

This interview was conducted by Kiriakoula Hatzikiriakos, with the assistance of Chris Yangchen, graduate from the Faculty of Law of University of Montreal and currently completing the Quebec Bar.

The interviewees were [Weston Anson](#) (Chairman), and [Jeff Anderson](#) (Managing Director) from [Consor](#), IP Consulting and Valuation firm.

Question 1

During the pandemic, many brands are closing their stores and seeking protection under insolvency laws; eventually they may face a liquidation of their IP assets. How will this situation affect the valuation of their IP assets?

Weston: Let me begin by giving some background. In the last economic crash, there were many versions of what is happening now to the brick-and-mortar stores, particularly in retail. In the last round, we liquidated companies like Montgomery Ward, Circuit City, Service Merchandise, Fortunoff and several others.

So, the question is: in a liquidation, what happens to the asset portfolio, like the trademarks and trade names? Well, one thing we learned from the last round is that once the brands disappear, they disappear. It's remarkable how quickly the public is willing to forget companies like Pier 1. The consumers, while they would like to be loyal to the brand, when the brands are gone, they are gone. Their value in a sale is relatively *de minimis*. You do probably end-up selling your brand and trademark assets to an online company the way that Gump's did, a luxury home furnishings and home décor retailer, founded in 1861. Gump is purely digital now.

What about the companies who own patents? Those can do better because technology will continue to exist. Patents can be more valuable in this market than brands and trademarks. Websites and domain names will lose a great deal of value also. Domain names become essentially worthless and websites that have not been particularly well built will eventually disappear.

Question 2

The lockdown has halted most of the industry operations. This has worsened the financial state of companies. But are there some strategies that companies can use to remain relevant, like e-commerce? Do you see a growth of ecommerce? Do you see a change to the business model of companies that would allow them to adapt to the current environment?

Jeff: My sense is the pandemic has not caused anything to happen that was not already going to happen. All the pandemic is doing is accelerating what was already going to occur. The retail industry was facing hard times long before the pandemic arrived. The pandemic worsened the situation for many brick-and-mortar stores. Same goes for the commercial real estate market, that has had a difficult time between the last recession and now. So, the pandemic is just forcing the changes to happen at a very rapid pace.

Wes is right: it will be a better market for patents as they tend to increase in value during uncertain times. Companies are currently looking to technology advantages to increase efficiencies. So, I think patent values will increase, and we are seeing that they are. I think Wes was also right on the trademarks front, but I think there are some trademarks that will make a shift; they will change themselves as they are already doing.

They are making a shift to more “delivery-based” model and less on “in-person” activity. I think those brands that make that shift, quickly and effectively, will increase in value overtime. And those who do not do the shift will certainly decrease in value.

Koula: What about those companies that are doing business only online, like Amazon?

Jeff: Well, there are clear issues with Amazon. We all deal with Amazon on a daily basis, just as we did prior to the pandemic. And the things that we used to get in a day can now that up to 3 weeks to arrive. Online platforms are overwhelmed with demand. That caused Amazon to make a shift, they hired hundreds of thousands of people as they are trying to improve their technology and data management to cater to the current supply chain needs. Amazon can benefit from this shift. The pandemic is also forcing Walmart to push into that next-day delivery market, to directly compete with Amazon. Walmart was already heading in that direction; but now they are forced to make it happen even quicker. Otherwise, it will only become more difficult to compete with Amazon.

Weston: And I want to add a final comment on this. All we must do is look at Sears and Kmart and how slow they are adapting to the online model. And as a matter of fact, they are both going bankrupt. A quick response to the current situation is critical.

Question 3

How can companies use the new market reality to leverage their IP assets? Could you give advice to the companies which mainly depend on their IP assets? What IP strategy should they adopt?

Weston: Well, if they are not thinking about it now, it is going to be too late tomorrow. IP must be a critical part of the business because we are not going back to the traditional retail model. And this is true not just for retail, but for all kinds of service and technology support businesses. Everybody needs to think of a new way to manage the reduced access to the marketplace. They all need to figure out one thing: it is the reduced access to core marketplaces that is driving companies to rethink their strategies.

Jeff: There is reduced access to certain goods and services in certain channels, but access has increased in others. You have more people now, sitting at home like me, in front of two monitors and who constantly have screens in front them. So, it is all about a company shifting its strategies on how to leverage its brand through the screen time and media where people are accessing information and data. At the same time, it is about how you shift your technology to benefit from this new reality versus maintaining the status quo, like Kmart.

Weston: For example, let's just take retail for moment. The IP strategy for retail now must be to coordinate and manage large data as quickly as possible. That is a skill that lots of companies do not have, especially in the service and retail sectors. Larger companies like manufacturers of consumer goods are also having a hard time. They also must think about what they must do to adopt technology to get their products dispatched.

Jeff: Exactly, even a trillion-dollar company like Amazon, can improve. For example, the Amazon Subscribe & Save service software can be improved to allow for a more personalized service. For example, the entire Subscribe & Save program should become smarter. There is no reason that a consumer should have to buy repeat goods on an exact 2, 4, or 6-week basis. Why can't Amazon allow us to select a 17 day, or 43-day interval for recurring purchases? I have tried the Subscribe & Save program and I either end up with way too much product piling up, or running out of something else before the next delivery. We all know Amazon has mountains of data on our purchase history – use it to make consumers' everyday

purchases easier, and to improve supply chain efficiency. Having a smarter software that solves these problems would greatly improve the services offered and at the same time increase the value of the Amazon's IP.

Question 4

Banks are currently assisting businesses survive through the economic realities due to the pandemic. Is it a good time for lenders to help companies with their IP strategies?

Jeff: As IP professionals, our answer to that is Yes, of course, because it is an amazingly difficult time for well-known companies which have been around for 50-100 years. They cannot even find a financier that is willing to lend on their IP. If you look at U.S economy, it's actually 70% plus IP base. But it's difficult to lend on IP assets. Why is that? Is that because they don't know how to value it? Weston, what is your take on this?

Weston: I am just as surprised as you are Jeff. It is an issue of traditional lending rules, of course. This is compounded by lenders' inability to know which intellectual properties will prosper, and which will not.

Jeff: Yes, I agree. Koula, I think the answer is in front of us all the time: banks and traditional lenders are reluctant to lend on IP and they have not taken advantage of the opportunity to benefit from IP. You can see that, because the banking industry is having a fairly tough time, but the equity market is essentially lending on IP assets, especially the U.S. market. You provide capital through equity, and look what happens? Apple, Microsoft, Facebook, Netflix, Amazon. If banks would lend on the IP of small or start-up companies, perhaps those companies could blossom into the next cohort of FANG stocks?

IP strategies:

Jeff: An effective strategy for IP value to increase is through "consolidation". Think about the dot-com bubble... where you had millions of companies that consolidated into a handful of companies, and some of them are now the most valuable companies in the world. And the same goes with brands. We have seen a consolidation in brands where mergers of fortune 500 companies occurred which allowed them to focus on certain brands only. These consolidations made such brands become stronger. I think this strategy increases the value of a brand and removes the dead-weight.

Weston: Yes, a good example of this is M&M/Mars over the last 5 years. They converted all their secondary brands around the world under two brands names. Why? Because it adds value. So, this is the question that we need to ask ourselves: when will the accounting methods change so this kind of IP could be valued every 2-5 years? When will balance sheets reflect the true value of the assets?

Question 5

What strategies can help companies leverage their IP assets to compensate for their loss in revenues? For example, earning royalties by licensing the IP, exploiting the IP through strategic alliances, making money by selling the IP or suing potential infringers?

Weston: A good strategy in the current environment is to focus on a business' IP and see how it can be leveraged to raise financing. We have a client right now, they are taking a look at how to run their business, and what we are helping them to do is to keep the manufacturing business, which is profitable. Then, take their two major global brands, consolidate the ownership of the trademarks into a separate company and attempt to either sell or grant a master license for the branded assets. That is a durable strategy.

Jeff: I think there is another example, which is United Airlines. They are leveraging their intangible assets, especially their mileage program. UAL recently secured a \$5 billion line of credit using it's MileagePlus® rewards program as collateral (<http://www.consor.com/united-airlines-using-intangible-assets-and-intellectual-property-as-collateral/>). This program is mostly composed of various intellectual property and miles that can be created in unlimited quantity out of thin air! The value of this program is significantly higher than the market value of the company as it is traded on the market. That is a great example of how a company is leveraging its IP for secured lending purpose.

Question 6

What is the appetite of traditional banks in lending against IP? Can government initiatives help to incentivize lending against IP?

Weston: I had a conversation yesterday with one of the biggest business advisory firms in the US., Gordon Brothers. Gordon Brothers finances IP. They got into this business because traditional bank lending for IP is practically nonexistent.

Jeff: It would be great if the government promoted lending against IP! Considering all the money being printed by central banks, wouldn't it be worth a shot? Given the high percentage market value that is derived from intellectual property, perhaps it would not be a bad time to try something new and have the government invest directly in IP.

Weston: We may not have all the answers today! But some sovereign entity in the U.S., Canada and U.K. must finally admit, to some extent, the value of IP. Until such time as that happens and we change our accounting rules, things will not change much.

Jeff: I agree 100%. I think it's the regulation and law that may make a difference. It is going to be risky; they are not going to have a 100% success rate, but think about the benefit generated from actually lending to start-ups and small out-of-the-garage operations that are creating new ideas, just like Apple back in the 70s. If you are willing to lend on that, how many jobs will be created. And what kind of prosperity will it create? What kind of increased tax revenue could it generate? So, it's unfortunate that the government and large financial institutions are looking at one-sided risk, but not looking at the benefits and rewards that are actually provided as well.