Intellectual Property Inequality

Disti Khanna

Intellectual property (IP) law is an important element of modern business since it protects innovations, creative works, and brand identities. IP laws' patents, copyrights, trademarks, and trade secrets protected by the law foster creativity, innovation, and fair competition. The legislation aims to reward creators and inventors for their efforts, encourage technological advancement, and ensure consumer confidence by preventing market confusion. To small businesses, these protections may be the keystone to breaking into competitive markets. But let the same law fall into the hands of big business, and it can turn what is meant to be a shield into a dagger. Through examining real-life illustrations of these businesses, Apple, Monster Energy, and Kellogg, this essay will explain how IP laws can be both a threat and a protection for small businesses.

Small businesses depend heavily on intellectual property in order for them to set themselves apart in the market. Whether it is a distinctive logo, copyrighted software program, new product design, or catchy marketing slogan, IP allows small businesses to build brand identification and legally protect their ideas. Small businesses, unlike big companies with a diverse portfolio of products and an army of lawyers, tend to rely on a limited line of signature products. Intellectual property protection can therefore be critical to their survival. But securing and protecting these rights may be expensive and time-consuming. Securing a patent may entail several thousand dollars in legal and administrative fees, and it may require ongoing maintenance and possibly costly litigation to maintain that protection.

For instance, trademarks protect brand names and logos, which are critical to establishing customer trust and recognition. However, the same legislation that empowers small businesses to protect their trademarks empowers large corporations to oppose or cancel them. This will create a chilling effect in which small businesses will not assert their rights for fear of reprisals. The disparity in resources becomes obvious when there are disputes, e.g., small businesses not being able to stand on their own even if they are in the right.

An essential example of such power disparity is the case of Apple Inc. v. Prepear. Apple launched a trademark opposition in 2020 against Prepear, a small meal planning company. Prepear's logo also featured a stylized pear with a leaf, which Apple claimed was too similar to its famous apple logo. Even though the logos were distinct and catered to a different market tech and meal planning food Apple attorneys argued that the similarity would confuse consumers. Prepear, which had only five employees at the time, had to spend a lot of money on legal fees and risk losing its brand name. Although the company eventually settled with Apple and was allowed to keep a somewhat modified logo, the suit shows the intimidation that small businesses experience when faced with corporate giants. Here, the trademark law was not used to prevent confusion, but as a means of flexing legal muscle.

Another instructive case is Monster Energy Co. v. Thunder Beast LLC. Monster Energy is well known for its zealous protection of the brand and trademark, particularly the "Monster" name and the stylized claw trademark. Thunder Beast, a small root beer manufacturer, was sent a cease-and-desist letter by Monster notifying it that its name was an infringement of the Monster brand because it included the word "beast." Despite the fact that there was no possible consumer confusion, energy drinks and root beer are obviously two different products, Monster sued the company. Thunder Beast, unlike most other small companies that have been threatened in this way, decided to fight back. The case garnered media attention and sympathy

and was eventually dropped by Monster. The case does, however, demonstrate the way that IP law can be used by larger firms to try to bully smaller rivals, even where the claim is not being made in good faith. The financial and emotional cost of defending against such claims can destroy a small business outright.

Even when companies are in entirely different businesses, trademark law is leveraged to stifle competition or block market entry. Consider Kellogg Co. v. MyPillow, Inc. MyPillow had wanted to enter the breakfast food market with the "MyBreakfast" brand but was challenged by Kellogg in their trademark application. While MyPillow and Kellogg sell fairly different products, pillows and breakfast cereal, the larger firm argued potential customer confusion. The cost of defending such claims in court can be sky-high, especially for firms not yet raking it in from the new enterprise. MyPillow argued its case here and dropped its trademark application to avoid an expensive court battle. This is a perfect example of how IP law is being used not to protect legitimate brand interests, but to suppress competition at an early stage.

These examples reflect a common pattern: large corporations use IP law not only to protect their legitimate interests, but to take up space in the market. This places small businesses on an uneven playing field where they must contend with the legal complexity of IP and the strategic jockeying of larger rivals. There is some relief, however. Pro bono legal clinics and services, sometimes law school- or non-profit-sponsored, provide advice and sporadic representation. The United States Patent and Trademark Office (USPTO) has small entities' dedicated resources available to them, including fee reductions and educational materials.

The Trademark Modernization Act of 2020 is a move in the correct direction. The Act introduced new opposition procedures for trademarks and eased procedures for removal of unused trademarks from the register. These measures alleviate some of the administrative and financial burdens on small organizations. Defensive publication is another option for small businesses. By publicly disclosing an invention or brand idea, a firm can prevent others from also patenting it. This can be a good strategy for startups that cannot afford to buy full patent protection.

Publicity and the media are also great friends of small businesses. In both Prepare and Thunder Beast cases, public outcry served to contain the violent actions of the larger corporations. Internet-based crowdsourced campaigns and social media campaigns can help bring the injustice being perpetrated against small businesses to light and turn the tide in their favor. This is not a legal remedy but one that can potentially place enough pressure on corporations so that they will be forced to change whatever it is they are doing.

Yet further structural reform is necessary. Two suggestions are compulsory mediation prior to IP litigation. This would compel parties to seek resolution through negotiation beforehand as a precursor to going to court, with the potential for cost and time savings to both parties. The other is penalties for frivolous or out-of-bounds claims. Just as there need to be sanctions for contract fraud or ad fraud, there need to be sanctions for misuse of IP law as a club that it can be. More transparency would also benefit the system. A publicly available database of cease-and-desist letters and their outcomes would reveal patterns of abuse and allow small businesses to prepare for suit more effectively. More access to low-cost or subsidized legal representation would level the playing field and allow small businesses to enforce and defend their rights more effectively.

Lastly, IP law needs to be used as a spur to innovation, never as a barrier. When it is functioning properly, it enables small businesses to compete on the basis of the quality of their ideas and products. But the situation today is one of a justice system in which access to justice

depends on the size of your bank account, not the merits of your case. And if big companies are able to game the system with impunity, then small businesses can never be on a level playing field. That is, while intellectual property law is necessary in its protections, the form and practice of the law as it currently exists favors more powerful actors with resources to utilize it. Actual examples discussed herein demonstrate without a doubt that small businesses are not provided with an equal chance to enforce rights or penetrate new markets. Reforms like requirements for mediation, transparency mechanisms, and eased legal asset access are indispensable to the establishment of a much more even playing field. It is only by doing so that IP law can turn into a genuine tool of innovation and justice in the marketplace.

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