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“We can be allies but that’s not enough”: call for IP community to do more to help black-owned SMEs

- **Support grows for black-owned businesses alongside Black Lives Matter movement**
- **Many of these companies are SMEs without trademark protections in place**
- **Call for IP community to do more to promote *pro bono* and low-cost schemes**

The Black Lives Matter movement has placed racial injustice and police violence at the centre of social and political discussion. It has also led to calls for consumers to support local black-owned businesses. The latter provides an opportunity for the IP community to step up and help ensure that SMEs have easy access to IP advice and services – with one legal expert stating: “This is something we absolutely can do.”

Over the past week there has been a [multitude](#) of [articles](#) promoting [black-owned businesses](#) and encouraging support for them. Of course, as many of these articles trend across social media platforms, the risk is that bad actors will try to take advantage of these brands. “Any brand that becomes widely recognised is at risk for counterfeiting,” warns [Alan Behr](#), a partner at Phillips Nizer. “Counterfeiters do not care who owns the brand, how much work went into building the brand or how many people will be hurt along the way, whether they are owners, investors, employees, vendors or consumers.”

IP rights are vital to all businesses as the assets that drive sales and profits, yet the SME sector has generally lacked the resources to attain – or had access to advisers that stress the need for – trademark protection. However, not doing so can be costlier in the long run, Behr noting: “Far too many mistakes in protecting intellectual property arise from waiting too long, turning what could have been an inexpensive protection programme into an expensive loss-containment programme. That is, if you don’t protect what you have from the start, you may find yourself having to sue later to get back what you lost or will soon lose.”

Hence, IP offices around the world are increasingly reaching out to the SME community to preach the IP gospel. And while business owners in the United States will benefit from common law trademark rights, it is important that SMEs are aware that these are not equivalent to fully fledged protections.

Importantly for SMEs that are trying to save as much money as possible on initial costs, legal advice is not necessary at all stages, states Lathrop GPM partner and past president of the American Intellectual Property Law Association (AIPLA) [Sheldon Klein](#): “Anyone can go on Google or the USPTO’s website and do a fairly sophisticated search to see what’s out there.” Similarly, while no substitute for professional services, a degree of watching can be carried out through online searches.

Of course, any corner cutting comes with risk. When discussing trademark prosecution, Klein notes that “non-lawyers tend to not do the greatest job”. For those seeking trademark counsel, Behr points out that many firms will offer registration services on flat-fee structures: “That means you can get quality trademark assistance at, generally speaking, rates that are structured to be affordable to most anyone who needs trademark legal services.”

A call to action

Naturally, for many SMEs there are often more pressing concerns in terms of where to direct available financial resources, making *pro bono* offerings key. These are certainly out there. For instance, the [USPTO](#) offers legal assistance programmes through its Law School Clinic Certification Programme, while the [AIPLA](#) has a *pro bono* special committee as part of its mission to help businesses. [INTA](#) also has a large number of resources for SMEs, as well as its [Pro Bono Clearinghouse](#), which matches eligible clients with INTA member attorneys so that legal services can be provided free of charge. Additionally, help can be found from many of the [state bars](#), which also offer *pro bono* assistance. Commenting on the AIPLA’s firm members, Klein says: “A lot of our firms are eager to help small businesses and start-ups through either *pro bono* work or creative fee arrangements.”

But could more be done?

“I think there are many firms that are willing to work with small businesses at a reduced rate if necessary, especially with black and other minority businesses,” notes Klein – adding that, as most firms do not make their money off the back of applications, it is an area that could see bigger commitments. The question is how to spread the message, with *pro bono* schemes a lifeline that arguably is not promoted enough. After all, if small businesses are not exposed to the message that IP protection can support their enterprise, they will not seek out advice.

If firms and associations are willing to offer or facilitate free or low-cost help to SMEs, including black-owned enterprises, it is something that the IP community should also find new ways of creating awareness about. Klein concludes: “Frankly, with what’s been going on in the last few weeks, everyone I know is desperate to do something. We can be allies and we can support but that’s not enough. This is something we absolutely can do.”

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