



## Précis Paper

### IP Audits Necessary Business Hygiene Check

Abstract – Auditing of intangible assets is an essential element in valuing a business and needs to be done annually, long before planning any potential sale.

#### **Discussion Includes**

- Identify your intellectual property (0:42)
- How to audit (4:06)
- Domains and social media (7:30)
- Buying a trade mark (13:16)
- Copyright (16:57)
- Have a checklist (23:11)
- What is commercialisation? (24:53)
- Franchises (28:17)

# Précis Paper

## IP Audits Necessary Business Hygiene Check

1. In this edition of BenchTV, Melissa McGrath (Principal Lawyer) and Catherine Sedgley (Senior Associate) discuss the need for regular audits of business intangible rights to keep tabs on intellectual property and value add in case of future sale.

### Identify your intellectual property

2. Everyone has intellectual property (IP) but they often don't identify it. It could be a name, a creation or a system.
3. Have some education around what is the IP that could be useful to the business, just as a good corporate hygiene check.
4. A trade mark is useful offensively and defensively. It can be used as an asset when you sell your business. Or it can be used to enforce your rights against somebody else and keep them out of your patch.
5. These are registerable rights which are relatively easily identified by a checklist as you're going through your business, say at sale point.
6. You can also have new material from the ideas of staff and underutilised assets.

### How to audit

7. See list on video at 4:08.
8. In terms of timing, do it annually. A value of intellectual property and culture of valuing IP have to come from the top.
9. Identify someone in the business with an interest in innovation or at least intellectual property, who can try to identify where new revenue streams can come from or what is protectable.
10. Middle management is the perfect area to place it. They know the difference between a trade mark and a design, They can identify to the CEO 'we need to do something about it'.
11. Or you can outsource your IP auditing or management.

### Domains and social media

12. These are an important intellectual property asset. If people don't have domains they do have Facebook pages. They need to be careful who owns these things. It needs to be in the name of the organization so it can be properly transferred on sale.
13. If you have tech support registering your domain, making sure that if you do get someone to set up a domain for you that it's put back into the company's name.

14. Especially for smaller businesses, you can use services to monitor. China is a good market to have monitoring in because it has 'first to file'. You can put watches on a competitor, a brand that might be coming out - you can be proactive.
15. Not just for your business but one you might be merging with or purchasing.

#### Buying a trade mark

16. It is that intangible asset, that trade mark, that name, that people will buy.
17. Get advice on your best strategy with a limited budget.

#### Copyright

18. Unregistered rights are often forgotten. Copyright just exists, you don't have to register it to identify it's a copyright work. The copyright symbol and year are recommended on web pages or for a creative business or architectural business for architectural drawings.
19. They need to be put in the schedule of assets when the business is being valued. It can be everything from the pamphlet you produce to explain the product.
20. Identify confidential information. That's important for enforcement reasons but also to be able to value it.
21. You need an audit of access and use.
22. Have an IP hygiene check every year, and confidential information should not be forgotten in that.

#### Have a checklist

23. If you've got a checklist you can break that down. It's a bundle of rights.

#### What is commercialisation?

24. Pick up the expression of an idea and make a going concern out of it.
25. It's putting a system out there, or a brand. That can then be extended to others.

#### Franchises

26. With a franchise you're buying into a brand.

## **BIOGRAPHY**

### Melissa McGrath

Principal Lawyer, Coleman Greig, Sydney

Melissa is a specialist Intellectual Property lawyer and trade mark attorney with qualifications in Law and Biochemistry and over 15 years' experience. With a sharp business acumen, she is recognised globally by her peers and clients as a leading IP lawyer. Her clients have included Sony Music Entertainment, Universal Music, Warner Music, Navman Wireless Australia, Voxson, FMCG, media, life sciences and technology industries, with a particular interest in providing advice on patentable inventions and trade marks. She understands the complexities of copyright and is able to manage disputes in each of these areas.

Melissa is the Chair of the Marketing Experts Committee of the international Trade Mark Association Public Information Committee and of the NSW Intellectual Property of Australia and New Zealand (IPSANZ) Committee. She is also a Fellow of IPTA and former Chair of the INTA marketing experts committee.

### Catherine Sedgley

Senior Associate, Coleman Greig, Sydney

Catherine Sedgley is a Senior Associate within Coleman Greig's Commercial Advice team. Having assisted clients across a wide range of commercial legal areas, she has developed a passion and a particularly high level of expertise and practical knowledge in the areas of brand protection, intellectual property and franchising law. In addition to her passion for protecting brands and intellectual property for her clients, Catherine specialises in providing advice, support and guidance to those operating in the Australian franchise industry. Having worked with both start-up *and* established franchise networks and both franchisors and franchisees, she has a thorough understanding of the franchising industry and is in a unique position when it comes to assisting her clients.

## **BIBLIOGRAPHY**

### Benchmark Link

[https://benchmarkinc.com.au/benchmark/weekly\\_intellectual\\_property\\_law/benchmark\\_17-04-2020\\_weekly\\_intellectual\\_property\\_law.pdf](https://benchmarkinc.com.au/benchmark/weekly_intellectual_property_law/benchmark_17-04-2020_weekly_intellectual_property_law.pdf)

### Judgment Link

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/65.html>

### Cases

*Kraft Foods Group Brands LLC v Bega Cheese Limited* [2020] FCAFC 65

### Legislation

*Berne Convention for the Protection of Literary and Artistic Work, September 1886*  
*Buenos Aires Copyright Convention 1910*  
*Personal Property Securities Act 2009* (Cth)