



Protecting Your IP when Crowdfunding

Crowdfunding is a new and exciting way of raising funds. However, if you fund your business in this way you need to consider carefully how to protect your valuable intellectual property (IP). Crowdfunding involves wide and rapid disclosure of information. This can be beneficial to your business but may also pose some risks to your IP.

The reasons why you might want to protect your IP will be determined by the nature of your business. They may include:

- preventing others using your invention
- providing a licensing opportunity
- supporting an investment opportunity
- stopping someone else getting a patent
- obtaining a negotiating tool
- increasing your asset value or
- demonstrating ownership.

Primary IP Risks

The main risk you need to consider when seeking investment using crowdfunding relates to publicity. Anything which involves bringing your business idea to the attention of the public counts as a “disclosure”. Of course, the basis of the crowdfunding concept is to publicise your idea to as many people as possible. A compelling pitch is key to attracting investment and you need to explain your business in sufficient detail for your pitch to be persuasive. However, any disclosure of your idea could prejudice your chances of securing effective or valid protection of your IP further down the road.

There are several forms of IP and different issues arise with each one.

Patents

Patents relate to technical innovations or improvements.

Prior disclosure can be fatal to any subsequent patent application if it reveals the essential features of the invention. It may prevent you getting broad protection if the core idea is disclosed (even if the details are kept back).

Trade Marks

Trade marks protect brands as a sign of origin.

Disclosure does not prevent you subsequently registering a trade mark. However, it increases the chances of someone copying your brand name or logo. If they register it before you, they are likely to secure the prior rights in the trade mark.

Designs

Designs protect the appearance of a product.

In many countries, prior disclosure is fatal to registering a design. A few countries (including the UK and the EU) have a 12 month 'grace period'.

Copyright (and Unregistered Design Right)

These rights arise automatically upon creation in a variety of 'creative' works and subsequent disclosure is not fatal. However, they only provide protection against copying (and do not protect technical innovations).

Confidential Information (Know How and Secrets)

Once disclosed, this type of information is obviously no longer confidential.

In view of the many types of IP right that can be lost or compromised through disclosure, you should stop and think before disclosing your business idea on a crowdfunding website.

Limited disclosure - such as an explanation of broad concepts or a general description of the idea - may not prejudice subsequent protection if it does not provide an 'enabling' disclosure. An "enabling" disclosure is the publication of information (in any format) which makes it possible for a person in the field to reproduce your invention using only their general knowledge of the field.

You need to make an informed decision as to what you can disclose and what you cannot, bearing in mind the potential value of your IP. You also need to take care not to be drawn into making inappropriate disclosures when answering questions on a crowdfunding site from prospective investors.

With regard to patent protection, the safest course of action is usually to file a patent application covering at least the broadest concepts before disclosing any of your ideas on a

crowdfunding site. If you restrict the disclosure to broad concepts covered by the patent application, you may be able to file follow-up applications for sub-concepts at a later stage (and use the money raised from crowdfunding to help finance these further developments of your business).

Every case is different and the forms of IP protection needed to support a business depend on the nature of the business, its unique features and the business strategy, so it pays to seek advice.

Other IP Risks

Another issue that is often overlooked is third party IP rights: by commercialising your idea will you be at risk of infringing someone else's rights? It is important to consider whether you could be sued on grounds of infringement for selling your product. Because launching your idea on a crowdfunding website exposes it quickly to a large number of people, any potential infringement issue may arise sooner rather than later. Crowdfunding platforms may seek your assurance that you do not infringe third party rights so that they do not receive complaints from third parties.

You should consider whether or not someone else has already patented your invention or registered your brand name. If there is a question mark over your 'freedom to operate' - or even a risk of legal proceedings - this can be very off-putting to potential investors. You should make appropriate investigations to reduce the risk. These investigations may include patent searches, trade mark searches or analysis of market intelligence on your closest competitors.

Whilst an investor may share your interest in keeping your IP protected (and may therefore sign a confidentiality agreement), it should be remembered that most crowdfunding platforms have no interest in protection of your IP. Most platforms will still make their money if you secure funding, whether or not this process damages your prospects of securing valuable IP protection.

The use of crowdfunding sites also has a specific risk in that some people specifically target these sites to find valuable ideas that are not yet protected.

In summary: stop and think before disclosing, seek advice before it's too late and don't shoot yourself in the foot!

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