

ENTERING THE US MARKET?

DUE DILIGENCE
PAYS OFF



Entering the US Market? Due Diligence Pays Off

When entering the US market, non-US companies and entrepreneurs need to understand whether and/or how their products or services might infringe upon the intellectual property rights of those already operating in the United States.

Violating someone's IP will not cost "only thousands of dollars in fines". Violating someone's IP could result in a court-ordered injunction against further importation and sales of the accused device/product, an order to pay significant monetary damages (possibly in the millions of dollars), and an order to pay the other side's attorneys' fee.

"When infringement occurs, it's not always obvious," explains Eric Ludwig, ESQ, an experienced, US-based trial lawyer with an extensive background in intellectual property and business litigation. "IP violations can be as blatant as stealing someone else's design, brand, business, or product idea and violations can also be much more subtle of someone's business or product idea, though that can occur. Instead, it's usually much more subtle and perhaps even unintentional, such as using a graphic, logo, brand name, or messaging that's very close to what someone else is already using in a certain area. Or it comes by way of relying on the work of employees or independent contractors who utilize their prior expertise in doing work for you, which has the potential of infringing on the IP of their previous employers."





Freedom to Operate

Anyone engaged in the initial stages of product or process development should perform a *freedom to operate analysis*. Known as an “FTO™,” this assessment determines whether a product, technology, or invention infringes on existing patent claims or another’s intellectual property rights in a specific area or country. An FTO™ goes beyond determining whether or not an idea or process is patentable in the United States. It also checks international records, expired patents, patents pending, competition infringement, government regulations and safety standards, and other areas.

“An FTO™ is not a definitive legal ‘yes’ or ‘no’ determination as to whether you have the freedom to operate without fear of IP infringement in the United States,” Ludwig cautions. “Cross-licensing agreements, where you work out an arrangement with the current IP rights holder, can help you overcome a negative FTO™ analysis. But just because you get a positive result from FTO™ analysis doesn’t mean you’re 100 percent in the clear. That’s why I always recommend that any foreign/overseas company, individual, or entity thinking about entering the United States market, retain competent US-based legal counsel—someone who can commit to a process of due diligence on behalf of the client and advise on various legal issues, especially in the area of best practices concerning IP laws, patents, trademarks, etc.”

Protect Your Product. Your Business. Your Dreams.

Contact *Eric Ludwig* today for a consultation to discuss whether you need to apply for copyright, patent, and/or trademark protection in the United States.

(619) 929-0873 | consultation@ludwigiplaw.com