



# Intellectual Property Audits

SIMPSON GRIERSON 2007

## Intellectual Property is Crucial

Most businesses keep accurate and up to date inventories of their physical assets such as land, buildings, plant and equipment, but often do not take the same care with their

intellectual property assets. A story often told is that if all the physical assets of Coca-Cola were destroyed, it could still raise many billions of dollars in funding on the strength of rights in its name and its secret formula.

All businesses use and rely on some form of intellectual property in their day-to-day operations. At the least, this will include their rights in a trading name or brands. For many businesses, intellectual property is a key asset. While product based businesses usually take adequate steps to protect the intellectual property relating to their products (such as patentable inventions, product designs and brand names) they

too often do not recognise the other valuable intellectual property that they use day-to-day. For example, many businesses find themselves left in the lurch when departing key employees take valuable know how with them.

It is crucial that businesses know what intellectual property they use and what their rights in that intellectual property are. Effective management, protection and use of intellectual property is beneficial to a smooth running business and a pre-requisite for a business seeking to maximise its profits. Strategic decisions regarding use, development and commercialisation of intellectual property cannot be made unless the business has a reliable inventory of its intellectual property assets.

### What would be Audited?

All key intellectual property assets of the business should be considered as part of an intellectual property audit.

Intellectual property assets will usually fall into one or more of the following categories:

- ♦ copyright works;
- ♦ trade marks (including trading names and brands);
- ♦ inventions and patents;
- ♦ registered designs; and
- ♦ confidential information and trade secrets.

Related items that should be included in an intellectual property audit include domain names and 0800 numbers.

### What does an Audit do?

An intellectual property audit should be tailored for the needs of each business. The scope and focus of the audit will also vary depending on the type and size of the business and also the purpose and desired outcomes of the audit. For example, whether the audit is carried out for internal reasons (such as to assess if intellectual property of the

business is adequately protected) or in the course of an acquisition of the shares in or the assets of the business. Whatever the purpose, most intellectual property audits would cover the following:

- ♦ identification of key intellectual property used by the business;
- ♦ assessment of current protection of key intellectual property;
- ♦ assessment of policies and procedures to capture, leverage and exploit key intellectual property;
- ♦ review of adequacy of rights to use third party intellectual property; and
- ♦ identification of risks.

A thorough audit would also involve a review of all agreements that relate to the creation, transfer or licensing of intellectual property as well as the business' other policies and procedures relating to intellectual property.

When an audit is carried out for internal reasons such as part of an asset or risk management exercise, the audit would lead to development of or improvement to strategies and procedures for identification, capture, development, acquisition or divestment, use and exploitation, maintenance and risk management for key intellectual property.

## When should an Audit be carried out?

Any business that has not had its intellectual property audited should consider engaging an intellectual property specialist to conduct one. Even if your business does not perceive it has an immediate need for an intellectual property audit, an audit should be considered if:

- ♦ there is a new person within the business or external counsel or consultants responsible for intellectual property;
- ♦ there is a proposed acquisition of significant intellectual property;
- ♦ a business is considering implementing new policies or procedures relating to intellectual property;
- ♦ a business is in or about to enter into an intellectual property development or licensing phase;
- ♦ a business is considering exporting, expanding overseas or having an internet presence;
- ♦ a significant new product is being developed or about to be launched; and
- ♦ there is a significant development in intellectual property law.

Once a business has had an intellectual property audit, updated audits should be conducted regularly through various stages in the business' life cycle to ensure optimum capture, use and protection of intellectual property assets.

If you consider that your business may benefit from an intellectual property audit, and to ensure any audit is carried out appropriately and adequately covers all key intellectual property of your business, you should seek advice from a legal professional skilled in intellectual property matters.



*This newsletter is produced by Simpson Grierson. It is intended to provide general information in summary form. The contents do not constitute legal advice and should not be relied on as such. Specialist legal advice should be sought in particular matters.*

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