

EXPERTS' FORUM | Legal

Keeping IP Enforcement in Line

Intellectual property rights can be your business's most valuable asset, but only if their utilization is in line with overall business goals. Understanding the vision of your business and how IP rights can best further that vision are the keys to successful IP management. Not all intellectual property is created equal.

Typically, some of your company's IP will relate to core products, those that produce the greatest profit margin and compose the majority of your market share. This IP should be a priority, especially during an economic downturn. These rights protect the backbone of your company.

So what if you believe a competitor is treading on your core IP rights? Obviously, due diligence must be done to determine whether your competitor is actually infringing. Beyond that, carefully consider how enforcement of your IP rights will further your business goals. In other words, look before you leap. Weigh the benefits of enforcement against the potential cost of doing so.

Does it make business sense? Engage your counsel in the discussion, not only so that you are on the same page, but also so a dispassionate, objective view is included. This is a vital step before any action is initiated, because once a dispute begins, it can often take on a life of its own.

If you decide to proceed with enforcement, the next step is determining what action to take. This is done by asking a number of questions that relate back to your business goals. Is it important to maintain exclusivity in the market?

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If you wish to maintain exclusivity in a market, some level of enforcement of your IP rights is often necessary. Sometimes, a letter demanding that a competitor stop infringing solves the problem. Other times, informal discussions about the violation can curb the issue. Solving the problem becomes more difficult when court action is required to compel the infringer to stop.

If a lawsuit seems inevitable, it is important to ask some additional questions. Is there a significant risk that if the first infringer is not stopped, more infringers will emerge? If so, seeking injunctive relief or a design change by the competitor may be a top priority. Is there a likelihood of recovering substantial damages from the infringer? How important is the infringing product to your competitor?

These questions may dictate whether the infringer will put up a fight or look to quickly resolve the dispute. Is licensing or cross-licensing an option? Use this analysis to search for weak spots in your thinking and challenge counsel to assist you in the process. The middle of a lawsuit is the wrong time to discuss for the first time if the lawsuit makes any business sense.

Enforcement of IP rights can generate additional revenue and protect your company's profit centers. But only thoughtful and goal-oriented management of your company's IP can be such a catalyst for success in this demanding economic climate.

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