



## Analysing Intellectual Property as a Forerunner in Creation of Competitive Advantage in Business

\* Suvrashis Sarkar \*\* Dr. Stephen D'Silva

\* Researcher for PhD with Mumbai University at Jamnalal Bajaj Institute of Management Studies

\*\* Research guide and Professor of Marketing at Jamnalal Bajaj Institute of Management Studies. Mumbai

### ABSTRACT

*Successful management of competition, creation of great brands, being international, having major market share, being successful in the stock market index, perfect in service deliverables . . . the list is endless to mention what would bring competitive advantage to ones business. Most often in India, the term intellectual property rights come to mind or action only when an infringement has happened and the time is high for a legal action involving IPR laws, never otherwise. Indian industries who have taken IPR to a certain serious manner are none but the Pharmaceutical, Information technology and Entertainment sectors only. A small survey was done among business executives of 10 different industrial sectors to understand the same. This paper has attempted to highlight the importance of IPR in creation of competitive advantage for every business in India not just as a legal function but as an integral management responsibility to create business excellence.*

**Keywords :** Intellectual property rights, competitive advantage, business excellence, India

### Need for research:

We strongly believe from our academic background and practical industry working background knowledge that Intellectual property is a major component for competitive advantage in the present generation of business more so since the advent of this new century. However we believe that IPR has not been understood properly and considered with due seriousness in most sectors and hence was important to understand the same from industry representatives.

### Research methodology:

Ten mid-senior business executives known to us, who represent 10 different industry sectors, were interviewed with open ended questions in a short survey through telephonic interview for collection of primary data and some journals and books were referred for secondary reference data. The selection of these ten representatives was done on convenience sampling basis in Mumbai itself.

### Introduction:

Talking of competitive advantage of companies, the first thing comes to obvious attention is the product and the brand that the company has. The excellence and superiority of the product offering in term of its technical edge or quality edge (eg: Apple, Nikon, BMW) gets its due share of competitive advantage in the market along with the brand name associated which creates an equity in the market for that product and the company in total. This superiority is an example of competitive advantage that a company might enjoy in the market which also ensures higher market share and higher revenues. Branding of the product/s and the brand name of the organization itself can create the business excellence and competitive advantage required to grow and sustain in the market. This is highlighted and projected with a larger picture among consumers through advertising and other marketing communications mostly. Brand portfolios have attracted increasing attention in the academic literature during decades (Aaker and Joachimsthaler 2000; Kapferer 2004; Keller 2003; Laforet and Saunders 2007). They have been

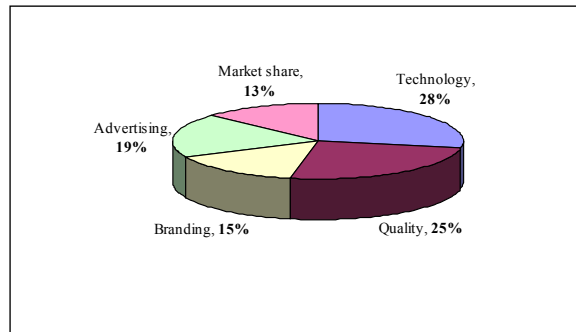
discussed especially in advertising context. Advertising perspective is traditionally strongly related to product branding, however, and relying solely on it may in certain cases be too narrow an approach, especially when corporate brands are of concern.

Among the relevant areas of corporate brand management where the hierarchy can be of relevance is protection of the brands. Despite the extensive interest brand hierarchy has received, issues like intellectual property rights (IPR), are seldom discussed from corporate brand management perspective. One reason behind this could be that IPR matters are not understood by all and are often seen as an external issue something that has to be taken as it is and can only be reacted to in case of infringements, rather than being internally and strategically controllable factor. Another shortcoming is that even if the substantial value that can be derived from brand names and trademarks has given start to some research on protection in recent years (Alessandri 2007), the existing studies are often limited concerning mainly product and service brands rather than corporate brands. Furthermore, most of these studies are restricted to protection provided by trademarks (Alessandri and Alessandri 2004 on legal and non-legal protection mechanisms), including studies on trademark dilution based on unauthorized use of a mark, trademark infringement and the application of trademark legislation to the Internet. However, managing corporate brands successfully requires approaching trademarks differently, and it can also be influenced by other IPR than just trademarks. Consequently, in this study we adopt a wider approach and consider trademarks, patents, copyright, and design rights. Also unfair competition is briefly touched. This paper aims to increase understanding of IPR issues as an important factor of the company, which can and should be actively managed as an integral part of the corporate brand management and we suggest that these decisions need to be actively managed in the company in order to work towards competitive advantage and business excellence.

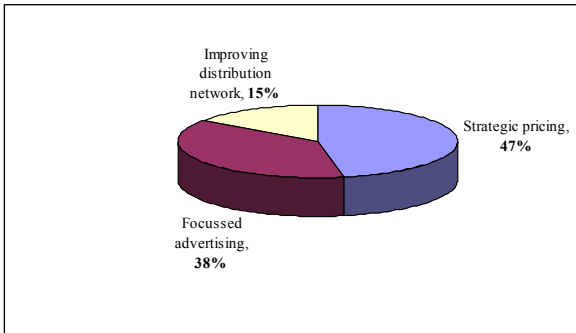
**Findings of the brief survey:**

The mid-senior business executives interviewed were of the following backgrounds: Product delivery executive of an IT MNC, Brand manager of a FMCG company, product development manager of a home appliance company, a marketing teacher of a business school, marketing manager of an automobile company, sales manager of an event management company, creative director of an advertising agency, a fashion designer, a shopping mall manager, Senior Manager of a packaging company.

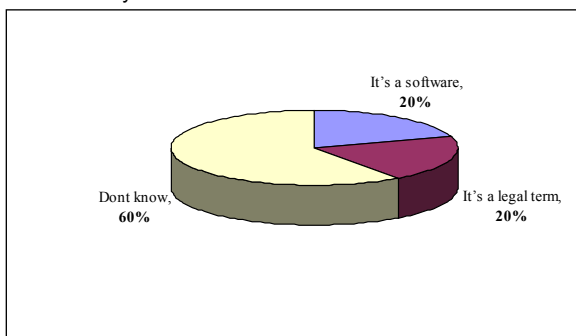
What did they feel about the most important factor needed for competitive edge of a business?



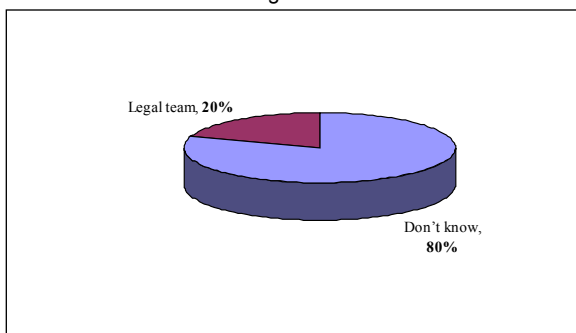
What did they feel is the best way to be ahead of competition?



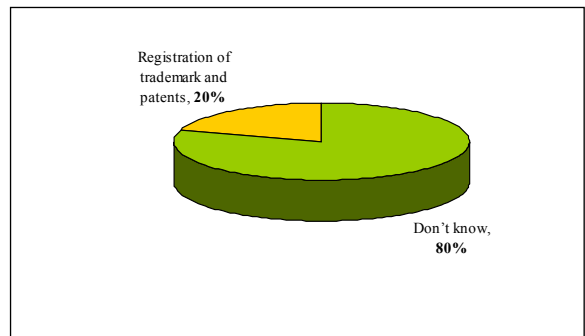
What do they know about IPR?



Who handles IPR in their organization?



What does IPR do?



**Conclusion:**

As is evident from the short survey that awareness of the subject matter of IPR itself lacks among most business professionals and this could be the root cause of IPR not being adapted to its required level for harnessing excellence for a business. Intellectual property, clearly, is major component for competitive advantage in the 21<sup>st</sup> century. We can see many industries where intellectual property right played important roles for competitive advantage in the past. Whenever an engineer or a design & development team of a product oriented organization invents or develops something new, the idea gets implemented into a new product, at the same time they may file for patent in order to protect the intellectual property rights, followed by production. The technology / innovation are supposed to be protected by law. However, if we take a look at businesses in India other than IT, pharmaceuticals or entertainment to a certain extent, we can see quite a different story. Legal aspects of brand management emerge from the very beginning of company establishment and product launches. Uniqueness and un-imitable superiority are of tremendous importance for a successful brand, and these can be enhanced by relying on a variety of intellectual property rights. IPR comprise several different rights mainly- patents, copyrights, trademarks, designs, etc. encapsulating different dimensions of intellectual creations. Since the rights do not exclude each other, a combination of IPR may be quite useful: While trademarks and design rights can be used in connection to individual products or services, the main features of a corporate brand can be protected with trademarks, domain names and copyrights. Also the norms related to unfair competitive conduct may enable protecting the corporate entity: From the study done we recommend a cultural shift to happen in organizations to bring in the management culture of IPR in practice. Companies have excelled by bringing in cultures like TQM, SixSigma, etc in the organization and the rest is history (eg: Toyota). The world recognized these companies as brands with excellence and that has given a tremendous competitive advantage to them which still exists. Considering IPR which has tremendous potential for enabling business excellence resulting into competitive advantage for companies, probably a same culture adoption is required which can be driven by the top management of the organization. A wide approach may also be beneficial since it cannot be taken for granted that obtaining legal protection is straightforward in relation to product branding, and it can be even more challenging when corporate branding is considered. While legal protection can be gained even if IPRs are not registered (copyrights, well known trademarks), considering the burden of proof registration is often advisable. However, establishing rights is not always easy. For example, considering copyrights, only expression can receive protection, and the object of protection has to be original and creative enough. Likewise, design right (provided for the appearance of a concrete object or a part of it; overall impression of its lines, contours, colours, shape, texture) is available only for creative and new designs.

Our findings indicate that there indeed is a need to approach IPR issues a bit differently than has been done so far. Therefore, this study has two important contributions: We argue, that, first IPR are different when they are utilized in relation to

product dominant, mixed, and corporate dominant branding strategies, and, second, that also other IPR than trademarks should be acknowledged in corporate branding. It is worth noticing that patents may enhance the corporate branding and having such rights may improve the reputation of the firm as one operating in the leading edge. This study provides a starting point for a big future scope of work, especially empirical contributions are needed. Also, further work has to be done to cover areas such as alliance branding and co-branding as well. In these areas, IPR are likely to play an important role. We hence strongly recommend that IPR should be part of business management curriculum which largely is lacking

and therefore resulting into professionals considering it as outside their preview of work and consideration for creating competitive advantage. IPR should be considered Legal issue only for the legal team executing it, however the IPR torch bearing has to be done by the product/brand management team concerned in an organization. IPR needs to be seriously considered as a corporate culture in every organization racing to create business excellence and competitive advantage. It is therefore made clear that any company has to have a clear IP strategy which will act as a forerunner to build business superiority by utilizing IPR as a powerful tool to manage competition and emerge as a winner.

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