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AN INTELLECTUAL PROPERTY ROADMAP FOR MANUFACTURERS

The manufacturing sector in Kenya is increasingly becoming innovation-driven, with businesses investing in research, product development and new technologies to remain competitive. In fact, the manufacturing sector contributes approximately 8% of Kenya's Gross Domestic Product (GDP), underscoring its importance to Kenya's economic growth.

Yet many manufacturers focus mainly on protecting their tangible assets while overlooking the intellectual property that underpins their competitive advantage. This exposes manufacturers to lost ownership of innovations, imitation by competitors, costly disputes and missed commercial opportunities. Intellectual property is therefore more than a legal consideration; it is a strategic business asset. This article highlights the key intellectual property risks manufacturers face and the steps they can take to protect and maximize the value of their innovations.

WHY INTELLECTUAL PROPERTY MATTERS IN MANUFACTURING

Manufacturers routinely generate valuable intellectual property in the ordinary course of business, often without recognising its commercial significance. A single product may embody several forms of intellectual property simultaneously, each requiring a different protection strategy. For instance, a beverage manufacturer may own a trade mark protecting the product name, an industrial design safeguarding the distinctive shape of its bottle, a patent covering an innovative production process, copyright in its product labels and technical drawings and trade secrets protecting its formulation or manufacturing method. Together, these assets form an important part of the manufacturer's competitive advantage and commercial value.

An effective intellectual property strategy therefore requires manufacturers not only to identify these assets but also to determine the most appropriate legal mechanisms through which they should be protected.

1. ESTABLISHING OWNERSHIP

Ownership is the cornerstone of any intellectual property strategy. Yet it is often overlooked during product development, particularly where innovations are created by employees, consultants, software developers, industrial designers or external research institutions.

The Industrial Property Act (Cap. 509) provides that the right to register an invention made by an employee in the course of employment generally vests in the employer, unless an agreement provides otherwise. Further, the Copyright Act (Cap. 130) provides that ownership of copyright created in the course of employment or under commissioned arrangements vests in the author's employer or the commissioning party unless there is an agreement between the parties that excludes or limits that transfer. Significantly, where innovations are developed by consultants, contractors or other third parties, ownership does not automatically vest in the manufacturer and must be expressly assigned through written agreements.

Failure to address ownership at the outset may result in disputes that delay commercialisation, complicate investment transactions and ultimately diminish the commercial value of the innovation.

2. PROTECTING MANUFACTURING INNOVATION

2.1. Patent protection

Manufacturers continuously improve production methods, machinery and product formulations. These innovations may qualify for patent protection provided they satisfy the statutory requirements of novelty, inventive step and industrial applicability.

However, manufacturers frequently undermine patent protection by disclosing inventions before filing an application. Presenting a new process to investors, discussing technical specifications with suppliers or exhibiting prototypes without adequate confidentiality protections destroys the novelty required for patent protection.

2.2. Industrial design protection

Competitive advantage is not always derived from technical innovation alone. Product packaging, shapes and visual configurations often distinguish one manufacturer's products from another and influence consumer purchasing decisions.

These features qualify for protection as industrial designs. Failure to register industrial designs before commercialisation may leave manufacturers exposed to imitation, particularly in industries where product appearance is a significant differentiator.

2.3. Trade secret protection

Not every valuable business asset can be patented. Many manufacturers derive their competitive advantage from confidential manufacturing processes, production techniques, formulas, quality control systems, machine calibrations and supplier information. Unlike registered intellectual property rights, these assets derive their value from remaining confidential and are protected as trade secrets.

Manufacturers should implement comprehensive confidentiality policies, non-disclosure agreements, restrict access to sensitive information, clearly define confidential information in employment and commercial agreements and ensure appropriate obligations continue after employment or consultancy arrangements have ended.

3. COMMERCIALIZATION OF THE INNOVATIONS

Commercialization transitions intellectual property from a legal right into revenue. This is achieved through licensing, assignment, strategic partnerships and distribution arrangements. Yet the commercial value of an innovation is only as strong as the agreements that govern its exploitation. For instance, a licensing agreement that fails to define the field of use may inadvertently allow a partner to compete directly with the manufacturer's core business.

Manufacturers must therefore treat commercial agreements not as administrative formalities but as strategic instruments ensuring every term is precise, rights granted are carefully scoped and the manufacturer retains sufficient control to protect and grow the full commercial lifecycle of its innovation.

4. INTEGRATING INTELLECTUAL PROPERTY AS PART OF THE BUSINESS STRATEGY

Rather than addressing intellectual property only when disputes arise, manufacturers should incorporate it into their broader corporate governance and innovation strategies. This includes conducting periodic intellectual property audits, reviewing contractual arrangements, identifying registrable assets early, implementing internal innovation reporting procedures and regularly monitoring the market for infringement and counterfeit products.

An integrated intellectual property strategy not only reduces legal risk but also strengthens enterprise value, supports investment and enhances competitiveness within increasingly dynamic domestic and regional markets.

CONCLUSION

As manufacturing becomes increasingly innovation-driven, intellectual property has evolved into a strategic business resource. The effective management of intellectual property should therefore form part of every manufacturer's broader commercial strategy. Businesses that embed intellectual property considerations into innovation, product development and commercial decision-making are better placed to sustain competitive advantage and create lasting enterprise value in an increasingly dynamic marketplace.

HOW WE CAN HELP

Protecting intellectual property demands a strategic approach that aligns innovation with the business objectives throughout the product lifecycle. Our Intellectual Property, Brands and Commercialisation Practice advises manufacturers on identifying, protecting, commercializing and enforcing their intellectual property rights, enabling them to maximize the value of their innovations while mitigating legal and commercial risks. Our services include:

- **Intellectual property audits and strategy:** Identifying valuable intellectual property assets and developing protection strategies aligned with your business objectives.

- **Registration and portfolio management:** Advising on the protection and management of intellectual property rights.

- **Commercialisation:** Structuring licensing, assignment, distribution and technology transfer arrangements to maximize the commercial value of intellectual property.

- **Enforcement and dispute resolution:** Advising on infringement, counterfeiting, breach of confidence and other intellectual property disputes.

If you would like to discuss how best to protect your intellectual property or require advice on any intellectual property matter, please contact the contributor below or reach out to our Intellectual Property, Brands and Commercialisation Practice at ipbc@cmadvocates.com.

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