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PROTECTION OF INTELLECTUAL PROPERTY (IP) IN GLOBAL EXPANSION

GLOBAL GROWTH SHOULD NEVER MEAN LOSS OF OWNERSHIP

Scope of This Article

This article discusses the importance of IPR protection during global expansion. Additionally, it highlights the potential and hidden risks associated with unprotected IP, outlines critical pre-expansion considerations, and the role played by the Company Secretary in ensuring the global growth never results in loss of ownership.

Introduction

In the era of interdependent economies, national borders no longer restrict business expansion and growth. Companies, from startups to multinational are expanding their business operations across geographical boundaries. With the expansion of world trade due to the removal of trade barriers and an increase in competitiveness at the international level, it is pertinent to protect the business assets, including intangible assets like intellectual property. **While businesses focus more on product development, aspects of taxation, and regulatory approval, one important aspect businesses often underestimate or ignore is the protection of Intellectual property.**

Why Intellectual Property Matters

Intellectual property rights are considered the backbone of any economy, and their creation and protection are essential for the sustained growth of a nation.

It acts as a tool for corporate competitiveness in today's highly competitive global market. **In an era where brand scales across borders with a click, protecting intellectual property rights is no longer optional.** In the absence of strategic IP protection, business expansion may result in brand erosion, loss of ownership, and control. Global expansion of business without adequate IP protection may result in huge losses, such as brand value loss, ownership loss, monetary loss in fighting litigation, and the like.

Intellectual Property in the Context of Globalization

Understanding IP & IPR

Intellectual property refers to the creation of the human mind and human intellect, and the rights associated with it are intellectual property rights (IPR). IPR provides the owner the exclusive right to use it, including the right to transfer, assign, or license it.

Trademarks

A brand logo represents its identity and goodwill, which helps to identify and distinguish the goods and services of one business entity from another. A brand logo, to claim protection, must be trademarked. While expanding globally, a trademark must be registered first in the home country and in the countries where business is expanding, as geographical boundary is crucial in the protection of a trademark. Earlier application and registration strengthen the business value and can be used as a strong argument in case of infringement cases.

Software, Patents & Digital Assets

Software and digital assets are mainly protected **through patents and copyrights**. Innovations must be protected to reduce the chances of copying. Without proper international protection, it increases vulnerability. An inventor of the patents enjoys exclusive rights to use and allows him to control the output of the patented goods. Without the consent of patent holders, the innovation cannot be utilized, made, or sold for profit. This allows businesses to showcase their exclusive goods in the global market, which makes them unique and less common.

Industrial Designs

Industrial designs refer to creative activity that results in the ornamental or formal appearance of a product that is appealing to the eye. In a consumer-driven market, the design of products plays an important role in brand differentiation. At the same time, the risk of replication is potentially high. Products of famous brands get easily copied and sold as a first copy in the markets, which are of inferior quality. **Consumers buying these fake replicas often get disappointed results in brand tarnation which in turn can reduce the demand for these products.** Hence, it becomes crucial for businesses to get their design registered when expanding globally.

Trade Secrets

A trade secret refers to a method, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients. Sales techniques, client and supplier lists, production procedures, and advertising strategies are all examples of trade secrets. **During global expansion, the chances of trade secrets leakage increase due to exposure to third-party vendors and employees.**

Global Sales without IP Protection: The Hidden Risks

What looks like growth today can quietly become tomorrow's liability.

At first instance, generating revenues in the global market without adequate IP protection may not be so dangerous. Sales increases, brand growth, visibility, and market presence may seem to be a success; however, beneath this success lies an underestimated risk. **Global expansion in the absence of IP protection exposes businesses to financial, legal, and strategic vulnerabilities that can undermine long-term growth.**

Territorial Nature of IPR

One of the important reasons for this risk is the territorial nature of IPR. For example, a trademark registered in the home country does not automatically become eligible for protection in another country. Separate registration is required in separate countries under an international framework, except for trademarks that have acquired the status of a well-known trademark. A lot of businesses operate on the wrong assumption that, let alone the fact of prior usage, protects their mark without registration. However, registration offers strong legal backing to the business entities. In fact, several jurisdiction follows "first to file" principle, wherein the entity to file for registration earlier is granted protection regardless of usage. Hence, entities may be barred from using their own brand name and logo in international markets.

Trademark Squatting

Another risk related to trademark squatting. When brands expand globally and their visibility increases, it becomes a target of local vendors and businesses, who copy the mark and get it registered. This practice prevents the original owner of the mark from using their mark in that country. Such squatters demand an exorbitant amount

to transfer the ownership rights, or rather, they use the mark to launch competing products. This forces businesses to rebrand themselves and may result in loss of goodwill.

Commercial & Reputational Impact

Moreover, it becomes difficult to enforce rights against authorized users. As a consequence, businesses suffer reputational damage due to counterfeiting goods over which they have no control. Furthermore, **weak IP protection may lessen the bargaining power in commercial relations. Investors, Joint venture partners, or distributors conduct IP due diligence before entering into agreements.** In international transactions, IP certainty acts as a critical factor in risk assessment.

Last but not least, securing protection after achieving success can be more expensive in the form of handling cancellations, third-party objections, and litigation, which is far more time-consuming.

Clarifying Rights before First Shipment: Pre-Expansion Checklist:

Before entering into global markets and involving in cross-border transactions or dispatching the first shipment, it is crucial to find the answer to the following questions –

1. Who owns the IP?

2. Who can use it?

3. What happens if the relationship ends?

The owner and ownership of intellectual property rights must be clearly decided as well as properly documented. Employment and co-founder agreements must clearly mention IP assignment clauses. The IP must vest with the company, and the company shall have rights to use it. Ambiguities might arise in the case of a foreign joint venture agreement, an employment relationship across jurisdictions.

The manner and extent of use of IP must be clearly documented through detailed agreements that must contain clauses such as duration of license, geographical extent, and permitted activities.

Termination clauses are important in international contracts. It must contain the survival of confidentiality obligations, non-compete restrictions, and return of confidential information. Failure to include these clauses might result in misuse of IP by former employees or partners.

Role of Company Secretary in IP Protection during Global Expansion:

A company secretary plays a crucial role in ensuring corporate governance and legal compliance. With vast global expansion, the role and scope of work of CS have increased significantly.

A company secretary can act as a trademark agent. A CS assists in identifying the jurisdiction of trademark registration. It plays an important role from trademark application, to continue tracing trademark status, handling third-party objections, and representing their clients before the trademark department in a show-cause hearing. Besides, it assists in international filing under the **Madrid protocol**.

Another important role played by **CS is in drafting IP clauses in Contracts**. Contracts that involve vendors, employees, and consultants must include robust IP clauses. **A CS ensures proper drafting of these agreements, ensuring proper assignment provisions, licensing limitations, and non-disclosure obligations.**

The CS ensures contractual restrictions on sublicensing, transfer, or unauthorized exploitation of IP. Monitoring compliance and enforcement mechanisms is equally important.

Conclusion:

Thus, the Company Secretary bridges legal compliance and business strategy, safeguarding IP during global expansion.

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