

### **New Year Due Diligence Guide**

Welcome back to 2011!

For many businesses, January is the month to reflect on the past year and plan for the future. This period of review and reflection should include a review of your business strategy and intellectual property (IP). Intellectual property should be checked regularly so it is consistent with any revised business strategies. This means making the time to undertake a due diligence of your IP.

#### **Top 10 areas to review in the New Year:**

- 1.** Do you use non-disclosure agreements? It is important to have a non-disclosure agreement between your business and another business if you are disclosing information about a new idea or product that you are in the process of protecting. This will ensure that both you and any other parties you are contracting with know their rights and obligations in relation to the use of any IP.
- 2.** Do your documents notify others that they are protected by copyright? All documents created by your business should contain a short phrase in the footer notifying users of the information that the document is protected by copyright, the year that the document was created, and the owner of the copyright material.
- 3.** Are all trade marks currently registered and protected? If you have recently introduced a new product or brand, or are about to introduce something new, you should ensure that it contains a registered trade mark. Additionally, you should check the details of your old trade marks to ensure that they are currently protected and that your details are up to date on IP Australia's database, otherwise you may miss out on important notices.
- 4.** Are all of your confidential documents marked as confidential and treated as such? This may mean using password protection for computer files so that only employees that require access in order to meet the requirements of their jobs have access. Hard copies of confidential files should be kept in a locked filing cabinet and marked as confidential.
- 5.** Have you made additions to any products or documents? If you have made improvements, do these improvements qualify for separate IP protection? If you make significant changes to something, for example, a graphic or text, the changes may be substantial enough that they create an entirely new right of copyright in the revised works. Likewise, if a patent is significantly improved, it may be eligible for registration as a separate patent, thus increasing the monopoly you have in the market for that product.
- 6.** Do all your employee agreements protect the IP of your business? Now is the time to review employee contracts to ensure that any IP created by employees in the course of their employment is assigned to the employer.
- 7.** Do you have an IP register? It is important to keep a record of your IP. The details that you should record include every item of IP that has been created, be it a design, patent, copyright or trade mark. As part of your IP register, you should outline details of who created it, in what capacity, whether it needs to be registered, and when it was registered. An IP register will ensure that critical dates are not missed and valuable IP is treated as such.

**8.** Are you monitoring your close competitors? It is important to keep abreast of your competitors to ensure that they are not infringing your IP rights. This may mean checking to see what IP your competitors have attempted to register including patents, designs or trade marks. The sooner you notice an application that is similar to your IP, the more options available for you to protect your own intellectual property.

**9.** Are your ideas your own? It is important not to copy the work of others as you may be infringing another person or entity's IP rights leaving you open to defend a costly litigation proceeding.

**10.** Do you have an IP expert? If you are not sure what to do in relation to your IP, it is important to know an IP lawyer or qualified trade mark or patent attorney that is available to discuss your IP concerns.

If you think you have intellectual property that needs protection, your IP rights are being breached or you need assistance performing a due diligence for your business, contact our intellectual property experts at [info@msslawyers.com.au](mailto:info@msslawyers.com.au) or visit our website [www.msslawyers.com.au](http://www.msslawyers.com.au). Alternatively, contact our professional team at our Gold Coast or Brisbane office.



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