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TRUST & EXCELLENCE

IP STRATEGY IN THE BEAUTY INDUSTRY

INSIGHTS

Introduction

In today's rapidly evolving business landscape, intellectual property (IP) strategy has become an essential component for companies across various industries. This case study delves into the strategic approach of the beauty industry, exploring how IP assets are leveraged to drive innovation, protect valuable ideas, and gain a competitive edge. By examining the experiences and tactics of key players within this industry, we aim to uncover the nuanced ways in which IP strategies are employed to navigate the challenges and opportunities specific to their field.

The most common Intellectual Property rights in the beauty industry are Trademarks, Patents and Trade Secrets

1. Trademarks:

The Trade Marks Act¹ is the primary legislation on trademark registration in Nigeria. Trademarks are distinctive symbols, words, or phrases used to identify and distinguish goods or services. It provides brand recognition and legal protection against unauthorized use by others. During the trademark application process, a thorough examination is conducted, relying solely on the information provided. Paying attention to the smallest details is crucial, as they can distinguish your mark and provide a competitive advantage.

The term trademark refers to a recognizable insignia, phrase, word, or symbol that denotes a specific product and legally differentiates it from all other products of its kind.² It helps consumers distinguish between different brands and creates a connection between the brand and its reputation, quality, and overall identity. Trademarks can take various forms, including words, names, logos, symbols, designs, or a combination of these elements. They play a crucial role in protecting the intellectual property rights of businesses and ensuring fair competition in the marketplace.

¹ Trade marks Act, Cap T13, Laws of the Federation of Nigeria, 2004

² <https://www.investopedia.com/terms/t/trademark.asp>

One of the best methods to safeguard a brand's identity and make sure that buyers seeking a certain product know exactly where to go is to register a trademark. In addition to identifying the point of origin, trademarks represent consumer expectations and, frequently, encourage customers to stick with their favoured brand.

Therefore, producers should endeavour to take steps to register their brand marks which include logos, colours etc. with the Trademarks, Patents and Designs Registry to safeguard their brands' identity.

2. Patents:

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.³

There are two types of patent applications in Nigeria, namely;

- I. Patent Cooperation Treaty(PCT) or Conventional Patent and
- II. Non-conventional Patent.

PCT or Conventional Patent refers to patent applications that have been registered in one or more countries before being filed in another country. These patents allow the patent owners to claim priority based on the initial filing date in the first country. For example, a patent registered in the UK, then the US, France, and finally in Nigeria would be considered a conventional patent. The patent owners can maintain the priority date in each country and claim priority in each subsequent filing.

Non-conventional Patents are patents that are being registered for the first time in the country where the invention was made. These patents are also known as local patents. For instance, an invention undergoing its first patent registration in Nigeria will be considered a local Patent. Beauty brands can have robust protection from items that replicate their ideas thanks to patents. Cosmetic firms have the option to apply for patents on a variety of product components, such as the composition, application, or usage of a certain ingredient.

Big brands like Mary Kay Inc. have a patent portfolio including a patented "method for reducing a presence of sebum on skin, reducing an appearance of shiny skin and reducing an appearance of the size of skin pores,⁴" which the company says covers its Clear Proof Deep-Cleansing Charcoal Mask. The usage of homemade beauty remedies at home has increased after the Covid-19 outbreak.

³ <https://www.wipo.int/patents/en/>

⁴ <https://www.prnewswire.com/apac/news-releases/mary-kays-patent-count-hits-record-high-of-1-678--302020995.html>

More than ever, customers are forgoing in-person services in favour of online purchases of cosmetics to use at home. This change is reflected in the patents cosmetic businesses have filed recently. L'Oréal submitted many patent applications covering a range of innovative beauty gadgets, such as one that offers users a "personalised skincare recommendation and skin care device having [an] energy regenerating end effector"

In conclusion, the role of patents in the beauty industry is undeniable, serving as a catalyst for innovation and fostering a competitive landscape. As beauty companies navigate this dynamic environment, it is important for players in the industry to proactively engage with patent protection strategies. By securing and strategically leveraging patents, companies can not only safeguard their groundbreaking formulations and technologies but also establish a unique market position. As the beauty landscape continues to evolve, a commitment to intellectual property protection will not only safeguard individual interests but contribute to the industry's overall growth and advancement. Thus, in the ever-changing beauty landscape, a strategic approach to patents is not just a legal necessity but a pivotal tool for sustained success and progress.

3. Trade Secrets

The World Intellectual Property Organization ("WIPO") defines trade secrets as intellectual property rights on confidential information which may be sold or licensed.⁵

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁶ - an agreement between the member nations of the World Trade Organization (WTO) - classified trade secrets as undisclosed information that needs to be protected as long as such information:

- I. is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- II. has commercial value because it is secret; and
- III. has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Trade secrets safeguard confidential information, including manufacturing processes or formulas, that have actual or prospective value for their owner because they are proprietary and have been the subject of appropriate

⁵ <https://www.wipo.int/tradesecrets/en/#:~:text=What%20is%20a%20trade%20secret,may%20be%20sold%20or%20licensed.>

⁶ The TRIPS Agreement was amended through the Protocol of 6 December 2005 that entered into force on 23 January 2017. The amendment inserted a new Article 31bis into the Agreement as well as an Annex and Appendix. These provide the legal basis for WTO members to grant special compulsory licences exclusively for the production and export of affordable generic medicines to other members that cannot domestically produce the needed medicines in sufficient quantities for their patients.

safeguards. The owner will have a de facto monopoly if these conditions are met, and it will remain so until the secret ceases to be hidden.

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Conclusion

From raw material selection and processing to production, packaging, distribution, and marketing to client sales, the skincare and cosmetics sector has emerged as one of the industries with the fastest economic turnover.⁷ Naturally, because of its very complicated production and processing procedures, this industry has developed into a capital-intensive corporate sector.

By protecting these aspects of their business such as a formula or a manufacturing method as trade secrets, beauty companies can maintain a competitive advantage, safeguard their investments in research and development, and preserve their brand identity in a highly dynamic and evolving market.

⁷https://www.beautypackaging.com/contents/view_breaking-news/2024-05-08/us-beauty-industry-sales-slow-but-are-growing-in-q1-according-to-circana/#:~:text=Skincare%20dollar%20sales%20increased%20by,to%20Q1%20of%20last%20year.

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