

# 9.5 Intellectual property

PRODUCT
DISTRIBUTION
PROMOTION
PEOPLE
FINANCE
<b>RISK</b>
GROWTH

- > *Identify*
- > *Value*
- > *Protect*
- > *Manage*
- > *Utilize*

Intellectual property (IP) is a valuable asset for all businesses, whether big or small. Even the smallest business has some IP that if recognized, valued and protected can add value to the business.

Your most valuable intellectual property may not be what you think it is at first glance. For a food business, your brand, your recipes, your quality management processes, your novel packaging ideas, and the designs and content of marketing materials and packaging labels are obvious examples. But what about the process you have used to scale up that magic recipe for Grandma's apricot jam by 10,000 x while still preserving the country kitchen taste? Your business processes are perhaps the most valuable intellectual property you have.

To make the most of your IP,

1. Identify your IP
2. Value your IP
3. Protect your IP
4. Manage your IP
5. Effectively utilize your IP

## **1. Identify your IP**

Develop an IP register. Items on the register may include

- > Business name, brand and logo
- > Recipes and product formats
- > Research and development outcomes
- > Unique products, services, processes, applications
- > Unique design of products and packaging
- > Content of marketing materials and product labels

Part of this process is double checking that you do in fact own the IP. If another entity owns it, but you judge it to be valuable to your business, can you buy or license it?

## **2. Value your IP**

By valuing your IP you can put it onto your balance sheet. By understanding the value you can make an informed decision about how much money to spend on protecting it, if your rights are challenged. You may also be able to think of ways to extend your income stream by allowing others limited access to your IP.

Get expert advice on the valuation from either your lawyer or accountant. Make sure the value reflects the cost of developing the IP (eg how much you paid a designer for the logo) and also its

ongoing value to your business (eg the logo is integral to the brand and you are about to embark on a major branding strategy).

## **3. Protect your IP**

By protecting your IP, you gain exclusive rights to the property including the right to make money from it.

IP must be formally registered to gain legal ownership. It is strongly advised that you seek professional assistance in doing this from a trademark attorney or solicitor.

Excellent guidance on your options can be found on IP Australia's website. You can search their database to assess prior registration of other patents and trademarks. You can also apply to register your patent or trademark online.

The most common forms of legal protection include

- > Copyright
- > Registered trademarks
- > Registered designs
- > Patent rights

It is important to note that you cannot rely on a company or business name registration to own your brand. Trademarking is the most effective way to get exclusive rights to the use of a brand in Australia.



You can ascertain if your brand is able to be trademarked in your name by searching to see if there is anything similar:

- > The Trademarks Register at [www.ipaustralia.gov.au/trademarkssearch\\_index.shtml](http://www.ipaustralia.gov.au/trademarkssearch_index.shtml)
- > White Pages and Yellow Pages
- > Industry journals
- > The Internet (use Google or another well known search engine [www.google.com.au](http://www.google.com.au))
- > Contact a patent attorney

Copyright is a contentious issue. Copyright arises automatically for the originality of artistic and literary works, computer programs and engineering drawings. This means it is important to consider when commissioning a logo or other work that can be copyrighted. In the absence of any agreement to the contrary, copyright will be retained by the party commissioned to create the material.

When commissioning someone to create a logo or other copyright work, enter into a written agreement with the creator that includes an assignment of all IP in the relevant work. This is known as an 'Assignment Agreement'. Contact your lawyer for assistance with this.

In addition to legal protection, you should consider what else you can do to protect your property. Coca Cola have kept their formula secret for years through careful management of the formulation process. Shrewd management practices are important complements to formal legal protection.

#### 4. Manage your IP

It is important to actively manage all of your assets, including your IP, to get maximum effectiveness and also reduce infringement.

- > Develop an IP strategy, including this in your business plan
- > Develop an infringement strategy, ensuring that you are monitoring against infringement
- > Get in the habit of marking your protected IP with the registered trademark/copyright symbols. This increases goodwill and increases the market value of the asset
- > Do you need more than one type of protection to gain full legal rights (*i.e.* business name and trademark)
- > If looking at exporting, consider international protection. Registration in Australia does not give you international protection

#### 5. Effectively utilize your IP

IP can help build competitive advantage by protecting business image and even generating extra revenue through licensing arrangements eg franchising or licensing.

#### Websites

Intellectual Property Checklist  
[www.southaustralia.biz/Events\\_Calendar/Checklists/IntellectualPropertyChecklist.pdf](http://www.southaustralia.biz/Events_Calendar/Checklists/IntellectualPropertyChecklist.pdf)

IP Australia [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

#### Case study

BP secures green as a colour registration in Australia  
[www.aar.com.au/pubs/ip/fotmnov04.htm](http://www.aar.com.au/pubs/ip/fotmnov04.htm)

#### Intellectual Property Register

<i>Item</i>	<i>Type of IP eg logo</i>	<i>\$ value</i>	<i>Owned/licensed</i>	<i>Protected?</i>