

# Dunner Law Dicta

*IP Practice specializing in trademark and copyright law; IP counseling; domestic and international maintenance and protection of IP portfolios; Internet issues; social media; IP audits and strategies relating to IP portfolios; drafting and negotiating IP and IT-related agreements*

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## An Audit You Can Stomach

The word “audit” makes most people cringe and think of a tax nightmare. But an audit is not always a bad thing – especially if it is an intellectual property (IP) audit.

In the realm of IP law, audits are positive tools that can help a business maximize the value of its IP assets. Below, we describe the nuts and bolts of an IP audit\* and what it can do for your company.

### *What is an IP Audit?*

An IP audit is a comprehensive review of the IP assets owned, used or acquired by a company. Ideally, the audit consists of a review of all online and offline materials.

The key is to review everything that the business presents to the public along with copies of agreements and policies that the business uses to conduct IP-related transactions.

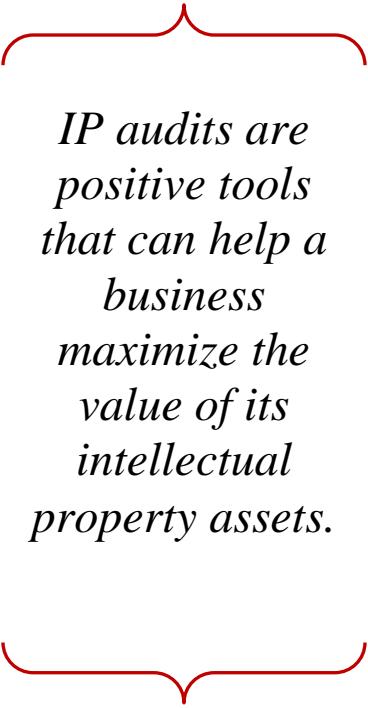
\*Since Dunner Law only practices trademark and copyright law (and not patent law), any reference to an IP audit here only pertains to a business’s trademarks and copyrighted works.

The review will result in a detailed written report that includes, among other things, best practices, action items, and exhibits of the inventoried assets.

### *Why Go Through an IP Audit?*

An IP audit serves many purposes:

- First and foremost, the audit will inventory IP assets. In some instances, a business will have protectable assets that it did not realize it owned. Without the knowledge of a business’s IP assets, a business might shortchange itself in terms of valuation, and as a result, it might forfeit rights in its assets by not enforcing them against infringers and other unauthorized uses.
- Second, the audit report will set forth how the business is using its IP assets. Trademarks must be used properly and consistently in order to maintain their strength, and the audit report will let the business owner know whether it is doing a good job in this regard. With respect to copyrighted works, if the business is freely allowing others to use its IP



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assets without restriction, then the business might have a difficult time preventing more widespread and unauthorized distribution of its proprietary works.

- Third, the audit will reveal potential liabilities, especially on a business's website where a business might post content on its site without requesting permission of the content owner. Also, where a business allows others to post content on its site, that business is probably not taking advantage of safe harbor legal provisions that shield the business from liability for infringing content.
- Fourth, the audit provides guidance on establishing protocols for policing and maintenance of the business's IP assets. This can be done effectively only after the business knows what it owns.

#### *When to Conduct an IP Audit*

Anytime is the right time to have an IP audit conducted—especially if your business has never done one or it has been several years since one has been conducted.

An audit is especially desirable if your business seeks to reorganize or restructure its business plan. Also, if your business is considering a merger, acquisition, or buyout, a current IP audit is essential.

#### *The Nuts and Bolts*

An IP audit will cover the following:

- Trademarks – those pending or registered with the U.S. Patent and Trademark Office and those simply used in the marketplace;
- Copyrightable works – those registered with the U.S. Copyright Office and those that should be registered;
- Agreements related to IP such as trademark and copyright licenses and assignments, collaboration agreements, work for hire agreements, author releases, permission forms, and website legal policies;
- Domain names – this will help in developing a domain name registration strategy and keeping up on renewal deadlines; and
- Social media pages – official pages run by or for the company, and unaffiliated member/fan/employee pages.

#### *Conclusion*

An IP audit is an investment in the company's future. Unlike its ugly cousin, the IRS audit, the IP audit looks to maximize the future by understanding the past.

