

INTELLECTUAL PROPERTY



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Women and IP: Accelerating Innovation and Creativity

1 Please tell us your name, profession and institution /please introduce yourself.

Donna Pilgrim – Attorney at Conyers Dill & Pearman.
Naomi Pickard – Trade Marks Manager at Conyers IP Dept.

2 How would you define Intellectual Property (IP)?

Donna - IP is a term used to cover a range of intangible property rights, such as trademarks, copyrights and patents. Like real estate or tangible property, IP rights have value and can be sold, licensed and sublicensed. For instance, if you own copyrights in a book, you are the only person who can authorize the reproduction of that book, but you also have the right to sell the copyright or to licence it for a period of time to another party.

3 How long have you been in the field of Intellectual Property?

Donna - I have been working as an attorney in the IP field since 1992.
Naomi - I have been working as a department manager in the IP field since 2009.

4 Do you have a particular field of IP that you practice?

Donna - I primarily work in the trade mark field.
Naomi - I also mainly work in the trade mark field.

5 Can you tell us about the IP rights which exist?

Donna - There are several different IP rights, such as copyrights, trade and service marks, patents, design rights, trade secrets, database rights, confidential information and other common law rights that protect unregistered trademarks and 'get up', or trade dress.

6 Would you encourage young practitioners to pursue training in IP law?

Naomi - IP is an important part of any business, so it would be beneficial to know the legal framework within which those assets can be protected and rights enforced.

7 Have you ever been involved in any IP litigation? Can you share the most interesting case you have worked on or a scenario which showed the detriment of not protecting one's IP rights?

Donna - Fortunately for Bermuda, there is not a lot of IP infringement because there is little manufacturing. However, I have worked in other jurisdictions where violations were rife, particularly in the luxury goods field, where items like designer handbags would be copied, or toys, which tend to have a limited shelf life, so infringers do their best to cash in on a current fad, to the detriment of the copyright owner who created and designed the product. Of more concern from a health perspective is the infringement of patented pharmaceuticals, which can be reverse-engineered and often sold under the trade mark of the patent owner without the same quality control standards.

8 This year's World IP Day theme is Women and IP: Accelerating innovation and creativity, what would your advice be to women/ individuals who wish to leverage their IP rights but are unsure about how to do so or are worried it is too expensive to pursue?

Naomi - It is important to identify what IP an entity has or is likely to develop and consider whether active steps should be taken to protect those rights. Obtaining some advice at the start-up phase could save a lot of time and expense down the line. As a start-up - it is also important to ensure you are not infringing the rights of others and that any trade/service marks adopted are protectable. For instance, when developing a new clothing line, a trade mark like "BERMUDA T-SHIRTS" would be considered non-distinctive for t-shirts sold in Bermuda and unregistrable. Rather than investing in the marketing and promotion of a trade mark which is not sufficiently distinctive to warrant registration, you would be better off coming up with a better trade mark from inception.

9 Why should women inventors/creators/entrepreneurs be IP aware?

Donna - IP awareness has two essential benefits - you don't want to infringe the rights of others, and you want to ensure your own rights are not just capable of protection but are protected as far as possible. For instance, if you come up with an invention that you want to exploit, you will want to ensure it is kept confidential until your patent application is published, or the application will fail.

10 When would you say is the best time to protect one's IP right?

Naomi - It depends on the type of IP really. As we said above, for something like a patent or design application, if the invention is public knowledge or deemed part of the 'prior art', before the application is filed, it will be rejected, so an early application is essential. A trade mark will not be registered if it is deemed too similar to an existing mark, so early registration is advised. Copyrights cannot be protected in Bermuda through registration - they are automatically protected from the time of creation, so it is important to notify third parties that copyrights exist - for instance, on a website design. This can be done using the copyright symbol ©, followed by the year of creation and the copyright owner's name.

11 How can IP enable inventors/creators/entrepreneurs to realize their ambitions, generate income, attract investors, create jobs, support community and national development, etc.?

Donna - The protection of IP can add value to an entity, safeguarding its manufacturing process (if based on an invention protected by a patent registration), its original writing and artwork (websites, teaching and other materials) and its trade/service marks (the sign the public associates its products with). These intangible assets are all quantifiable - the COCA COLA brand was estimated in 2022 at \$97.9 billion, and KELLOGG's at over \$22 billion. Goodwill associated with brand recognition is something all entities strive for - it is what brings in business and with increased business comes increased growth and profitability, and that is what leads to job creation and other benefits.

