

# TRADING IDEAS 2009

## INTELLECTUAL PROPERTY IN EDUCATION AND MEDIA BUSINESSES

By  
Joyce A. Tan  
JOYCE A. TAN & PARTNERS

### IP-RELATED CHALLENGES IN EDUCATION AND MEDIA BUSINESSES

- Supply of Intangibles – Business of
  - developing/acquiring ideas, knowledge and information
  - imparting/selling ideas, knowledge and information
- Currency and Dynamism – Need to
  - update ideas, knowledge and information
  - keep up with changing trends and events
- Duplication and Portability
  - visible deliverables
  - value largely in expression/delivery of ideas, knowledge and information
- Strong People Dependency
  - ideas, knowledge and information reside in human minds

## IP-RELATED CHALLENGES IN EDUCATION AND MEDIA BUSINESSES

- Strong People Dependency (cont'd)
  - deliverables through direct performance of services  
e.g. trainers, designers, producers
  - quality of deliverables as good as human performance
  - mobility of people = potential direct erosion of assets
  - contrast business where ideas of one/few implemented  
or manifested in tangible products sold by many e.g. a  
single/specific technology deployed in business
- Lines of Ownership to Deliverables
  - potentially blurred and ephemeral
  - requirements/specifications of deliverables may be  
dictated by external sources

INVEALIGN  
& PARTNERS

## TYPICAL/LIKELY IP IN EDUCATION AND MEDIA BUSINESSES

- Copyright
  - protects original material expressions, not ideas e.g.  
literary, artistic, musical works – no registration involved
  - e.g. papers, articles, publications, artistic creations,  
video/multimedia productions, brochures, marketing  
collateral
- Trade Secrets/Confidentiality
  - protects information which is valuable/business sensitive  
and not in public domain
  - must be disclosed in circumstances which impose duty of  
non-disclosure – no registration involved
  - e.g. processes, systems, SOPs, customer lists, pricing,  
marketing strategies

INVEALIGN  
& PARTNERS

## TYPICAL/LIKELY IP IN EDUCATION AND MEDIA BUSINESSES

- Trade Marks
  - protects names/symbols/signs used in business
  - registered and unregistered rights
- Less Likely But Possible
  - patent – registration involved
    - # protects invention – must be new, have industrial application and involve inventive step
    - # e.g. telecommunications technology
  - registered designs – registration involved
    - # protects designs – must be new, have industrial application and relate to “features of shape, configuration, pattern or ornament”
    - # e.g. design of furniture, luggage

INVEAIGN  
& PARTNERS

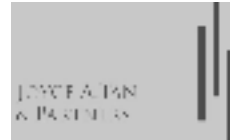
## STRATEGIC IP FOCUS AND BEST PRACTICES IN EDUCATION AND MEDIA BUSINESSES

- Limited/Difficult IP Protection
  - non-registrable copyright – self assertion and proof
  - non-registrable trade secrets – control over leakage
  - business deliverables directly tied to people – vagaries of human conditions and situations
- Branding/Trade Marks
  - distinguish from competitors
  - brand recognition and outreach programmes
  - marketing communications with brand profile
  - brand association - distinct business practices, method, quality, style, projects e.g. Kumon, Edward de Bono, Ogilvy

INVEAIGN  
& PARTNERS

## STRATEGIC IP FOCUS AND BEST PRACTICES IN EDUCATION AND MEDIA BUSINESSES

- Branding/Trade Marks (cont'd)
  - protection of marks
    - # proper and consistent use
    - # registration – jurisdiction-based
    - # protect against third party dilution /unauthorised use
- IP-Complementary Measures for Protection of Intellectual Assets - Examples
  - people strategy
    - # intellectual assets emanate from, reside in and delivered by people



## STRATEGIC IP FOCUS AND BEST PRACTICES IN EDUCATION AND MEDIA BUSINESSES

- IP-Complementary Measures for Protection of Intellectual Assets – Examples (cont'd)
  - people strategy (cont'd)
    - # compensation/reward schemes, innovation incentives, KPI measurements, etc
  - quality control
    - # establish/implement standard processes and SOPs
    - # prioritise reputation protection
  - accreditation programmes
  - achievements
    - # past projects
    - # alumni



## STRATEGIC IP FOCUS AND BEST PRACTICES IN EDUCATION AND MEDIA BUSINESSES

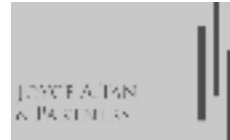
- Recognise/Identify/Protect Intellectual Assets
  - manifestations e.g.
    - # curriculum, research, information, know-how, expertise
    - # methods, processes
    - # business deliverables
  - internal tracking and record-keeping
    - # repository
    - # origination data – who, when, where
    - # revisions and updates
  - demarcate lines of ownership vis-a-vis
    - # staff, contractors and collaborators e.g. trainers, free-lance designers, course developers
    - # recipients e.g. customers, course attendees, business associates and partners

## STRATEGIC IP FOCUS AND BEST PRACTICES IN EDUCATION AND MEDIA BUSINESSES

- Recognise/Identify/Protect Intellectual Assets (cont'd)
  - raise awareness of/stake ownership claim
    - # internally and externally
    - # visible protection measures
  - contracting disciplines
    - # non-disclosure/confidentiality undertakings
    - # restricted terms of use
    - # acknowledgement of ownership
  - 'secrecy' controls - establish/implement policies/practices on
    - # release/sharing/publication of materials and know-how
    - # authorised access to materials and know-how
    - # copying and reproduction of materials and know-how

## IP VALUATION

- Market approach – market comparable intangible asset / IP
- Cost approach
  - capture cost to be incurred to develop market
  - appropriate for intangibles that do not directly generate cash flow
  - alternative approach to check whether income approach results are reasonable
- Income approach
  - most common approach
  - capture future cash flow
  - direct – cash flow directly attributable to intangible asset
    - # excess earnings method



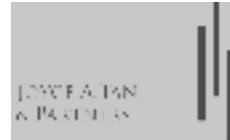
## IP VALUATION

- # premium profit / pricing method (generally applicable to brands)
- # relief-of-royalty or royalty savings method
- # cost savings method
- indirect – residual earnings after deducting tangible asset value of company
- Selection of approach – depends on IP e.g.
  - brands
  - patents
  - know-how
  - customer lists
  - franchises



## IP VALUATION

- Difficulties
  - separating cash flows between different classes of intangible assets
  - limited comparable companies and transactions
  - limited information on transactions involving intangibles
  - double-counting – whether valuation includes value of other intangible assets implicitly
  - trade secrets – can these be shared?
  - early stage of development of intangible asset (in progress R&D)



## THANK YOU

**JOYCE A. TAN & PARTNERS**

8 Temasek Boulevard, #15-04 Suntec Tower 3, Singapore 038988

Tel: +65 63336383 Fax: +65 6333 6303 Email: [all@joylaw.com](mailto:all@joylaw.com)