

Protection of business start-up ideas from intellectual property perspective

by Cristian Popescu, Managing Associate



Faced with the current conditions of rapidly expanding and evolving markets, especially in the on-line sector, many entrepreneurs wonder how they could protect their business ideas from third parties even from an incipient stage, of the "raw" idea.

Furthermore, since start-ups need solid financial sustenance, many entrepreneurs consider approaching larger companies/investors with their business ideas. At such a point, legal protection of the business idea should become a priority. The legal protection methods of business ideas/concepts from intellectual property perspective are varied, but may depend on the actual idea intended for protection.

Both under Romanian and international law the following categories may be subject to intellectual property protection: trademarks, patents, industrial designs and patterns, utility patterns, topographies of semiconductor products, geographical indications, copyright

Regarding the protection of a business idea (including the business proceedings/concepts), mention such ideas are not by default included within the above mentioned categories, which generically benefit from protection from an intellectual property perspective. Therefore, traditionally, the ideas were referred to as the "orphans" of intellectual property protection.

However, in practice, due to the growing pressure of the market, the necessity of obtaining patents to protect a business method/idea became more important both at national and international level. In some cases, the protection of the business idea as a patent was successfully approved by the Romanian State Office for Inventions and Trademarks.

This case law solution, even if it is not formally covered by legal provisions, should be firstly considered by the Romanian start-up entrepreneurs seeking to protect their ideas. Of course, the competent authority may decide whether the business idea is patentable or not on a case by case basis, and therefore the operation could be subject to a certain risk of failure. Generally, business ideas including also a technical component are more likely to be protected as patents.

Other form of protecting a business idea is connected to trademark registration. The advice for Romanian entrepreneurs is to find a strong/distinctive trademark to protect their business, consisting of a verbal element, accompanied by a distinctive graphic element and/or a logo.

Such trademark could be registered nationally or as community trademark. The protection as community trademark is generally more advantageous than the national registration – with similar costs the trademark would be granted equal protection throughout all 27 member states, including Romania.

As regards the copyright, it may only protect the presentation method of the idea (for example, the Power-Point document used in order to present the idea to a prospective investor is subject to copyright). The business idea in itself may not be protected by the legal category of copyright

Concomitantly with protecting the business idea in accordance with the above, the entrepreneurs should seek to implement a mechanism for protecting their business even from the team participating to the idea's implementation. This basically prevents the risk that the personnel involved in the development of the business to invoke certain rights with respect to the business idea/software applications/other creations.

To this end, it is essential to conclude, even from an incipient stage of the business, certain agreements to regulate the general framework for the use and disclosure of the business idea and other related creations by the persons having access to the business.

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