

Are You Buying a New York or New Jersey Business? Don't Overlook Valuable Intellectual Property

by Dan Brecher on March 1, 2012

When purchasing an existing New York or New Jersey business, it is essential to fully understand what assets and liabilities you will be inheriting. While tangible assets like equipment, inventory, and buildings are important considerations, intangible assets like intellectual property should not be overlooked.

In fact, given the increasing value of trademarks, trade secrets, and patents in today's business world, intellectual property should be near the top of your list when investigating a potential business acquisition. While certainly not an exhaustive list, below are several key areas to consider:

Verify IP Ownership: It is important to verify that the potential acquisition in fact owns all of the intellectual property needed to run the business successfully. This means obtaining documentation related to all federally registered IP such as trademarks, patents, and copyrights as well as any rights obtained under state or common law. In addition, any representations that the company makes regarding IP ownership should be reflected in the purchase and sale agreement.

Review Existing IP Agreements: You should also carefully review any existing IP agreements to determine your future liability. These can include licensing agreements, assignments, royalty agreements, and even employment agreements. For instance, will you be responsible for any ongoing royalty payments? Has the company assigned any copyrights to a third party? Does a key employee hold rights to a patented invention?

Evaluate Potential Infringement: It is also important to find out if the company is involved in any infringement lawsuits. First, you will want to know if the company is aware of any infringement allegations by third parties (i.e. cease and desist letters, complaints, etc.), as this could lead to costly litigation down the road. Second, it is also important to determine whether the company's IP rights have been infringed by third parties, as this could indicate the IP is prone to attack.

Given the importance of intellectual property to a business acquisition, it is important begin your investigation early in the process. This will allow you to conduct your own due diligence and address any obstacles you may encounter. To ensure that you cover all of your bases, it is advisable to consult with an experienced business attorney.