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Preserving IP Assets During Insolvency

The Value of IP

Intangible intellectual property (IP) assets are often the major value component of any business, especially amongst technology-rich enterprises. IP assets include patents, trade marks, copyright, design rights, domain names, know how and trade secrets. Some estimates have suggested that 71% of the value of BP, 96% of the value of Coca Cola and 97% of the value of Kellogg resides in IP assets. Ongoing day-to-day management and strategic planning are essential to maintain value. IP rights are all too easily lost or diluted by inactivity.

Administrators and liquidators will have to identify and possibly dispose of IP assets. In discharging liabilities, the preservation of any IP will be essential.

The Problem

Once applications are made for IP rights, a series of time limited official procedures are opened up before national and regional patent offices, often in many countries around the world. Failure to complete the procedures and pay official fees in specified periods can result in irrevocable loss of rights. Default recovery, where available, is always expensive and time consuming.

Procurement and management of IP rights is often conducted by law firms or patent and trade mark attorneys on behalf of the owner. When the owner goes into administration or liquidation, the service provider becomes an unsecured creditor and may often refuse to provide further services. If the day-to-day care of IP assets is interrupted, then there is immediate risk of default on due dates and official fees. This can lead to irrevocable loss of rights. There is real potential for diminution in the value of the IP during periods of inattention, even during relatively short periods of time. New IP arising may fail to be identified or properly dealt with and opportunities for protection or defense of rights may be lost.

The Solution

The liquidator or administrator must ensure that they have a full and detailed list of all IP assets. An IP audit is one means by which the IP assets of a business can be readily identified. At a basic level, an IP audit can be used by liquidators and administrators to quickly identify IP rights owned by a company. The audit can also identify any specific actions required to secure the IP assets which might otherwise be lost through acquiescence.

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More detailed audits can be used to identify and remedy any defects within an IP portfolio which might be prejudicial to disposal of the IP, to co-ordinate the maintenance of the portfolio going forward with the business needs of the liquidator or administrator, and to identify alternative applications of the IP, and thus potential new avenues of revenue.

Once the extent of IP rights is known, then it becomes possible to engage in effective portfolio management, whether this is preservation at minimum cost prior to disposal, or active procurement and enforcement within agreed budgets.

At HGF our specialist patent and trade mark attorneys, together with solicitors from our sister law firm HGF Law, are skilled in conducting and managing IP audits. In addition, we are able to take over the day-to-day management of IP portfolios and develop an effective prosecution strategy to meet the business and budgetary requirements of a Liquidator or Administrator. Why not contact us to discuss your strategy for identifying, securing and realizing the IP assets you are entrusted with?

For further advice, please contact either Dr Gary Wilson on +44 (0) 141 229 5800 or email gwilson@hgf.com or Neil McKechnie on +44 (0) 141 229 5800 or email nmckechnie@hgf.com