

Role of Intellectual Property in Enhancing the Competitiveness of the Tourism Industry¹

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Introduction

We are no longer operating in an economy characterized by scarcity but one of plenty, where a multitude of providers jostle for limited space. Success in today's globalized and very crowded economic environment is, therefore, about adding value and offering a differentiated product. This is true whether we are talking about goods or services. Whether we are buying a bicycle or an insurance policy. Walking into a store to buy a bicycle, one is not content to simply walk away with an item that has two wheels, handle bar and pedals. Our choice is based on many other factors: How does it look, does it have any other new and interesting features, who produces it and of course how much does it cost. All of these considerations are over and above the physical product and are critical to the decision making process. They refer to the added value: the design, the reputation, the brand, the technology that went into its production, the technology that allows it to function in a particular way. They all contribute to make that bicycle different from another in the market and influence the purchasing decision which is based on a combination of factors, such as the above, that provide the best value for money to the customer. Most of these aspects that influence the purchasing decision are intangible. Companies will not take an undue risk by investing in such intangibles, whether we speak of a better way of doing business, a superior technology that allows for a new or improved product by way of enhanced features or more efficient production methods, appealing designs or business identifiers, unless the risk is reduced by way of creating barriers to unauthorized copying of these intangible aspects by, for example, through legal protection afforded by the tools of the intellectual property system. The intellectual property system provides that protection by allowing for proprietorship and

¹ For more information on the practical aspects of using the tools of the intellectual property system for business success visit the website of the SMEs Division at www.wipo.int/sme, and, in particular, the downloadable publications "Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises", WIPO publication No. 900, "Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises", WIPO publication No. 498 and "Creative Expression: An Introduction to Copyright for Small and Medium-sized Enterprises", WIPO publication No. 918, "Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises", WIPO publication No. 917 as well as the recently released multi media e- learning product IP Panorama.

² The opinions expressed here are those of the author and not those of the World Intellectual Property Organization where she is employed. Many thanks to Guriqbal Singh Jaiya for his most valuable guidance and comments.

exclusive rights thus providing the tools for enhancing the competitiveness of enterprises and ultimately of an economy as a whole.

According to the World Trade Organization, services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade³. The tourism industry has experienced continuous growth in the service sector and, according to the World Tourism Organization, its business volume equals or even surpasses that of oil exports, food products or automobiles. Tourism, it says, has become one of the major players in international commerce, and represents, at the same time, one of the main income sources for many developing countries⁴.

Tourism – What Does It Entail

Why do people travel? People travel for a variety of reasons. It could be to experience the culture of another people, expressed through their music, their food, their customs, their arts and crafts, their costumes, language, religions etc... Culture may also be manifested by monuments and sites, history, architecture which also provides a cultural experience. People are also attracted by nature whether it be sandy beaches, wildlife, mountains, lakes or forests, islands, mountains, national parks, lakes, lagoons, rivers, caves, gorges where the main interest is the observation, appreciation, enjoyment and an awareness of the importance of protecting such natural environments. There was a time when mass market tourism took off where it was enough to have a sandy beach, a mountain or a lake to attract the visitors. However, that market is now reaching saturation point. Rising standards of living and better quality of life has meant more people with disposal income, more leisure and who are also more educated and who are looking for a better and more rewarding experience. They are looking for added value and differentiation. No longer can a country simply rely on its golden beaches. There are many others with golden beaches. So, in essence, we come down again as with any product as to how does one differentiate and add value in a crowded and competitive market.

Some of the ways in which we see countries trying to add value, and thereby trying to differentiate themselves, is by creating niche markets catering to a certain clientele. We see, therefore, the birth of ecological tourism, which has gained a lot of momentum lately with the rising consciousness, particularly in the developed world, of the importance of the environment. The main message of eco-tourism is protecting and maintaining the environment and ensuring that the impact of tourism on the environment is at a minimum. It also promotes conservation and local traditions and aims through that process to protect and develop the region. Ecotourism appeals to the ecologically and socially conscious individuals involving travel to destinations where flora, fauna, and cultural heritage are the primary attractions. It also demands a certain responsibility and

³ http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm

⁴ <http://www.unwto.org/aboutwto/why/en/why.php?op=1>

accountability of its clientele promoting recycling, energy efficiency, water conservation, and creation of economic opportunities for the local communities

There is also Agro tourism which involves touring local farms to viewing the growing, harvesting, and processing of locally grown foods as well as sampling them on site or in local restaurants and cafes. There are also lectures and other learning opportunities and the visitor also has the possibility of staying in one of the farms to really imbibe the experience.

There is a growing market for therapeutic or health tourism where the main objective is natural treatment through spas, where certain natural properties are known to exist in a particular location. Similarly, there is significant growth of those coming to experience Ayurvedhic treatment. Here too the know-how residing in a particular country or region complemented by the existence of plants, herbs and other natural ingredients that constitute the treatment allow for the growth of that particular market. There is now a growing market for “medical tourism” where the clients are offered a package around a specific medical treatment, including, for example, surrogate motherhood.

Religious tourism or pilgrimages is another niche market where major sites of importance to different religions attract large numbers of tourists, whether it be the Vatican, Mecca, Jerusalem or the numerous sites of importance to Buddhists in Asia.

Thus we see already attempts by markets to differentiate themselves from the others and to provide a specific service of interest to a particular clientele.

This paper is not about strengthening the competitiveness of the tourism industry in general which will be left to the specialists on tourism but, as the title suggests, it is about the role of intellectual property in strengthening competitiveness. How does intellectual property fit in and how can it strengthen competitiveness in the tourism sector.

Intellectual Property

The tools of the intellectual property system⁵ are amply applicable to the tourism sector. Broadly speaking, developing and exploiting brands is particularly appropriate to the service sector and thus to the tourism sector. Core to developing and exploiting a brand are trademarks, geographical indications (certification marks, collective marks or a *sui generis* system) or industrial designs as well as other intellectual property rights such as patents, copyrights and trade secrets which contribute to the whole brand image.

⁵ Most of the substance here on intellectual property extracted from “What is Intellectual Property” WIPO Publication Number 450 (E) ISBN 92-805-1155-4 and from the WIPO website www.wipo.int except section on Trade Secrets which is extracted from “Secrets of Intellectual Property, A Guide for Small and Medium-Sized Exporters” published by the International Trade Centre and the World Intellectual Property Organization, Geneva 2004.

If we look at the market for goods, trademarks were one of the most important means by which manufacturers or providers were able to differentiate themselves and their goods from the competition. Trademarks are any sign capable of distinguishing the goods or services of one enterprise from that of another. That is whether the sign is composed of letters, numerals or figurative elements if it is capable of distinguishing the product or service it could amount to a trademark. Today even sound, shape or smell could amount to a trademark provided they function as trademarks in the marketplace. Depending on the national law of a country, a trademark could be a registered mark or be an unregistered mark, the latter amounting to a trademark through use in the market place. The intellectual property system protects such marks, allowing the owner to have exclusive use of that mark and providing him the right to prevent anyone else from using that mark with respect to the same or similar goods. Those marks deemed to be “famous” have more extensive rights. Registered or unregistered marks have rights in perpetuity, as long as renewal fees are paid in the case of the former and as long as no one successfully opposes the use of that mark in the case of the latter.

In industry and on the street one is more likely to hear the term “brand” as opposed to “mark”. It is important to clarify that while these terms may overlap they are not one and the same. Branding is a marketing term which embodies many different concepts with intellectual property rights, principally trademarks, contributing towards its development. A brand, is therefore a larger and more amorphous concept, being essentially a communication tool whereas a trademark and other intellectual property rights, which may contribute to it, are based in law and have clear legal definitions.

There are other categories of trademarks which are very relevant to the matter at hand. Collective marks are owned by an association whose members use them to identify themselves with a level of quality or other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects. Certification marks are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone whose goods or services meet certain established standards. A geographical indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that origin. An appellation of origin (AO) is a special kind of GI.

GIs are protected in accordance with international treaties and national laws under a wide range of concepts, including laws specifically for the protection of GIs or appellations of origin, trademark laws in the form of collective marks or certification marks, laws against unfair competition, consumer protection laws, or specific laws or decrees that recognize individual GIs.

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color. Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical

instruments to watches, jewelry, and other luxury items; from household items and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods

Broadly speaking, any confidential business information which provides an enterprise a competitive edge can qualify as a trade secret. A trade secret may relate to technical matters, such as the composition or design of a product, a method of manufacture or the know-how⁶ necessary to perform a particular operation

Copyright is the body of laws which grants authors, artists and other creators protection for their literary and artistic creations, which are generally referred to as “works”. A closely associated field of rights related to copyright is “related rights”, which provides rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are performers (such as actors and musicians) in their performances; producers of sound recordings (for example, cassette recordings and compact discs) in their recordings; and broadcasting organizations in their radio and television programs. Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, advertisements, maps, and technical drawings.

Relevance of the Intellectual Property System to the Tourism Sector

All of these different tools of the Intellectual Property system⁷ which provide an exclusive right of exploitation and of preventing unauthorized third parties from benefiting from that right are amply useful for the tourism sector.

Branding

Recent efforts to brand places also known as “destination branding” has at its core a trademark, whether by virtue of a registered logo or tagline. As indicated earlier branding is more than the registered logo or tagline but it is its bedrock. Also, creating a fancy logo or catchy tag line is not enough for trademark purposes. They should ideally be registered in the relevant national or regional register for trademarks and, depending on a variety of factors, should also be registered internationally. Many cities, regions and countries are realizing the importance of differentiating themselves from the rest, creating a niche market and an individual appeal that will translate into more tourist arrivals.

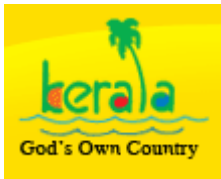
⁶ Know-how may or may not be a trade secret. Know-how generally refers to a broader group of internal business knowledge and skills which would amount to a trade secret if the conditions for qualifying as a trade secret have been met.

⁷ Patents which are less applicable to the service sector have not been discussed. However there may be occasion where they might be relevant. It is an exclusive right granted for an invention, whether a product or a process, which must be industrially applicable (useful), be new (novel) and exhibit a sufficient “inventive step” (be non-obvious). A patent provides protection for the invention to the owner of the patent. The protection is granted for a limited period, generally 20 years from the filing date.

The Swiss mountain resort St Moritz was one the first to register the name “St Moritz” and the tag line “Top of the World”, not only in Switzerland but also in the Office of Harmonization for the Internal Market, the Trademark Office of the European Community.



Similarly “Kerala – Gods Own Country” has been registered as a trademark in India



and



Tri-valley California trademark is owned by the tri-valley visitor and convention bureau representing the region comprising of three adjacent valleys – Amador, Livermore, and San Ramon – and is comprised of five communities. The Tri-Valley region spans two California counties: Alameda and Contra Costa. The population of the Tri-Valley region is about 300,000.⁸ Of course lets not forget the much beloved trademark owned by the



state of New York.” “I love NY” has succeeded in capturing

⁸ http://www.trivalleycvb.com/docs/Brand_ImplementationdocFINAL.pdf

the hearts and minds of millions who see New York through this logo as a vivacious, lively and dynamic city with something for all.

These are a few examples of many such examples of towns and regions using the intellectual property system to differentiate themselves from other such towns or regions and to market themselves as offering a unique and distinct “product”. A trademark such as “St. Moritz” is confined to a small mountain village in Switzerland but whether it relates to a small town or a large province or region it is trying to capture the essence of that particular place. Such destination brands are often trying to accomplish the task of communicating a single message that would embrace a variety of very different products and as such performs the function of an “umbrella brand”. That is to say, a particular place may have, for example, elements of cultural, nature and religious tourism and a single destination brand will try to bring all of those experiences under one logo or slogan. Trying to capture in a single message a variety of different experiences building up to a composite whole is the essence of having an umbrella brand.

Many of these authorities that own such a destination brand allow tourism operatives in the area to apply the brand in addition to or in place of a brand of their own. For doing so, stringent guidelines have been put in place on how the trademark should be used, how it should be depicted, the font, the color, etc and often written guidelines are provided and users have to submit examples of their intended usage for prior approval.



The above registered trademark owned by “Tourism Australia” of the government of Australia allows third parties to apply the mark on goods and services indicated according to the guidelines provided and in particular followed by the “**™ Trade Mark of Tourism Australia**”. The applicant is required to provide every example of the way the mark is intended to be used and in every situation in which it is used, including that it should not be used in situations likely to damage the reputation of Tourism Australia.

Such a brand, therefore, unifies the tourism sector in a particular region under one banner, allowing third parties to benefit from the reputation of the trademark. By definition, therefore, a variety of different brands will find refuge under the umbrella brand and while they will also have their own distinct personality, they will, at the same time, communicate the single message of that destination. Thus, there could be trademarks, certificate marks, collective marks or sui generis geographical indications under the umbrella brand, all of which individually and collectively contribute to and strengthen the umbrella brand.

There are varieties of profit or not for profit authorities that lend their logo to enterprises in the tourism sector, certifying that they have complied with certain stipulated criteria. The fair trade logo in South Africa is one such certificate mark.



If a particular entity has in its view complied with its stated criteria on fair trade, such as fair wages and working conditions, fair operations and purchasing, fair distribution of benefits, ethical business practice and respect for human rights, culture and environment, the entity is certified and has the right to apply the trademark. Given the increasing importance of the concept of fair trade, particularly in the markets of the developed economies a certification that the particular entity is deemed to have complied with the standards of fair trade would give it a competitive edge, once again a way of adding value and differentiating.

The Green Globe Certification is a global “eco-tourism label” that promotes sustainable tourism



“GREEN GLOBE 21 Certified”

By obtaining the Green Globe certification, the company or region is able to apply the green globe trademark, which enhances the competitive strength of that region or company, as it communicates the message that it has been recognized as having good environmental standards, an important message for environmental conscious customers.

Collective marks have also been successfully exploited in the tourist industry. “Logis de France” is a registered trademark of the Fédération Nationale des Logis de France, which is an association of independent hoteliers bound together with the objective of promoting privately owned hotels in a rural setting grouped under the same label. The concept is to experience a rural establishment of a certain quality which is in harmony with the local environment and serving local food. By attaching a label and by enforcing strict compliance of the criteria that the hotels need to adhere to they have not only prevented the abandonment of the rural areas but have created a new product with added value. Today there are over 3000 hotels that are members of this association and



they have expanded into several outside France. The hotels are also classified by category as well as by themes. If not for the now widely recognized and respected trademark these individual establishments would not be able to effectively compete in the highly competitive service market. These individual hotels would not be known and thus not sought after. Belonging to the association ensures recognition and appeal.

Geographical indications have become an engine of growth of agri-tourism by strengthening tourism in rural areas where the focus is agriculture. They may reside within an umbrella brand applicable to a whole region or they may be an independent and stand alone brand which is the destination brand. Earliest and best examples of such tourism are built around the wine industry. Wine produced by a collection of small production entities have been able to market themselves more effectively by selling under a single mark referred to as a geographical indication pertaining to the geographical region in which they are situated and the wine is grown. Such a mark may be a collective mark used by a cooperative of producers, a certification mark where using of the mark denotes that the product emanated from a certain geographical region and adhered to certain quality or other standards or it may be a *sui generis* right, which allows the producer to apply the mark if it adheres to pre-defined criteria which would usually include that the wine was produced in that area, using particular methods and applying certain specific know how. Agri-tourism around such products is now a fast growing segment of the tourism industry. This would include experiencing the product by sampling it in the local restaurants and wine yards, visiting the production facilities, participating in festivals and staying in local wineries. The bedrock of this whole experience is the product protected by a geographical indication.

A leading geographical indication (known as an appellation of origin) in the field of wine is Bordeaux, a region of France. Around wine there are wine tours, stays in wineries, the possibility of sampling different kinds of Bordeaux wines, wine festivals, etc, creating a differentiated market catering to a niche market of wine loving tourists. Napa valley in California, USA is another interesting example of leveraging the name Napa Valley and its link to quality wine and food to create a brand that would appeal by their own admission not to the mass market but that the “...consumer will be one that has discovered in themselves an appreciation of premium food & wine, understands & respects our destination’s values, and helps to ensure the sustainability of the unique sense of place that is the Napa Valley through their tourism experience.”⁹. Similarly the Barossa region in south Australia has leveraged the geographical indication of Barossa made famous by the wines produced in that region to make its region an attractive destination for tourists interested in wine, food and the *joie de vivre* that goes with it.

Design rights though not as popular as the other rights discussed above in service sector may also have its uses to the tourist industry. These rights have increasingly

⁹ http://www.destinationstrategy.com/32.html?*session*id*key*=*session*id*val*

moved beyond its traditional home of protecting the shape and form of industrial goods venturing into other areas traditionally the domain of trademarks as well as copyright. Its applicability to two dimensional products such as textiles opened the way for companies to discover its usefulness as a tool to protect logos¹⁰. Therefore trademark protection is not the only tool available to companies in the tourism sector, industrial design rights may be a useful ally as well.

A logo could also be protected under copyright law as it is often a work of artistic creation. Copyright would also offer protection to the promotional materials that most such businesses would rely on. Whether we speak of guide books, leaflets and a variety of other material that tourists rely on to inform themselves of their destination are creative works that would warrant copyright protection. Further, many of these different rights and copyright in particular would become relevant in the context of websites which most companies today, and companies in the tourism sector are no exception, would be relying on.

All companies rely on confidential business information for their business success. In the tourist industry customer identities and preferences, vendors, product pricing and discounting systems, marketing plans and strategies, company finances, booking systems, personnel evaluations, research data and analysis would be the kind of information that companies could consider confidential and would lose their competitive advantage if accessed by competitors.

Beyond Exclusivity

Intellectual property rights are more than an exclusive right to prevent a third party from exploiting the benefits of that right. It is an asset just like a tangible asset, and can be used and leveraged to create more value. As such, an owner of a trademark, collective mark, certification mark, design right, copyright, etc. may grant others the right to use the mark, design right or copyright, subject to certain conditions in exchange for a fee (or even free of charge). This practice known as licensing of intellectual property rights (franchising and merchandising are also kinds of intellectual property licensing) has been at the core of a substantial and growing practice, which is equally applicable to the tourism sector.

The right to use the registered trademark “St. Moritz, top of the world” referred to earlier has been widely granted to businesses ensuring a steady and additional revenue stream to the St. Moritz tourism board. One of the licensees is “Fashion Box” a clothing company which carries St Moritz as one of its brand labels for its clothing.

¹⁰ “The wide definition of a design means that one can gain registered protection for logos, packaging, graphic symbols, typefaces, computer icons....” 1 Nw. J. Tech. & intell. Prop. 2 at <http://www.law.northwestern.edu/journals/njtip/v1/n1/2/>



Franchising is when an owner of a business gives another the right to run the same business model applying the trademark and other relevant intellectual properties that are integral to that business. Usually, businesses that are franchised have a business model that lends itself to being replicated and has built a strong name recognition allowing the franchisees to have a head start while going into business for themselves. This is one of the fastest growing industries and is of great relevance to the tourism industry. Hotels, restaurants, and other services such as transport, cleaning, management are often franchised businesses. A leading name in the hotel industry; Hilton is a franchised business¹¹. In other words, the Hilton in a particular location is owned by an independent entity who is entitled to use the trademark Hilton and all other relevant intellectual properties as well as the whole business model of running that hotel.

Merchandising which is also a specialized form of intellectual property licensing, is when an owner of an intellectual property right, generally a trademark, industrial design or copyright, gives another the right to apply that mark, industrial design or copyright, usually on ordinary consumer goods to enhance the appeal of those goods. This provides an avenue to the owner of the right to obtain additional revenue from his right and gives the licensee the possibility of enhancing the value and thus the likelihood of sale and of higher price of his goods to gain more revenue and profits. Most souvenirs that are available for purchase by tourists, whether it is models of the Eiffel tower, or T shirts with a particular slogan that is a registered trademark or mugs bearing Maori designs¹² have (or should have) obtained the right to apply the image or slogan and pays a royalty for that right. Here we see how the appeal of a particular “core product” translates into economic gains to various players in the tourism industry through the creative use of the tools of the intellectual property system to build new business models in partnership with other producers.

The core product in the tourism sector, that which is the object of the visit, whether it is nature, therapeutic, religious, ecology, food or wine or whatever other attraction it may be are as demonstrated above well suited for branding through the use of trademarks, designs, copyright and GI. However, while the “core product” may be the focus and object of the visit the total experience depends on a whole host of other

¹¹ www.hiltonfranchise.com

¹² Designs of indigenous Maori in New Zealand are protected by the certification mark Toi Iho which certify that the product is a genuine Maori art.

services that nurture and/or package the “core product” and are in turn nurtured or packaged by the core product. They are, therefore, interdependent and as such integral to the success of the tourism industry. Here we speak of the support services such as hotels, restaurants, transport, shops, hospitals, interpretation, guides all of which contribute towards the total quality and experience of the “Product.”

Here too the trademark system, including certification and collective marks strengthened by copyright and design rights plays an important role in adding value and distinctiveness.

Then there is the whole machinery that moves and promotes the industry. Here we are talking of promotional materials, web sites, booking systems all of which add to the quality of and complete the promised experience of the core product. In order to be competitive, it is not enough to have a good product and to protect it but one also needs to protect the structures that support that product. In other words, having a good location and promoting it through branding and extracting more value licensing, franchising and merchandising is not the end of the road. There is more to be done.

The promotional materials, the literature, guide books and leaflets are linked to the core product and are creative products in and of themselves. Their unauthorized use by others could cause harm to the reputation and image of the core product. The copyright system which protects literary and artistic creations provides the framework for protecting such materials. Literary and artistic creations are not confined to works of great art or novels but are as applicable to materials referred to above

Similarly, booking and reservations systems and other such solutions through information technology may be protected by trade secrets, copyright or patents or a combination of these rights, depending on the national law of the country. The information contained in such systems as well all other information that is relevant to the competitiveness of that particular business may be protected by trade secrets. Above all, all such businesses have their own trademarks to protect their reputation and goodwill.

Concluding Remarks

Therefore, as has been demonstrated, the intellectual property system provides very powerful tools for strengthening the competitiveness of those operating within the tourism industry. The rules of the game today are no longer what they used to be. Competition is very intense and the knowledge economy rewards those who understands the importance of intangibles and their role in differentiating and adding value to products. The intellectual property system provides the structure and the tools for protecting, managing, exploiting and enforcing the rights arising from such intangibles.