

Safety net is essential to stop rivals copying your product

By Patrick Wheeler, a partner in the intellectual property group of Collyer Bristow LLP, Solicitors, London

As a new business with a new product we have lots of business and legal challenges competing for our attention. Why should we consider intellectual property protection a priority?

The UK Intellectual Property Office has just published the results of its 2006 Intellectual Property Awareness Survey. Small businesses fared badly. Barely one in 10 knew that disclosing details of a new invention before filing a patent application would invalidate the patent application.

IP protection is just as important for small businesses as it is for medium and large ones. Getting the basics right can make the difference between success and failure.

Understanding what IP protection is available for products and brands will help a business to formulate strategy - for example, whether to manufacture and distribute itself, or use third party licensees or distributors.

If a new product has no legal protection, there is nothing to stop a competitor copying it and under-cutting on price. IP rights offer a variety of protections - patents for inventions, registered or unregistered designs, or confidential information relating to a secret process. The business needs to understand what protection is available and whether any formal step, such as an application for registration, needs to be taken.

A name or brand is key to differentiating a business from its competitors. The reputation of the business will be attached to it. Preliminary research can minimise the risk of the chosen name or brand infringing rights belonging to others, and forcing the new business to rebrand in a hurry.

A business will generally own the IP in designs, ideas and other materials created by its employees. It will not automatically own IP rights if those same materials are generated by contractors or external consultants. This can lead to disagreements and expensive disputes

If the IP rights of the business are infringed, the right response can make the difference between a swift and productive resolution, and a long, costly and possibly unsuccessful legal action.

Ignoring infringements is almost always a bad idea. At the first hint of trouble a clear strategy needs to be implemented. An ill-considered, aggressive response, such as sending a letter alleging trademark infringement to a retailer of competing products, can backfire. The retailer may retaliate by bringing an action for "unjustified threats" against the trademark owner.

Carefully considered IP protection, exploitation and enforcement will add substantial value to any new business. Not only will its present business benefit but if and when the founders are looking to quit the business, evidence of strong IP will be crucial for any investor.

First published: July 21 2007 in the Financial Times, UK