

# Intellectual property in downturns

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## **Intellectual property sales grow in down market**

### **Firms cash in on patents, trademarks they're not using**

By Ann Meyer

Special to the Tribune

February 2, 2009

Neglected trademarks and patents that have been collecting dust may get new life.

As firms streamline operations to save money amid the recession, a growing number are looking to generate cash by selling or licensing their dormant trademarks and patents. That's creating new demand for Chicago-based Ocean Tomo's intellectual property appraisals, auctions and other services.

"In the depressed economy, companies are re-evaluating their intellectual property portfolio," selling patents and trademarks they're not using, said James Malackowski, chief executive of the intellectual property merchant bank. "They're saying, 'If we don't need it, get rid of it.' "

Ocean Tomo, which had revenue of about \$30 million in 2008, is expecting revenue growth of 25 percent this year. "Intellectual property is countercyclical. In good times, people are focused on everything else," Malackowski said.

Ocean Tomo recently launched a corporate recovery and restructuring practice to help companies better manage their intellectual property during the downturn. On Jan. 26, it announced a fixed fee structure for expert services in patent infringement cases because it recognized customers are watching their spending closely.

Selling off intellectual property is similar to spinning off a business unit or closing satellite offices and selling the real estate, said intellectual property attorney Kara Cengar, partner at Bell, Boyd & Lloyd. "Most companies would be surprised at how much of the value of their company is in intellectual property," Cengar said.

According to Ocean Tomo, intangible assets, including patents, trademarks, copyrights and goodwill, represent about 75 percent of the market capitalization for the Standard & Poor's 500. "Intangibles, and particularly patents, are clearly the least commercialized asset," Malackowski said.

On the flip side, entrepreneurial firms see opportunity in the cast-off intellectual property because it can provide a shortcut to success. As a result, more customers are perusing Ocean Tomo's catalog of intellectual property. "Now more managers are saying, 'What intellectual property do we need to support our business plan?' and 'Should we buy it from a third party?'" Malackowski said.

Companies can pick up trademarks for a lot less money today than a year or two ago, but building a business around them might be challenging given the tough economy, said Mark Thomann, chief executive of River West Brands, a Chicago firm that specializes in bringing dormant iconic brands back to the market. "I could buy something for a very good price, but I still have to put money into that brand to make it relevant again," he said. And in this market, there's no guarantee the investment will pay off.

River West Brands acquired the Bonwit Teller brand and planned to relaunch it as a retail store last year, until the market plunged, Thomann said. It now intends to launch a Bonwit Teller brand of products to be sold in existing retail stores.

River West looks for neglected brands that major consumer products companies are trying to shed. It pursued the marketing license for Eagle Snacks from Procter & Gamble several years ago. It spun it off as a separate business called Reserve Brands in 2006. Reserve recently added a new snack nuts line to its two salty snack offerings, and the products are sold in about 6,000 stores, said Scott Lazar, the firm's president and chief executive.

River West also has revived the Salon Selectives brand—created by Helene Curtis and later sold to Unilever—and recently acquired the rights to the Bold detergent brand from P&G. It also plans to relaunch the Brim coffee brand this year, coupling it with patented technology to give it new relevance. "It's more of a coffee with benefits concept," Thomann said.

"You take an iconic brand that has tremendous awareness with a certain demographic and marry it with a technology patent that gives it an accelerant," he said.

It's a concept that companies could employ with their own brands, he said, by developing a new way to add value to them. Infused with innovation, Brim should sell for a premium when the economy rebounds, Thomann said.

Calvert Hawkes, owner of Island Software in Sarasota, Fla., sold four patents at an Ocean Tomo auction in Amsterdam in June for a total of about \$400,000.

Hawkes filed the patents himself, keeping the cost to about \$10,000 per patent. If he had gone to a major law firm, the cost might have been \$100,000 per patent, he said, so he netted a tidy profit and is working on more patents.

Many small-business owners take their intellectual property for granted and don't realize its value. The first step is to identify the intellectual property rights you own, Cemar said. It could be a brand slogan, product name, consumer association, product packaging or even color scheme, she said.

To figure out how much the intellectual property is worth, determine how much it cost to develop, what is the expected income, and how much comparable intangibles have sold for, Malackowski said. Then factor in economic conditions.

"It's the classic free market," said attorney Scott Glickson, partner at McGuire Woods. "How much is it worth to you versus the price the seller is demanding for it?"

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