitoring the market including trademark applications to ensure that your rights are not infringed.

These experiences taught Marie Sharp's to appreciate the role and importance of intellectual property rights and intangible assets to business development. In fact, these might be just as or more important than traditional assets such as land, capital and machinery. In terms of its trademark registrations, the fact that Belize is not a member of the Madrid Protocol, has had an impact due to financial constraints. In addition to Belize it currently has the its logo registered in Belize, the USA, Japan, China, Germany, El Salvador and Guatemala.

Confidentiality/Trade Secrets

The trademark of Marie Sharp's products obviously plays an important role but ultimately, the company was able to grow not only due to sound business principles such as prudent financial management but because the products, especially the pepper sauces are popular with consumers due to their taste. Therefore, of tremendous value to the company are the recipes and processes used to make these sauces. It is important to keep these recipes secret so that competitors cannot access them. To achieve this means that steps have to be

taken to limit access to them and to prevent those who do have access from disclosing them.

Marie Sharp's strategy with regard to the above has been to limit full access to the entire recipes and the process used to make the sauces to three persons. Additionally, the processing system is separated into stages so that only five persons know about half of the overall process, limited to the stage in which they participate. These eight persons had to sign an agreement of confidentiality. In some countries, there is specific legislation in place to protect trade secrets but in many common law countries, such as Belize, confidentiality is protected and there are legal remedies for breach of confidence in commercial or technical secrets when trade secrets have been disclosed, used and acquired inappropriately. The person claiming the breach of confidence will have to prove that steps were taken to keep the information secret, and that it has commercial value. Trade secrets are intangible assets but not intellectual property rights.

The agreement Marie Sharp's uses also seeks to maintain confidence even after an employee leaves the company and to prevent them from working with competitors. Unfortunately, it is quite possible that these restrictions would not be upheld by the courts as these will most likely constitute a restraint of trade. In other words, it must be shown that the agreement is reasonable and adequate to protect the legitimate commercial interests of the company otherwise, it would unreasonably prevent the former employee from plying his/her trade after the termination of their contract. But it is a real concern given the fundamental value of the recipes and

processing and is illustrated by an example of Marie Sharp's with a former employee. This employee knew about 50% of the recipe and process and after five years at the company, he left and returned to Guatemala. There he started manufacturing pepper sauces which, since he did not have all the information required, were not quite the same. However, because his product was not considered a competitive threat and because he was in another country, the decision was made not to pursue legal action.

In the situation with the former Mexican partner Marie Sharp's provided know how about its recipes and processes as part of the agreement. Once the relationship fell apart, the Mexican company not only retained the trademark but also the shared recipes and processes. Therefore, not only is the Mexican manufacturer still offering "Melinda's" hot sauces but using some of the actual Marie Sharp's recipes.

This situation with the former employee demonstrates one of the key challenges when operating in the international market, that is, how to enforce your agreements in international jurisdictions. Of course, you will need to have a sound legal advice to guide you with your contracts but key provisions to keep in mind are those that govern jurisdiction which the parties agree that the court of a particular country (if there is exclusive jurisdiction) or courts in specifically named countries (non-exclusive jurisdiction) will hear the dispute if one arises. Another important clause is that which determines which country's law will apply and this may be different from that of the court of jurisdiction. So, you want to ensure you choose a jurisdiction and law which is considered favourable for the enforcement of commercial agreements in terms of costs, speed etc.

Reinforcing the Importance of IP Protection in Branding Strategies

It made be mistakenly assumed that the story of Marie Sharp's reflects the constraints which arise from operating in a small, developing country. However, as is shown below, the branding and intellectual property issues are not unique. Another hot sauce, Sriracha sauce has taken the American market by storm. Major brands produce and use their own version including Tabasco, Texas Pete and Heinz. It is used as a flavouring by others such as Lay's and Blue Diamond and major restaurant chains also use it such as Subway, Denny's and Starbucks. It is used for merchandising on clothing and articles. It is ubiquitous. But the original Sriracha was not manufactured in the USA but in Thailand. Its history dates back over 80 years to the seaside town of Sri

Racha, Thailand where it originated and is sold there under the name Sriraja Panich.

As far as the first American made Sriracha sauce this was made by a Vietnamese immigrant who started a company in 1980, called Huy Fong and introduced the Sriracha sauce in 1983 naming it after the Thai town. It was like the original but less sweet and thicker. It is bright red, made from red chili peppers, garlic, vinegar, salt, and sugar. It was marketed solely by word of mouth and sold in transparent bottles with a green cap and a graphic of a rooster on the bottle, for this reason it is also known as "rooster" sauce. However, the popularity of it grew beyond the original Asian market in Los Angeles outgoing its first facility after the first seven years of operation and moved to a 68, 000 square foot facility and by 1993 was being distributed by Walmart. By 2010, it moved to a 650, 000 square size factory and sells ten million bottles annually.



Credit:https://images-na.ssl-images-amazon.com/images/I/51-0qhh6NvL_SL1024_.jpg



<http://srirachaheaven.com/wp-content/themes/srirachaheaven/images/clothing.jpg>

The popularity of Sriracha soared. It became a sought-after food and became really mainstream with recognition in major food magazines and online and a number of similar competing products appeared on the market. However, the Huy Fong company had a problem as the name Sriracha, could not be trademarked as it is a geographical name. Therefore, it was not possible to stop others from using the name and as the use of the name grows, there is a real chance it will become a generic name. Still even if as in this case the name could not be trademarked, it is worth remembering that a trademark can also be registered for the packaging if it is distinctive enough. In the case of the Huy Fong Sriracha sauce, some companies went as far as to copying the bottles completely and using other animals than the rooster. Moreover, the Sriracha imagery is being applied to all types of products beyond hot sauces taking advantage of its popularity. Without a trademark, the company also lost the ability to develop a revenue stream and some market control from licensing its trademark.

In the case of Sriracha in spite of what seems to be a very unfortunate situation, ultimately the approach to business development and growth, the strategy employed is informed by the philosophy of the business. In this case, the owner of Huy Fong did not have an objective of building a large, global business and he has not paid much attention to its growth. He has not changed his wholesale price since 1980, uses 10 distributors but pays no attention as to where it is sold. The company since its founding has never employed a salesman or invested any money in advertising including through the use of social media although a primary reason for this is the fear that advertising would

increase the gap between demand and supply. The focus remained on quality and the use of high quality ingredients.



Credits:

<https://target.scene7.com/is/image/Target/51203917?wid=520&hei=520&fmt=jpeg>

However, the above approach can perhaps work for some time in a large market like the USA where the company has been able to build a substantial and loyal consumer base. But as the level of competition increases, even Huy Fong has come to realise the value of proactive brand protection as major competitors entered the market and have come to represent a real threat to the company's market position. It was also realized that in spite of the attention made to the ingredients used and the source of those materials that these might not provide enough of a competitive edge. It has since established a social media presence and developed its online presence. In 2015 it partnered with a snack company to start its own line of Sriracha flavoured snacks. But will this be too little too late?



Credit:

<https://i.pinimg.com/736x/dd/5e/14/dd5e1468125e782ad354cfc6d9bb4988--sriracha-sauce-sriracha-recipes.jpg>

Key Lessons Learnt

IPRs play an important role in the development and protection of a company's brand. There are different types of IPRs and these can be used concurrently to reinforce protection of the product or service.

Trademarks

In the case of trademarks, they allow businesses to distinguish their goods and services from competitors in the market but must be registered in the country of interest as a trademark registration is specific to each country or region. Trademarks are registered on the basis of first come, first served so any delay in registering the mark could result in a competitor becoming the trademark owner. Furthermore, trademarks are registered in classes and, so it is possible to have multiple owners of the same or similar name for different classes of goods or services. Therefore, you need to carefully consider in your business planning the specific goods or services with which you plan to use the

trademark. Another important lesson is that a trademark is not the same as a business name or a domain name. In your branding strategy, you should try to register the name as a business name, domain name and trademark so that there is no confusion with third parties who use the same name.

Confidentiality/Trade Secrets

A trade secret is not a right which can be registered as an IPR but it is a very important protection mechanism which can be used instead of an IPR registration, for information from which the company derives commercial value. For trade secret protection to work, it is important that steps are taken to maintain secrecy and employees and third parties who might have access to sensitive information should be limited in number and made to sign non-disclosure/confidentiality agreements.

Industrial Designs

Industrial design is a form of IPR which offers exclusive rights for the protection of the appearance of products. The design must be novel which means that it has not previously disclosed in any form to the public.

The Management of Intellectual Property Rights

The development of your brand requires that you participate in a number of commercial contracts which are affected by IPRs. The ownership of IPRs allow not only the protection of your intangible assets but also to expand your revenue streams through the licensing of rights, for example, through trademark licensing. For this reason, careful consideration should be given to the

ownership of IPRs and the ability to enforce your right.

Internally, IPRs have to be managed not only in terms of controlling access to sensitive company information but where employees engage in innovative and creative activity which results in products and services which could be protected by IP, you have to have policies in place to address these situations. It is therefore advisable to have an IP policy and clear job descriptions which define the scope of an employee's duties and responsibilities.

There is a cost to the registration, monitoring and enforcement of IPRs and you ought to carefully develop an IP strategy as part of your business strategy and financial planning. The potential costs of not registering your rights and having an effective plan to manage *your intangible assets should be weighed* against the benefits.

The registration of IPRs, the monitoring and enforcement of these rights cost and should be carefully considered in your business strategy and financial planning
The potential costs of not registering your rights and having in place an effective plan to manage your intangible assets should be weighed.

The potential costs include:

1. The usurpation and infringement of these rights by others
2. The inability to enter markets because a third party has already registered the rights
3. The expense of having to develop new designs and labels where you have infringed a third party's rights, the potential damage to your brand

and the need to start the branding process over

4. The challenge of developing your brand reputation
5. The inability to expand your market through licensing strategies

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