

## Managing ip for entrepreneurs

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On Sept 10, 2009, the government established the National Creative Economy Policy Committee to set guidelines and translate policy into action by various government agencies. This led to the Creative Thailand programme, which was intended to encourage the growth and competitiveness of businesses through creativity and research and development. Intellectual property rights (IPRs) play a crucial role in moving this policy forward.

Although the government has attempted to promote IPRs to the public through several channels including publications and conferences, many business owners \_ especially entrepreneurs and new ventures \_ fail to understand the key link between IPRs and the success of their enterprise. If you are an entrepreneur or new venture, this article will provide you with guidelines for effectively managing your IPRs.

**Guidance for IPR users:** Some companies develop their own IPRs, while others are simply IPR users. The latter model does not rely on creating IPRs; instead, the company may seek permission from the rights holder to use the rights. For businesses such as distributors and franchisees that rely on this model, there are two important keys to be considered.

- Conduct an IP survey: Entrepreneurs and new ventures should supplement their standard market surveys by conducting an IP survey in order to understand what IPRs already exist in the market and how to avoid infringing them.

For example, if you are going to use a new brand with your products, you should conduct a trademark search at the Intellectual Property Department to determine whether anyone has already registered the same or a similar mark in Thailand. When introducing a new technology, a patent search will show whether your new product \_ or the technology involved in producing it \_ is already protected as a patent in Thailand. For complex technologies, a more thorough "Freedom-to-Operate" report from an IP lawyer may be required to make sure your product does not infringe an existing patent registration.

- Register your licensing agreement: If your business operates by using IPRs owned by others, you need to register your trademark licensing agreement or patent licensing agreement with the IP Department. If you fail to do so, the agreement will be void and non-enforceable between the affected parties.

In a franchise agreement that includes a clause for the franchisor to grant trademark or patent rights to the franchisee, the franchise agreement should similarly be registered as a licensing agreement.

By registering the licensing agreement, you will protect your company when you use or sell products bearing the registered IPR, and the licensee or franchisee can fully exercise the rights under the law.

**Additional steps for IPR owners:** Companies that move beyond merely using IPRs and begin to innovate will likely hold a wide range of IPRs \_ not only trademarks, copyrights, patents and trade secrets but also domain names, websites, know-how and more. These IPRs are important company assets and must be managed effectively so they can contribute to revenue growth and profitability. Companies that are creating their own IPRs should be sure to take the following four steps:

- 1. Take an initial inventory:** Knowing what IP you have, what your IPRs are worth, how your IPRs are protected and how they should be protected will help you get the maximum value from your creation and development. This can be difficult for a new venture, which may not know much about IP law and the scope of IPR protection. At this first stage, you may need to consult with your company's legal adviser. Then you can evaluate the IPRs within the company's broader portfolio of assets and implement the proper measures to manage them.
- 2. Ensure compliance:** By obtaining full protection of your IPRs under the law, you can ensure compliance while also contributing to your company's bottom line. For example, if you create a new trademark or brand, you should register the trademark or brand with the IP Department. If you come up with a unique idea or invention, obtaining patent protection will give you the exclusive right over the invention and prevent unauthorised use by your competitors. Your company may consider recording copyrighted works with the department to prove the company's IPRs more easily in the future.

Without the proper protection, some IP may be walking right out the company's door through employees, former employees or visitors who are using email, data storage devices, the telephone or just taking things home. Today's employees may be tomorrow's competitors.

- 3. Create an IP portfolio:** After initially managing your IPRs, collecting and keeping evidence to prove that your company is the true owner of these IPRs is necessary so that you will be prepared in the event of any infringement or opposition in the future. Trademark owners should collect documents demonstrating the use of the trademark in Thailand such as advertisements, invoices showing sales figures of the mark etc to prove the well-known status of the mark in Thailand. It is also crucial to manage the deadline or expiration date for each of your IPR registrations to ensure timely payment of annuity fees or renewal fees.

- 4. Enforce and exploit rights:** Monitoring and enforcing your IPRs is also essential, as the more popular your products become, the higher the chance your IPRs will be infringed. If you learn a competitor has infringed your IPRs, you should enforce your rights through the relevant government authorities such as through raids against infringers or administrative methods such as sending a cease-and-desist letter or mediation through the IP Department.

By taking the simple steps outlined above, you can ensure your IPRs are well protected, which in turn will set a strong foundation for future innovation, faster growth and improved profitability.