

INTELLECTUAL PROPERTY BEYOND THE FRONTIER

by Michael A. Mann

When you take your products and services beyond your company's geopolitical boundaries or venture beyond real boundaries into cyberspace, you might want to check the local customs where you will be going so that you encounter no surprises.

The purpose of a business is to generate intellectual property. By generating intellectual property it generates wealth. Intellectual property include not only patents, trademarks, and copyrights, but knowhow, trade secrets and showhow. All of these generate wealth for a business and without them, a business can compete only on location and price.

For example, if a business develops a great reputation, which is associated with its tradename, trademarks and service marks, customers will prefer the goods and services of that business, will keep coming back for more, and will refer their friends. This assures a business with a steady stream of customers and contracts, making it a "going" concern. If those products are patented, then the business can charge more for them because it is the only source of those products. The same is true of copyrighted materials such as music; the owner of the copyrights can control sales.

Without intellectual property, a business has only its location and its price. But in cyberspace, location doesn't matter; and when exporting to a foreign country, location is a disadvantage. And there is always someone that can make the product more cheaply. The cheapest manufacturers are usually not domestic ones and they are now easier to find on the internet. Clearly, intellectual property is even more important in cyberspace and when exporting – it gives your business an exclusive advantage.

A business responds to this challenge by thinking beyond the frontiers of its own geopolitical boundaries right from the start. It needs a plan. When it develops a new product, it looks for ways to protect that product. Where will it need patents? When it selects a trademark, it considers the impact of that mark in other markets. Will the mark translate to other languages and will it have the same impact when translated? Can rights be obtained in that mark elsewhere? Can it register copyrights elsewhere? Do patents, trademarks and copyrights apply to activities on the internet?

The process of getting patents in foreign countries is a good news/bad news joke. Yes, you can get patents in other countries. No, there is no such thing as an international patent. Yes there are treaties that make it easier to get a lot of patents. No, the treaties do not make the process much cheaper. But, fundamentally, there is a process and it does make getting patents more manageable. The primary characteristic of this process for businesses is that, by taking certain simple steps, they can preserve the option of getting foreign patents for several years after applying in the US. This characteristic allows time for the decision-making process and

managing the costs of those decisions.

Some good news for exports and e-businesses: patents, trademarks and copyrights apply with full force and effect on the Internet and no formalities are needed in most countries to claim copyrights.

When selecting a trademark, you may want to consider a more comprehensive search on the candidate mark to see if it is available in other countries. This search should include a check to see if the domain name including the candidate mark is available. Also, words don't always translate well but logos do. Incorporating a visual element as a dominant feature of your mark is a very good idea if you are planning to export. Register your mark as a mark and as a domain name (in the ".com", ".org", and ".net" species". Finally, consider registering the mark in foreign countries as soon as you identify which ones you will be exporting to.

If your product can't be protected, and all you have is the knowhow for making it, sell that knowhow. You could try exporting the product, but there is no way to prevent someone elsewhere from reverse-engineering it and making copies just as good but cheaper than you can. If you can sell the knowhow, you at least get something for your intellectual property and they get up the learning curve more efficiently.

If exporting to foreign countries or planning an e-commerce initiative, review your business' intellectual property with your intellectual property attorney and form a plan for protecting it. Then implement the plan.