

Protect Your Magic: Intellectual Property Basics for Black Creators

by Candice Cook Simmons



We've long known that creations birthed from the intellect of Black people have gone largely unrecognized. From Lewis Latimer in 1848 creating the carbon filament — a vital component of the light bulb — to the most recent news uncovering that Jack Daniels became a distilling powerhouse thanks to the brilliance, process, and methodology of a Black man, Nathan "Nearest" Green; the trend of Black people being airbrushed out of history has sadly become as American as apple pie. The invisibility of our historical contributions must serve as the catalyst for our awareness of the vital necessity to vigilantly protect our unique ideas and take the steps required to monetize and create streams of additional revenue from them. This business strategy requires preparation and a foundational understanding of the value of Intellectual Property.

Intellectual Property — defined by the World Intellectual Property Organization as, "Creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce" — may refer to intangible rights, but when protected correctly, Intellectual Property can result in one very useful tangible result: cold hard cash (sometimes lots of it). Brilliant, Black nuclear engineer and former NASA scientist, inventor Lonnie Johnson, who made every kid's summer with his creation of the Super Soaker and Nerf toy guns, is an example of just how much

cash is at play. Johnson is said to have eighty patents with twenty still pending and was awarded \$72.9 million from Hasbro in underpaid royalties for his toy creations.

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who have yet to meet — but small steps have been made towards an equitable society. Access to the judicial system and known consequences for those who infringe on the rights of others have

protecting intangible assets. Let's start with visualizing the concepts that constitute Intellectual Property.

Imagine that you were in the financial position to acquire Nike. You go into the meeting to discuss the terms of the acquisition and during the course of the meeting you learn that the sale of "Nike" won't include a few items. There would be no sale of the swoosh or the Nike name itself, and the patents for the proprietary technology that can be located in the shoe would be excluded. Oh, and to that end, no brand slogans or taglines are included in the sale.

What you would get is the physical possession of the actual tennis shoes. Look, it's arguably an awesome tennis shoe and it works well. Ask Serena. It is, after all, a "Nike" tennis shoe by design. You, as the buyer, just do not get the "Nike" name or the rights to the patents and trademarks that have come to be known with it. Does possessing millions of that type of shoe (that you can still sell) hold the same value, and would that be a purchase you would want to take part in as an investor/purchaser? The answer to that question for many of you is probably, "no." Creating a great product (the Nike shoe itself) is important, but that alone is not — and has never been — enough. Many of the assets that make it a worthwhile investment are found in the value of the Intellectual Property.

Intellectual Property allows a business to leverage and monetize its creations through additional verticals, which can create new revenue streams outside of a product itself. Although the story is controversial, in his book, *Black Fortunes*, Shomari Wills notes that in the early 1900's as the boom of the hair beauty business for Black women took off, "Annie [the originator of the Wonderful Hair Grower] hadn't trademarked the name on the formulas and was powerless to stop the copycatting." As a result, there was an unintended competition in a marketplace that was ripe for being dominated by a woman of color...the issue became which woman. One of the beneficiaries of this occurrence was the indomitable powerhouse Madam CJ Walker who was able to use this scenario to her advantage.

Intellectual Property also plays a significant role in protecting market position. By now, if you haven't used the payment application Venmo, you know someone who has. Venmo's co-founder, Iqram Magdon-Ismael, is a man of color who was raised on the continent of Africa. While Venmo has captured a significant part of the financial services market, there is now another questionably similar tool available for bank customers called Zelle. However, users don't want just any financial services payment app. When they want to receive funds or pay a friend, the directions are explicit — "Venmo me." The use

So what are the first three steps to getting your Intellectual Property in order?

01 Assess your potential Intellectual

Property. Are you dealing with copyrights, trademarks, or patents?

01 Evaluate your potential rights to the Intellectual Property.

Has someone already registered your desired work/mark/technology? Is the mark already in use? If so, where? By whom?

01 Do not wait to protect! It

is easy to put your head down, work hard and build. But be careful not to focus so hard on building that you forget to protect your Intellectual Property as you go. Seeking to protect after you have found success can be an expensive strategy and can leave you susceptible to expensive payouts, the loss of IP rights and can result in you missing opportunities to scale your business.

of this brand identifier matters. The product alone does not protect market position. It's not just any financial services app your friend expects you to use. The desired method of payment is the Venmo app. The protected name as a source identifier is vital to protecting a product's market position.

There is no perfect road to business success, but we know that not protecting Intellectual Property can be a road toward failure.

Your business is valuable and many of the assets that may make it a worthwhile investment may be found in the Intellectual Property. Is your company, your company without the protection of your Intellectual Property? Much like the Nike analogy — arguably, yes...and no. Protect your Intellectual Property now so that you won't have to ask this question later.



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Talk To Us Nice: A Reflection on Capital

By Jonathan Jackson