

IPRs and Insolvency

by

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Insolvency Matters: Usual Approach

- **commonly, every one concentrates on the obvious “business” aspects:**
 - the employees
 - creditors/debtors
 - cash (!)
 - physical assets such as machinery
 - real property issues, such as leases and freeholds
- **trade marks and goodwill sometimes considered**
- **but commonly ignore the intangible assets, such as:**
 - copyright
 - registered rights like patents, designs
 - confidential information

Principal Issues

- **ownership**
- **licensing terms**
- **existence and subsistence**
- **validity**
- **infringement**

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Ownership

- **Who has legal/equitable title to the IPRs?**
 - personally owned by directors?
- **Is that title registered (if need be)?**

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Licensing

- **some of the IPRs might be used under licence, so must consider**
 - **termination clauses**
 - **run-off provisions to goods already made**

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Existence and Subsistence

- **Registered IPRs should have a certification of registration**
 - renewal fees need to be paid timeously
- **Unregistered IPRs more difficult**
 - copyright
 - design right
 - confidential information
 - performance rights
 - goodwill

Validity

- **validity determines value**
- **defensive/offensive use**

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Infringement

- **infringement by the insolvent company; if so, less attractive to prospective buyers**
- **infringement of the insolvent company's IPRs; if so, might be attractive to litigation funders**

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- All areas of IP law and practice, in particular patents, trade marks, copyright and designs. Over 70 reported cases since 2000, of which two thirds were appeals or JRs. Appeared often before the CFI and in the EPO (Legal and Technical BoA). Acted for the Comptroller-General of Patents (*Yeda*, HLs, CA, PatCt), the Registrar of Trade Marks (*General Cigars* and *Land Securities*, both appeals to the ChD) and the UK government (*adidas*, ECJ).