Philips – managing a master brand

Philips restructured its trademark management system just before the recession began to bite. This now looks like a smart move, as it further streamlined the company's protection and value extraction processes at a critical time

Philips Electronics has been building its brand for over 100 years. Its trademarks are now world renowned in the lighting, healthcare technologies and consumer lifestyle sectors. The Dutch electronics multinational is also highly regarded for its innovative approach to IP rights. It established its Intellectual Property and Standards (IP&S) group in 2000, which it then significantly remodelled in 2008.

Philips has not been immune to the recent downturn but its unique approach to intellectual property has helped the company to weather the global economic storm and to thrive in challenging conditions. Its decision to streamline IP creation and place greater emphasis on value extraction now appears prescient. Jef Vandekerckhove, Philips's vice president for IP&S in Europe, reveals to WTR how the system has provided the company with a strong foundation to maintain its position in the market.

Restructuring for success

The restructuring of the IP&S team in 2000 was primarily aimed at doing away with the 'silo' model. Under this system, Philips's IP experts worked in separate groups or 'silos', disconnected from each other. According to Vandekerckhove, this model undermined the business as it led to inefficiencies and delays. "When a problem arises and people are not connected, the business either fails to address the problem or addresses it too late, which results in rushing through the necessary actions," he explains. Philips thus came up with what Vandekerckhove calls an "integrated intellectual asset management scheme".

In 2008, to streamline the new system further, business group managers for each of Philips's key industry sectors (ie, lighting, healthcare, consumer lifestyle and innovative and emerging business) were introduced. These individuals are responsible for the creation of patents, trademarks, designs and domain names in their sectors, as well as for legal counselling and IP value extraction. They appoint and oversee other senior staff within their sectors, such as project managers, value creation managers and value extraction managers. The structure means that one person in the business

group now acts as a central contact point and draws on internal resources to coordinate projects and solve problems. This is the essence of the integrated approach.

In practice, if a project takes place within a particular sector, the group head appoints a project manager who, in turn, consults with all relevant parties, including IP counsel (ie, trademark, patent, design right and domain name experts). The project manager is tasked with compiling a report of all the IP needs of the initiative at a very early stage.

Under the previous organizational set-up, such a project would have demanded the input of several different groups (eg, the trademark and patent departments). The heads of those departments would have been consulted separately and managed their involvement in the overall project independently.

As Vandekerckhove points out, simultaneous consideration of all IP issues now affords superior protection for products in development, because problems can be foreseen and avoided. The new structure also allows each of Philips's businesses to react more nimbly. "Before, when everyone was in separate silos, it would take time to find the correct person to contact for each query – be it about creating a new trademark or registering a patent, design or domain name," explains Vandekerckhove. "Now we take a wholeproject approach to all IP-related issues across all our businesses."

The new structure has proved particularly beneficial in today's frosty financial climate, as it has given Philips's businesses the edge during mergers and acquisitions. "Having an integrated team allows us to conduct a full IP research during the due diligence process," notes Vandekerckhove. "The team will look at all aspects of intellectual property - patents, trademarks, designs - and report its findings back to the project leader, who in turn supplies this complete IP overview to the client. I think it is obvious how this creates an advantage during an acquisition – when you know what the intellectual property is, you know what the company is worth and it definitely helps those doing the deal," he adds.

Internal strength

Philips holds 33,000 trademarks, 49,000 design rights and 2,600 domain name registrations, as well as 55,000 patent rights and 12,000 patent families. The strategy governing these rights is developed at the IP&S group's headquarters – the "high-tech campus" in Eindhoven, the Netherlands. The trademarks, designs and domain names team consists of six counsel and five support staff. There is also a separate enforcement team, which focuses primarily on trademarks and which pursues infringements on a



Trademark and brand valuation

Philips's trademark portfolio is valued at \$8.1 billion by Interbrand and is ranked at 42 on the branding consultancy's list of the world's most valuable brands. External valuation by Interbrand takes place on an annual basis, but Philips also conducts its own internal trademark valuations.

"We have developed models of valuation so that we can put a value on our trademark when, for business purposes, we need to," explains Jef Vandekerckhove, Philips's vice president for IP and Standards in Europe. "Moreover, these models enable us to assess the trademark value of companies we want to acquire."

Vandekerckhove was involved in the creation of the valuation models in his former role as head of trademarks. They are formulated from the following standard methods:

- Cost-based valuation the cost to create a trademark or what it
 might cost to recreate a mark. This method considers cost only,
 so it does not take into account the value of factors such as
 quality, brand loyalty and brand association.
- Market-based valuation this is based on an estimate of the amount for which the brand can be sold. This kind of valuation requires details of comparable transactions which are not available in great quantity.
- Income-based valuation this method starts from the income-producing capability of the trademark (ie, the royalty income).
 A mark is measured by the present worth of the net economic benefit to be received over the life of the property.
- Royalty relief the value of a trademark is calculated on the basis
 of the royalty that would have to be paid if the mark were
 licensed from a third party.
- Discounted cash flow the value is the net present value of the earnings generated by the brand alone.

daily basis. This team liaises with part-time enforcement staff, who are consulted on specific problems when they arise. The company's worldwide IP&S team numbers 500, including 300 IP professionals and 200 support staff.

Philips does not regard investing in IP protection as a necessary evil; Vandekerckhove insists that top-class trademark protection is never considered a drain on resources. "The trademark section of the IP&S group actually has a very small budget because we mostly rely on internal people and do not use many consultants or outside counsel – 90% of the creation side for trademarks, domain names and designs is done in-house," he says. "Keeping things in-house means that our cost savings are quite sizeable."

Philips calls on outside expertise whenever a particular jurisdiction requires that local counsel be used to instigate or defend an action, or where the company does not have a local office, such as in South America and the Middle East. Vandekerckhove explains that Philips continuously evaluates its external counsel. Fee structures vary – some are paid a fixed fee, others by the hour. Typically, payment is arranged according to the type of service rendered. Thus, for IP creation a fixed fee is the norm, whereas Philips tends to pay by the hour for litigation work, although an estimate of the overall fee will be obtained at the outset.

Spending controls

Of the entire IP&S budget, 80% goes towards IP creation and 20% to enforcement. The budget forecast is based on portfolio plans developed in liaison with the businesses in each sector. Among other things, it indicates the volume of IP rights likely to be established in the coming year. The budget proposal is sent to the board of management for approval. If further funding is required at any time, the IP&S team works with the relevant business sectors and the board to identify possible sources.

Philips has not survived the recession unscathed, but the company has nonetheless managed to increase profits through heavy cost-cutting. The IP&S department was no exception. It cut

The Philips Nivea for Men shaver and Sensen Coffee machine are examples of Philips's strong co-branding strategy







back not only on departmental expenditure (eg, travelling and training), but also on project costs. "When the crisis took hold, we reacted immediately," Vandekerckhove explains. "We did not wait for a year and then start looking at our cost base to change things." As an example, the company typically registers between 100 and 150 families of marks each year; but a reduction in this number has been evident since 2008. Vandekerckhove notes that so far for 2009, Philips has registered fewer than 100 families.

While it is vital for the IP&S team to keep costs to a minimum, it also makes a vital contribution to company turnover. "We make significant additions to the company's profits through patent and trademark licensing, and we save money by ensuring that our rights do not infringe on other marks," argues Vandekerckhove. "We don't create intellectual property for the sake of creating it. Intellectual property must serve a purpose, and the purpose is to help the businesses achieve their goals."

Safeguarding rights

The online environment remains the final frontier for IP protection. However, Vandekerckhove believes that Philips is well ahead of many other companies which have only recently awakened to the impact of the Internet on their business.

Philips started tackling the issue of domain names almost a decade ago. "At that time, we set a clear policy for all Philips businesses to adhere to," Vandekerckhove elaborates. "It was decided that domain names would be centrally managed." There is a single administrative and technical contact for all of the company's domain names. Thus, Philips retains control of such names even if the underlying business is dismantled and ceases to exist.

Vandekerckhove reveals that monitoring online infringements in the business-to-business environment is perhaps his biggest headache. "There are sites which sell counterfeit products using our trademark but that are not directly targeting the end consumer; they advertise large quantities of counterfeit products and are clearly marketing to businesses," he says.

Philips's strategy for addressing counterfeiting is to target the countries from where the products originate, rather than "chasing sea containers". The aim is to close down the manufacturers, which is ultimately more effective than stopping single shipments.

However, Vandekerckhove is "worried" that EU law, particularly the Customs Regulation (1383/2003), is failing to meet the needs of rights holders in this area (for more on this issue see "Protecting fortress Europe" on page 39). "My concern is that goods in transit can no longer be stopped on the basis of the regulation," he warns. "Counterfeiters ship goods from their country of origin as 'goods in transit' and then when these goods land in Europe, by filling out a number of forms, infringers can change the status of the shipment to 'goods to import'. Thereafter, the products can be released onto the European market. This is what happens when goods in transit can no longer be stopped by Customs or rights holders."

Solving the Chinese puzzle

China is a country associated with considerable IP protection problems and brand owners regularly run into difficulties when attempting to protect their rights in that jurisdiction. But, according to Vandekerckhove, Philips's IP&S team has had some notable successes.

Philips works closely with the Quality Brands Protection Committee and the China State Administration for Industry and Commerce. Over the course of 2008 and 2009 it has chaired a team in charge of a new and highly effective enforcement project (known locally as "Siding Along with Famous Brands"). "As a result of the initiative, at the beginning of this year we performed a large number

Co-branding projects

Philips is involved in a number of co-branding arrangements for select products. Examples include the Senseo coffee machine, which is a partnership between Philips (the designer of the machine) and Douwe Egberts (the manufacturer of the coffee 'pods' used in the machine); and the Philips Nivea for Men shaving product, which combines a shaver (created by Philips) and shaving foam (produced by Nivea).

Jef Vandekerckhove, Philips's vice president for IP and Standards in Europe, describes co-branding as an "interesting and complex process". The aim of co-branding is to create a unique selling proposition for both companies. "You want to create a new product category," he says. Philips therefore seeks to partner with companies that have strong brand definition.

The most critical aspect of the process is the creation of the cooperation agreement, which is drawn up by IP counsel with trademark licensing experience. "The agreement is so important because you are partnering with a company to work with one of your main assets," says Vandekerckhove. Unlike licensing agreements, where the licensor has the upper hand and formulates the agreement to which the licensee must abide, cooperation agreements for co-branding require negotiation to achieve a mutually acceptable proposition.

The parties must decide which company name is to be used on the product and where, and which company will take the lead in defending which part of the product in the face of third-party infringement. Regarding the latter point, Vandekerckhove notes: "It depends on the situation. For instance, in the case of the Senseo coffee machine, if an infringement were to occur that related to the actual coffee machine, then it is clear that Philips would take the lead, but if it related to the coffee, then Douwe Egberts would be much better equipped to address the issue."

of successful enforcement actions across all sectors against companies infringing our names, including one that was using the name Modern Philips for various products," explains Vandekerckhove.

Philips has worked hard to achieve these results. According to Vandekerckhove: "You cannot enter the Chinese market and simply state what you need done; first you must build a rapport with the government. We invest heavily in our relationship with China."

Philips builds these links in a variety of ways, including supporting education on intellectual property – a knowledge-building programme that the Chinese government is keen to promote. The company has established an IP Academy through which it offers courses on intellectual property to law students at universities.

Future protection guaranteed

Following the various restructuring processes, Philips's IP&S team seems in a strong position to meet the many challenges faced by the business. It is helped by the fact that intellectual property is "taken very seriously" at the highest levels of the company. "Our leading mark and brand is Philips and we have a one brand strategy – a master brand strategy," states Vandekerckhove. "All our products carry this trademark as their master identifier. People trust the brand and recognize its quality, so the mark is one of the most important assets in our organization." According to Vandekerckhove, the IP&S team now has the systems in place to protect and extract value from this key business asset through both turbulent and thriving economic conditions. WIR

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