Intellectual Property Rights in Bankruptcies Worldwide

Intellectual Property Rights ("IPR") are a crucial part of today's commerce – both domestically and internationally. Companies, whether in financial distress or not, deal with IPR on a daily basis. The dealings include creating, licensing, sub-licensing, selling and enforcing the IPR they need to operate their business.

Unlike tangible assets that can be seen and felt, IPR is both intangible and very real. You need only walk down any downtown street almost anywhere in the world and you are surrounded by IPR – newspapers and books (copyrights), corporate and product logos of every size and shape (trademarks), personal communications devices (patents, trademarks and copyrighted operating systems), advertisements (copyrights), music coming from MP3 players and automobile radios (copyrights) and the list goes on and on.

Naturally, companies that find themselves in insolvency proceedings have to deal with their IPR. They have to assure access to the IPR they need to operate their business while also facing the realization that they might need to monetize their IPR to repay their creditors. It becomes more complicated when a company's primary products are (or rely heavily upon) IPR since failing to assure that its customers' ability to use the products is not jeopardized if it is to retain any value for its creditors.

Complicating matters even further, companies that have operations in different nations face even more challenges when they find themselves in financial distress. The challenge is magnified when they cross between common law and civil law jurisdictions since they can view IPR very differently. To help illustrate the intersection of IPR and insolvency law in cross-border insolvency actions, the panel developed a simplified set of facts involving a hypothetical company, Charlie's Software, Inc. A summary of some of the financial and legal issues Charlie's faces follows below.

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Charlie's Software, Inc. is a U.S. corporation that publishes software for computer games as well as contact management software for businesses. Part of Charlie's marketing strategy includes integrating and relying on characters from Hollywood's recent movies. Its unique business model that allows the contact management software to run as part of the games, received patents from the U.S. Patent and Trademark Office. As with any company, Charlie's relies on computers for its business and is a licensee of software that it relies upon to run its business. While Charlie's is based in the U.S., 40% of its sales come from international customers and that percentage is growing. The factories where Charlie's "burns" the CD's with its software are located in Canada and Italy and are owned by wholly owned subsidiaries.

By way of summary, Charlie's is:

- a software publisher and licensor (for its products);
- a patent holder (U.S.);
- a software licensee (U.S.);
- a U.S. Copyright and a U.S. Trademark licensee (movie characters).

Charlie's is experiencing severe financial distress and is facing the possibility of having its debts restructured in insolvency proceedings in either, the U.S., Canada or Italy. It may need to sell specific assets or subsidiaries (or even liquidate) to pay a significant amount to its creditors.

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