

IPKit

The purpose of this IPKit is to make you as a member of The Hub aware of some of the most common intellectual property ("IP") issues to consider when establishing a start-up. The purpose of this IPKit is also to enable you to identify the assets of your business that might be protectable as IP and to minimize the risk of infringing other businesses' IP during the course of your business.

Protection

Trademarks

The name of your business helps customers find you. Any goodwill created during the course of your business is also closely connected with the name of your business. If you choose a distinctive name for your business, i.e. a name that is capable of distinguishing the goods or services of your business from those of other businesses, or the name has become distinctive in relation to your goods or services in consequence of the use that has been made of it, the name can be protected as a trademark. If you register the name of your business as a trademark in the countries of relevance to your business (it is possible to register a trademark that covers the entire EU), you will be able to prevent others from using an identical or similar name for identical or similar goods or services in such countries, if there is a likelihood of confusion. The costs involved with applying for and maintaining a registered trademark are relatively low, and a registered trademark can be protected for as long as you need.

Patents

If an invention, i.e. a solution to a technical problem, has been made by your business, you may consider applying for a patent in the countries of relevance to your business. An invention can be patented if the invention is new in relation to the state of the art at the date of filing of the patent application and if it, moreover, differs essentially from such prior art. A patent will provide your business with an exclusive right for up to 20 years to commercially exploit the invention. However, the costs involved with applying for, maintaining and defending a patent can be substantial. You therefore have to carefully consider what you wish to achieve by applying for a patent. Please note that if you disclose your invention publically, e.g. in an article or during a presentation, the invention will no longer be "new" when you apply for a patent, and such actions will therefore effectively eliminate any chances of obtaining patent protection. Until you have decided whether to apply for a patent, you should therefore not publically disclose the invention or disclose the invention to anyone without having them sign a confidentiality/non-disclosure agreement beforehand.

Copyright

Copyright protects artistic and literary works, e.g. books, text, paintings, pictures, film and music. But applied art, such as chairs, tables, glasses, lamps etc., may also enjoy copyright protection. Computer programs, websites, databases and technical drawings are also protected by copyright. A work is protected by copyright if the work constitutes the author's own intellectual creation, and the work is protected by copyright from the moment the work is created; i.e. no formal registration of the work or use of a © is necessary in order to obtain copyright protection of a work in Denmark.

Design rights

If a design has been made by your business, you may consider applying for a design registration in the countries of relevance to your business (it is possible to register a design that covers the entire EU). A design is the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, colours or shape of the product itself and/or its ornamentation; e.g. the design of a chair or a website. A design can be protected if the design is new, i.e. if no identical design has previously been made available to the public, and has individual character, i.e. if the overall impression the design produces on the informed user differs from the overall impression produced on such a user by any prior design. The costs involved with applying for and maintaining a registered design are relatively low, and a registered design will provide your business with an exclusive right for up to 25 years to commercially exploit the design.

Please note that if you disclose your design publically, e.g. during a presentation or by showing it during a fair, the design will not be considered to be new, unless you apply for registration of the design within 12 months from the publication hereof.

Trade secrets

A trade secret is information that is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, that has commercial value because it is secret, and that has been subject to reasonable steps under the circumstances to keep it secret. Trade secrets include commercial information; e.g. information about strategies, customers, suppliers or sales margins, and technical information, e.g. information about processes, recipes, test results, studies and data.

However, a trade secret is only protected as such as long as it is kept secret. You therefore need to ensure that access to your business' trade secrets is protected by locks and passwords, and that they are only shared with employees and business partners on a need-to-know basis and under express and written obligations of confidentiality.

Ownership

For your business to become the owner of IP, the IP needs to be transferred to your business from the creator of the materials subject to IP. You therefore need to make sure that your business owns any IP generated during the course of your business.

Employment contracts should contain IP-clauses to ensure that any and all IP created by employees is assigned to your business to the widest extent possible.

Clauses regarding ownership and assignment of IP should also be included in all agreements entered into by your business and anyone creating materials subject to possible IP of relevance to your business; such as suppliers or consultants of e.g. photographs, designs, databases, test results, reports, graphics and websites.

Infringing other businesses' IP

Trademarks

If you register or use a name for your business in relation to goods or services that is identical or similar to the name and goods or services of another business, and there is a risk of confusion, you will infringe the other business' trademark rights. If you infringe another business' trademark rights you may have to change the name of your business, and your business may also be liable to pay damages. Therefore, before choosing a name for your business, make sure an identical or similar name has not already been registered or is being used for identical or similar goods or services as those of your business. It is difficult to provide absolute certainty, but by performing searches in the relevant business and trademark registers (and on Google ®) you will minimize the risk of infringing other businesses' trademark rights.

Patents

If you use a technical solution that has been patented by someone else, you will infringe the patent, and the owner of the patent will be entitled to prevent you from using the technical solution and to make a claim for damages. If a technical solution is important to your business, you may therefore consider to acquire a freedom-to-operate analyses from a patent attorney.

Copyright

If you use copyright protected material without the consent of the copyright owner, you will infringe the copyright, and the copyright owner will be entitled to prevent you from using the material and to make a claim for damages. If you wish to use any kind of material that may be protected by copyright such as pictures, text, music and designs, you therefore need to make sure that you have obtained the copyright owner's consent to such use. Please note that the fact that the materials are available and can be copied from the internet does not mean that the materials are free to use.

Design rights

If you use a design that has been registered by someone else, you will infringe the design, and the owner of the design will be entitled to prevent you from using the design and to make a claim for damages.

Therefore, if a design is important to your business, you should perform searches in the relevant design registers (and on Google ®) in order to minimize the risk of infringing other businesses' design rights.

Trade secrets

If you use trade secrets owned by another business, you will infringe the other business' rights to such trade secrets, and the other business will be entitled to prevent you from using the trade secrets, including any products based on such trade secrets, and to make a claim for damages. You should therefore make sure that none of the employees of your business are making use of trade secrets belonging to the employees' previous employer.

Enforcing IP

There are many ways to enforce your business' IP.

You can give the business infringing your IP a call, you can send them a cease-and-desist letter, you can file a writ, or you can file a request for a preliminary injunction and/or a request for preservation of evidence. Or you can choose to do nothing at all.

Choosing the right course of action requires careful consideration based on an assessment of risks and costs.

Licensing IP

Perhaps you need a licence to use someone else's IP?

Or perhaps you wish to give someone else a licence to use your business' IP?

If you wish to enter into a licence agreement you need to consider, among other things, the relevant territory, whether the licence should be exclusive or non-exclusive, perpetual or time-limited, transferable or non-transferable, sub-licensable or non-sub-licensable, based on payment up-front and/or payment of royalties, and who should be able to register, maintain and defend the IP.

IP Hotline by Plesner

Do you need help to identify, protect, enforce, or commercialise your business' IP? Perhaps you are considering whether and how to apply for a patent, a trademark, or a design registration? Or whether and how to sell or license your IP to another business?

Or do you need help to minimize the risk of infringing another business' IP? Or help because your business may already have infringed another business' IP?

Then use the free IP Hotline that provides members of The Hub with the opportunity to have a confidential initial discussion over the telephone about any IP issue with an IP expert from Plesner Law Firm free-of-charge. If additional advice is needed, subsequent meetings or calls can be arranged or tasks be performed based on cost estimates or fixed prices.

For information about the IP experts of Plesner Law Firm visit http://www.plesner.com/speciale/ip%20law?sc_lang=en.

Call or send an email to:



Emil Jurcenoks
Attorney-at-Law



+45 30 86 92 15



+45 36 94 15 07



ēju@plesner.com



Plesner

Plesner Advokatpartnerselskab
Amerika Plads 37
DK-2100 Copenhagen
Denmark
Phone: +45 33 12 11 33
VAT-No.: 38 47 79 35
www.plesner.com

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