

GETTING SMART about intellectual property

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Imagine taking years to perfect a new and super efficient system for harvesting mussels, opening oysters or farming some new aquaculture species, only to have a former employee walk down the road and share your secrets with the competition. Or developing some great new value-added product or method of packaging, then discovering someone already owns the rights to the name you intended to market it under and you have to settle for second best.

These aren't very far-fetched examples of why understanding and protecting intellectual property rights is important to all kinds of businesses, and not just the big guys. IP is a catch-all term used for innovations, creations and inventions that can be given legal protection.

Terms like copyright, trademarks and patents are familiar to us all, but what isn't always appreciated is that copyright protection (of written works, music, software, visual arts and so on) is the only kind of IP protection that arises automatically. Putting a copyright notice, e.g. "Copyright Justine Inns, April 2014", on something you have created can be useful for making other people aware of your rights, but isn't strictly necessary.

In the marine farming industry, the types of IP most likely to require legal protection include trademarks, patents and designs and all of these must be registered with the Intellectual Property Office of New Zealand in order to obtain that protection. IPONZ operates a publicly searchable database which can alert people that someone owns the IP in question and acts as a deterrent and legal barrier to the breach of the rights to that property.

A trademark is a unique identifier, e.g. a brand or logo. Trademarks commonly include words, logos, colours and/or shapes but can even comprise particular

sounds or smells, if they are sufficiently distinctive. Once a trademark is registered, the ® symbol can be attached to it, to alert people to the fact that it cannot be used without the permission of the owner.

Branding can be an expensive exercise and is undertaken so that businesses can distinguish their products or services from similar ones offered by competitors. The aim is always that the brand will add value by appealing to customers and building their loyalty to the product or service, i.e. winning new customers and keeping old ones. Trademarking ensures that value is legally protected. Even if you haven't invested a lot of money in branding, it's important to realise that forming a company and/or securing a domain (website) name won't automatically give you the exclusive right to use "your" name for branding.

Designs and patents are often related concepts, but each requires separate protection: design registration protects original design features in the external appearance of a manufactured item, whereas a patent protects the concept or idea behind the item, for example how it is manufactured or how it functions. Picture something like a new process for packing mussels in cylindrical containers that keeps them alive for twice as long as previous methods. The cylindrical design of the container, i.e. the outward appearance, would need to be registered as a design, as well as the features of the packaging that allow mussels to stay alive longer being patented in order for the innovation to have full legal protection.

Registering a design provides a higher degree of protection than simply relying on copyright because it requires a search for similar or identical New Zealand registered designs, thereby establishing whether the design is new and original.

It is far easier to prove ownership or authorised use of a registered design than for a copyrighted item. Registering a product design gives the exclusive right to that design in New Zealand for a period of up to 15 years, which prevents others from copying or imitating the design and gives the owner the right to sell the design or license its use to another business.

Similarly, a patent ensures the right of exclusive use of an invention for up to 20 years and can be bought, sold, transferred or licensed like any other property. The criteria for the types of inventions that can be patented are broad, but complex. Generally, in order to qualify for a patent, an invention must be new or novel, contain an "inventive" step (not just an obvious improvement to an existing product or process) and be capable of being made or used in an industry. Secrecy is important in developing an invention, as a patent may not be granted if it has already been used, displayed, described in a public document or made available in New Zealand.

Finally, it is essential that employment contracts for key staff, as well as joint venture agreements and contracts with other parties, deal explicitly with confidentiality and ownership of IP created in the course of your business.

Marine farmers have always been innovators of the "No.8 Wire" variety. It's good practice to recognise those innovations as valuable investments that require protection just like the more tangible parts of your business. 

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