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David Hopkins explains why advisers need to make it their business to know more about intellectual property

Key Points

What is the issue?

The financial sector profession is well versed on the treatment of IP in financial terms but at times there may be less of an understanding of what exactly IP is, its

benefits and whether it is protectable.

What does it mean to me?

There is a recurring correlation between innovation and the registration of intellectual property, yet many businesses are unaware of what may constitute IP, and how they can go about protecting and monetising it.

What can I take away?

This is where you, the financial professional, could be uniquely placed to help your business clients commercialise the innovative ideas, creations and assets that make up their IP.

In today's innovative world, it is exciting to think that businesses can seize the opportunity to create extra wealth just by identifying and managing their intellectual property – their IP – and leveraging it to their commercial advantage.

There is a recurring correlation between innovation and the registration of intellectual property, yet many businesses are unaware of what may constitute IP, and how they can go about protecting and monetising it. This is where you, the financial professional, could be uniquely placed to help your business clients commercialise the innovative ideas, creations and assets that make up their IP.

We live in a knowledge-based economy. Intellectual property can play fundamental role in the sustainability and growth of a business. In 2015, a report issued by the Office of National Statistics (*ONS – Experimental estimates of investment in intangible assets in the UK: 2015*) found that firms in the UK market sector invested an estimated £134.2 billion in knowledge (intangible) assets, compared to £141.7 billion in tangible assets. At that time, 47% (£63.5 billion) of intangible investment in the UK market sector was protected by intellectual property rights (IPRs). This figure continues to rise.

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Financial sector professionals will be aware that 'self-help' business providers and web platforms make it easier than ever for businesses to meet their own

accountancy and financial support needs. A natural response to that is for professionals to look at how they can enhance their own value proposition to ensure that they can maintain and grow their client base. One option is to provide complementary business advice, such as an IP audit, highlighting the importance of IP.

What is IP?

Intellectual property is not just one thing, but a collection of rights. Every business is likely to own or use IP in one form or another on a daily basis, for example, its web site, a logo or a trading name.

There are four main types of IP:

1. Patents – protect the processes that make things work, what they're made of and how they're made
2. Trade Marks – a sign, for example a word, logo or slogan, which distinguishes the goods and services of one business from another
3. Designs – protect the visual appearance of a product, including the colour, shape, texture, material and ornamentation
4. Copyright – protects written or recorded creative and artistic material, including websites, logos, photographs, documents, financial plans, music, drawings, literature and advertising materials, etc. Copyright is automatic, and free, and has the advantage of not needing registration in the UK.

Other types of IP include trade secrets, know how/show how, creations such as plant varieties – intangible assets that can play a significant role in a business's plans for sustainability and growth if they are understood and managed with care.

IP in business planning

It makes commercial sense to ensure that a business's IP strategy and business plan are closely aligned, since business plans and commercialisation strategies will include an evaluation of the assets and resources that will make the business successful. The business model should reflect the IP owned or licenced by the business and reflect how these might be managed in order to impact on the commercial viability of the business.

Trade marks – a little more detail

There are currently over four million limited companies in the UK. In the 12 months to March 2018, over 620,000 new companies were incorporated. When incorporating a limited company for a client, an early port of call will undoubtedly be a search of the Companies House website for conflicting names – but how many will think to carry out a trade mark search too?

An important point to note is that company law is different from trade mark law. Just because a name is registered at Companies House it doesn't create an automatic right for that name to be used in business. A third party may raise an objection to the use of a name if they own the trade mark for a similar business undertaking.

A registered trade mark:

- can be sold, franchised or licensed
- may deter third parties using the trade mark without the owner's permission
- makes it much easier to take legal action against anyone who uses the trade mark without permission
- allows Trading Standards Officers or the Police to bring criminal charges against counterfeiters if they use the trade mark.

Popular examples of where trade mark protection has been a wise course of action include Aardman Animations. The Oscar-winning studio behind animated films *Wallace and Gromit* and *Chicken Run* has been able to generate extra revenue by licensing its work. For JoJo Maman Bebe, the popular retailer of maternity wear, baby clothes and nursery products, protecting its trade mark was key to growing its business. Case studies can be viewed in full on GOV.UK.

Patents

Patents can be a powerful tool. One benefit to owning a patent or other IP right is as a device to keep potential competition out of the market place. The patent process can be costly for a business, however, so it is prudent to include IP within business plans to ensure that there are economic benefits to undertaking the process.

Businesses who own granted patents may be able to benefit from Patent Box, a scheme started by HMRC in April 2013. It offers an incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. Businesses can then apply a lower rate of corporation tax to any profits earned from patents. Businesses who innovate may also benefit from R&D Tax

Credits – referencing the link between innovation and intellectual property again.

Fold-up bike firm, Brompton, has been able to exploit its patents and trade marks to ensure that it stays at the forefront of its market with its innovative bike products. When family double glazing company Sashmate came up with a time and labour-saving device that would allow a single fitter to clamp and remove the sash, safely and easily, by themselves, a patent application allowed them to benefit from their invention, and prevent copycat products flooding the market.

Designs

Designs can be registered too. The designer of Carbon Black, a revolutionary wheelchair made from carbon fibre, was able to protect his innovation by registering his design. Design rights registered by worldwide novelty goods brand Smiffys has meant that it has been able to enforce its intellectual property rights, helping lead the fight against counterfeit goods.

Valuing IP

The inclusion of IP valuation improves the accuracy of a business's worth. It can help a business to access finance and funding, and be of benefit in transactions, joint ventures, mergers and acquisitions and company restructuring. The IPO published 'Hidden Value' in 2017 – an in-depth look at the business valuation market. It discusses methods of valuing IP including by cost, income and market value. The report identifies around 40 companies who provide specialist IP valuation services in the UK.

IP Professionals, IP advice and business advice

Further information is available to businesses via a UK-wide network of IP professionals who have a wealth of expert knowledge that can help you and your clients. These include professional membership bodies including the Chartered Institute of Patent Attorneys (CIPA) and the Chartered Institute of Trade Mark Attorneys (CITMA).

Growth hubs and business support networks can help too. In England, each region has a growth hub offering support to businesses, whilst in Scotland, Wales and Northern Ireland, similar help can be found through the devolved authorities. Finally, there are a number of Patent libraries and Business IP Centres located in libraries

across the country that can offer IP advice.

Where to go next?

The IPO is aware that financial sector professionals may not be as confident as they would like to be in their understanding of IP rights, so it has put together a comprehensive toolkit of online resources to help businesses and their advisers make the most of IP:

- IP for Business acts as an online advice centre offering a wealth of guidance, case studies and free tools.
- IP Basics is a collection of bite-sized animations exploring the key aspects of IP.
- The IP Equip online IP course is free to complete. It can be accessed via desktops, tablets and smartphones and is also CPD accredited.
- Hidden Value is a report produced by the IPO with guidelines for businesses on how to value IP.
- Case studies can be viewed in full on GOV.UK.

Image

TOP TEN TIPS FOR BEING AN IP-SAVVY ADVISER

1. Consider including IP content on your own website that your clients can access, and include a link to IPO business advice at www.ipo.gov.uk/business
2. Include IP as a core subject when in discussions with your clients
3. Recommend that clients review or audit their intellectual property
4. Encourage clients to undertake infringement searches before launching a new product or service
5. Ensure that IP is included in business plans and that an IP strategy is developed
6. Remind clients that it is important to keep new and innovative ideas out of the public domain until registration, and ensure that they make all employees aware of the importance of confidentiality
7. Ensure that you and your clients create agreements with commissioned parties to establish the ownership of IP (e.g. transferring the copyright of a website to your client's business)
8. If your client is thinking about trading overseas then remind them to consider protection in those countries (both for manufacturing and for selling into)
9. Build up your professional network to include IP attorneys
10. Finally, take the time to audit your own business for IP.

ADDITIONAL RESOURCES

- The Intellectual Property Office (www.ipo.gov.uk)
- HMRC Patent Box (www.gov.uk/guidance/corporation-tax-the-patent-box)
- The Chartered Institute of Trade Mark Attourneys (www.citma.org.uk)
- The Chartered Institute of Patent Attourneys (www.cipa.org.uk)

Growth hubs

- England (www.lepnetwork.net/growth-hubs)
- Invest Northern Ireland (www.investni.com/support-for-business/protect-your-intellectual-property.html)
- Scottish Enterprise (www.scottish-enterprise.com-
- Wales (www.businesswales.gov.wales/innovation/support-and-funding/intellectual-property)
- UK-wide network of Patent libraries and Business IP Centres located in libraries (www.bl.uk/business-and-ip-centre/national-network)