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“The atmosphere for IP rights is fairly hostile”: how trademark professionals could turn the tide

- CIPU chair reflects on challenges in creating IP appreciation
- Contends “trademark is the tail that wags the IP consciousness dog”
- Provides insight into arguments that resonate with different stakeholders

In recent years, much has been written about anti-IP sentiment and what the industry must do to facilitate change. For Bruce Berman, chair of [the Center for Intellectual Property Understanding](#) (CIPU) and CEO of Brody Berman Associates, “the atmosphere for all IP rights – trademarks, patents and copyrights – is fairly hostile”. However, he argues that trademark professionals may be uniquely placed to facilitate a change in attitude – both within their organisations and in the external environment.

Change inherently needs to start from within, and ensuring that at the corporate level there is an understanding and appreciation of intellectual property – or, to use another phrase, the nurturing of IP consciousness – is where it all starts. This can then be leveraged among customers and, ultimately, the wider world. Berman notes: “Creating a culture of respect, where IP creations and rights are understood in context of what they provide is lacking. IP consciousness provides an environment that facilitates more and better ideas, higher valuations and less theft. IP consciousness should be cultivated not only among direct stakeholders – employees, shareholders and customers – but on the part of important audiences like lawmakers, educators and students, which also impact value and reputation.”

That mission is also shared by the CIPU, which is an independent non-profit founded in 2016 by a number of current and former IP executives, entrepreneurs and academics. In order to raise awareness of intellectual property and its impact on people and business, the organisation provides outreach within an educational framework to improve IP literacy, promote freedom of ideas and deter theft. While its efforts continue, however, Berman argues that trademark professionals in particular are uniquely placed to lead the charge to change attitudes towards intellectual property more generally.

He explains: “Trademark, if you will, is the tail that wags the IP consciousness dog. Among the four primary types of intellectual property – patents, trademarks, copyrights and trade secrets – the idea of name recognition or branded products is the most compressible to people. They more readily accept that counterfeits are not only illegal but also unethical, and not just a threat to brand owners’ coffers. There are many teachable moments that trademarks offer and all IP owners can benefit from. This presents a unique opportunity to brand owners and managers to step up and help make audiences more aware of intellectual property and what it achieves.”

This means reaching out to IP and non-IP stakeholders alike, with Berman noting that there are two types of stakeholder: primary ones (ie, those directly associated with a business, such as employees, shareholders, suppliers and customers) and those less directly affected (eg, policymakers). In total, the CIPU [identifies](#) eight groups of IP stakeholders, all of which play an important role in perpetuating positive recognition of branded products or businesses, as well as intellectual property more generally.

Reaching out to each group and enlisting them to the ‘IP cause’ is vital, meaning that the arguments made are crucial. As to what resonates, Berman suggests: “How intellectual property functions in the context of their business’ performance is most important. Also, the benefits that intellectual property provides not only for the company but businesses in general. Everyone should have some awareness of how trademarks and other IP rights play a role in a business’ success – and how they benefit innovation, design and stories, and impact people. L’Oréal, for example, a company known for its strong consumer brand, received more than 3,000 patent grants between 2012 and 2017 alone. I would wager that what these rights achieve for the brand, and how, is a mystery to even its most important stakeholders.”

This can include investors, who have a clear vested interest in successful brands. Berman’s background is in investor relations and he identifies a number of ways to ensure that the IP message truly permeates this group of stakeholders: “With equities, there is acknowledgment of ‘book to market’ value. Say the book price of a share is \$10 but the market price is \$50. The \$40 premium is attributed to perception or future success (really, the financial brand of the company). Similarly, brand value requires continual explanation and reinforcement to maximise perceived value. This means reminding investors, albeit subtly, about what the brand means, how it got there and how it plans to maintain its market position. The importance of inventions and patents that contribute a small but essential part of the success of a product (eg, chips in an iPhone) is a much harder sell. It is easier to craft a clear and simple message about the quality, role and value of a name, invention or IP right or portfolio, and repeat it in different ways for particular audiences. Most are capable of understanding the role and relative value of intellectual property if owners make a sincere effort to respond to what they are missing.”

Such efforts are critical, Berman continues: “A business needs to understand and believe in its intellectual property and the strength of its rights and to convey that professionally. If its most immediate stakeholders – employees, shareholders, customers – do not get the sense the business cares about its assets and respects others’, potential licensees, financing sources and acquirers will not. IP rights are not the enemy that many make them out to be. They are much more of a facilitator or catalyst, and businesses should be keen to help stakeholders get the message. That message needs to be conveyed, quantified and repeated inside and outside the company. Documents like an IP annual report are helpful to all stakeholders, as are third-party endorsements.”

IP communication was a topic that we highlighted in a [recent review](#) of *The Great Catapult: How Integrated IP Management Will Shoot Your Brand to Success*, a new book by Zeeger Vink, when the author told *WTR*: “The IP community has always struggled with communicating the importance of intellectual property to a wider business community.” For Vink, building IP consciousness requires buy-in from the gamut of internal actors, including human resources, procurement managers and market research. And this is all predicated on the willingness to communicate about IP matters.

Reflecting on Vink’s assertions, Berman considers: “He writes about the reluctance of IP owners to divulge much about their intellectual property but believes the company’s IP position can be strengthened by communicating about it: explaining clearly what the company considers the extent of its rights and the boundaries of its exclusivity will increase respect of its intellectual property instead of weakening its position. It is not about communicating quantity but defining and conveying quality. Facts are essential, but so is the perception that is based on them.”

Companies talking about intellectual property, and branding, is of course not without precedent – and Berman hopes that the trend will continue, benefitting those that speak up as much as it does the wider IP landscape. He concludes: “When it comes to communicating IP prowess, enlightened companies include IBM and Philips. For them, discussing their intellectual property and rights has led to successful licensing, excellent recruiting and increased shareholder value. There is a huge opportunity for most senior executives, but especially brand-dependent ones, to step up and educate, to equip stakeholders with a level of IP literacy. In an increasingly digital, global and IP-centric world, where intellectual property plays an increasingly greater role, transparency matters – and there are safe ways of achieving it.”

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