



INTELLECTUAL PROPERTY RIGHTS` PROTECTION

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AGENDA:

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Part 2: Protecting Intellectual Property – Designs and Trademarks

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Part 3: Everyday IP Issues when doing Business

1. How to avoid IP infringement
2. Ways to publish IP protection
3. Ways to prevent counterfeits and eliminate them from online offers

Part 1: Intellectual Property in the Textile Industry

Introduction

- Tremendous value of intellectual capital in the textile and fabric industry; yet many enterprises pay little attention, if any, to protecting their intellectual assets such as patents, designs and trademarks.
- Enterprises need to identify valuable intangible assets in a timely manner, determine their business relevance, and conduct cost-benefit analyses to determine which of these should be protected by using the tools of the intellectual property (IP) system.
- This presentation looks at the strategic management and use of IP rights – especially designs and trademarks – to establish assets, reduce risks and enhance competitiveness in the textile industry.

Part 1: Intellectual Property in the Textile Industry

1. Patents and Utility Patents

- Technical Innovation – protected by patents – is one way to put a textile producer ahead of a competition.
- A portfolio of patents signals a company`s technical superiority, for example in inventing new fabrics that do not crease, are softer, more weather-resistant, have greater elasticity, etc.
- A patent portfolio can help attract business partners and inventors.

Example:

- GEOX BREATHES® Patented System – breathable membrane made of micro-porous material which absorbs sweat through the insole and evacuates it through the outer sole in the form of water vapor.

Part 1: Intellectual Property in the Textile Industry

2. Designs

- Protection of designs is one of the most relevant to the fashion and textile industry.
- Registering a design helps to prevent others from exploiting its new or original ornamental or aesthetic aspects, e.g. three-dimensional features, such as attractive shapes, or two-dimensional features, such as aesthetically pleasing textile prints.
- Yet, little use is made of national or international design law to register and protect designs. Frequent explanation: The short product life cycle does not justify the time and financial costs involved. But in fact, design protection is generally not a major financial burden.

Part 1: Intellectual Property in the Textile Industry

2. Designs

- Many countries permit the registration of a large number of different designs (10, 20 or 100) in a single application provided they all relate to the same product or „class“ of products.
- Some countries, such as United Kingdom and the EU, offer an unregistered form of protection. The **unregistered community design right** of the EU offers protection for a maximum period of three years, starting from the date on which the design is first made available to the public in any of the 28 countries of the EU.
- While fashion trends may come and go, some never pass. Many items become classical pieces, e.g. the plaid designed *Burberry* fabric. While there are means to act against copying under unfair competition laws, it is much easier to base claims on a registered design right.

Part 1: Intellectual Property in the Textile Industry

3. Branding and Trademarks

- Trademarks are the most obvious means of distinguishing one company`s products from those of their competitors.
- Canny businesses capitalize on their brand equity – customers associate their products with good design, or quality and workmanship, or outstanding technical properties.
- Trademarks are certified registered rights that are easy to enforce.
- Trademarks can become one of the most valuable assets of a business when they are administered strategically and when they are defended consistently.

Part 1: Intellectual Property in the Textile Industry

3. Branding and Trademarks

There are different kinds of trademarks:

- **Registered trademark** for distinguishing products from one company from those of another.
- **Collective marks** are signs that distinguish certain valued characteristics common to goods and services of a number of enterprises using that mark, especially their geographical origin, material, or mode of manufacture, e.g. Harris Tweed (CTM No. 000060665), SWISS COTTON (CTM No. 00267436) etc.
- **Geographical indications** for identifying a product as originating from a country or locality therein, reputed for certain qualities or characteristics, e.g. Iranian Carpets, Egyptian Cotton.
- **Certification marks** are given by license for compliance with defined standards, but are not confined to any membership, e.g. WOOLMARK which certifies that the goods are made of 100% wool.

Part 2: Protecting Intellectual Property – Designs and Trademarks

1. How to protect a Design

- In most countries a design must be **registered** in order to be protected. An application must be filed with the national or regional IP office where protection is sought. Requirements for protection are:
 - Novelty: Design must not be identical or almost identical to previously published design (one exception: the creator of the design can apply for registration within 12 months after first publishing his design)
 - Originality: The overall appearance of the design must be different from those that are already known to the public

Term of protection: In most countries maximum of 25 years with the requirement to renew every 5 years.
- In some countries and regions, e.g. the European Union, limited design protection can be obtained for **unregistered designs** for three years from the date on which the design was first made available to the public.

Part 2: Protecting Intellectual Property – Designs and Trademarks

2. How to protect a Trademark

Checklist for **selecting** a trademark (TM):

- Check that TM meets all legal requirements for registration, especially that it has distinctive character, is not generic or descriptive.
- Check that it is not identical or confusingly similar to existing TMs.
- Check that TM is easy to write, read and remember and is suitable for all types of advertising media.
- Check that TM does not have any undesired connotations.
- Check that corresponding domain name is available for registration.

Part 2: Protecting Intellectual Property

4. How to protect a Trademark

Trademark protection can be obtained through **registration** or, in some countries, also through **use** if the mark has become well-known.

Requirements for TM registration:

- Submission of TM application form to the national or regional IP office including:
 - Contact details of company and representative,
 - Graphic illustration of mark (if it is a figurative mark),
 - Description of the goods and services and/or classes for which the business wishes to obtain TM registration,
 - Payment of required fees.
- Term of protection: in many countries 10 years with option to renew TM.

Part 3: Everyday IP Issues when doing Business

1. How to avoid IP infringement, especially trademark infringement

- Before using a design or mark, do some research! E.g in case you want to give your new brand line or new products a name, have professional research done whether this name is already registered as a trademark.
- In case your preferred mark is a registered trademark, check further for which goods and services it is registered – if they are different from your intended goods and services and the prior TM is not a famous mark, you can apply for TM protection; if they are similar only in parts, you can possibly make a co-existence agreement with the owner of the prior TM.

In case your preferred mark is a registered trademark for the same or similar goods and services – refrain from using this mark for your goods and services!

Part 3: Everyday IP Issues when doing Business

2. Ways to publish IP protection

- **Patents:** If IP office has granted provisional status, you can use term „patent pending“ for public documentation which is later replaced by the official patent number.
- **Trademarks:** Use the ® or TM sign when your trademark has been registered.
- **Designs:** You can use the © sign if registration has not been granted yet, and replace it by „registered design“ after registration.

Part 3: Everyday IP Issues when doing Business

3. Ways to reduce counterfeits and eliminate them from online offers

While the link between the increased sales of counterfeits on the Internet and the harms caused to businesses and the public is clear, the solution to the issue is complex and challenging.

A lot of Search Sites, Marketplace Sites and Payment Service Providers (PSPs) have implemented policies under which TM owners can report counterfeiting and Providers will eliminate counterfeits from their Sites.

However, once counterfeits are online, it is generally difficult to eliminate them from the Internet .

Part 3: Everyday IP Issues when doing Business

3. Ways to reduce counterfeits and eliminate them from online offers

Therefore, prevention is key! How to prevent counterfeiting?

- Register your trademarks in countries where your products are sold, and where they are manufactured.
- Record your trademarks with customs offices.
- Maintain watching services, and monitor websites engaged in the „business“ of counterfeiting.

Part 3: Everyday IP Issues when doing Business

3. Ways to reduce counterfeits and eliminate them from online offers

Once counterfeiting has become a problem for your company, the following steps should be considered:

- If counterfeits are offered on Marketplace Sites, inform the respective Provider about counterfeits and ask to cancel the offer from Site;
- Depending on the territory involved, you may be able to conduct raids in collaboration with the local authorities.
- Depending on the territory involved, seize fake products or domain names.
- Work with customs agents in order to prevent further import/export of fake products.
- File civil or criminal actions (e.g. preliminary injunction) against the perpetrator.

Final Note

There are multiple ways to protect your intangible assets, and it is worthwhile to do so. Especially in the fashion and textile industry IP rights are one of the most valuable assets of a business and can put a textile producer ahead of the competition.

A company`s IP rights signal the company`s technical superiority, reflect their design skills, and distinguish their products from those of their competitors by associating them with good design, quality and workmanship, or outstanding technical properties.

Finally, IP rights prevent competitors from copying and counterfeiting, or respectively put their owner in the position to effectively eliminate copies and counterfeits.

THANK YOU FOR LISTENING

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