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Selling or expanding overseas, avoiding risk

In recent months, the Export Promotion Cabinet (EPC) reported to the president a five-year plan to double U.S. exports. In that report, the EPC noted the Small Business Administration has identified more than 2,000 potential exporters in its Central Contracting Registration database and the Export-Import Bank has increased its loan approvals by nearly 20 percent. Small business approvals are up to $4.1 billion.

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Businesses are exporting — some that never have before; but, as U.S.-based businesses strive to increase global demand for their products and services, their risks increase too. Risk assessment and management should be at the core of a company's business strategy for overseas expansion.

Brand control

Brands play a significant role in driving buying behavior. Customers use them to identify the source and quality of the products and services they buy. Because of this, a solid trademark position is much more valuable than other forms of intellectual property — even patents — for many companies.

Brands are broadcast worldwide through the Internet, making a company's good name and products a potential target anywhere. Many companies do not realize trademarks secured in the United States may not be secure in other countries. For example, as business expands, a U.S. manufacturer may develop distributor relations with foreign companies. They will spend a lot of money and time laying the groundwork for a successful expansion, only later to find their distributor actually owns the trademark rights to their most profitable products in the distributor's country.

Obtaining protection in a foreign country can seem daunting for those working only in the United States; however, good planning for future brand protection overseas starts with solidifying registrations here. Early registration in the United States enables action to stop importation of infringing goods. Also, some countries have laws that may protect established brands that are registered in the United States but an active strategy is needed to take advantage of the system.

Different controlling laws

Another risk involves commercial terms. U.S. transactions are built on assumptions that U.S. commercial laws will apply. In international situations, however, the so-called "INCOTERMS" or other terms may apply that could change the value or risk of a deal. Depending on the contract, foreign law may apply, and disputes can be forced to be heard outside the United States.

Contract terms

Careful review of what may seem like "standard" contract terms is also important. Sometimes, companies end up taking on large obligations but fail to manage the risk, which increases the probability that promises to pay or indemnity will be less reliable and expensive to enforce. Furthermore, contract terms for selling or distributing outside the United States may be different. Price maintenance, invention rights, copyrights, re-sale restrictions, indemnity provisions, currency fluctuations and dispute resolutions are all important preemptive considerations for successful overseas expansion.

Exporting can be a good way to expand; and, in some markets, it may be the only way. The companies that strategically plan the process avoid risk and gain opportunities. Those that fail to address their intellectual property issues early, find crossing the sea to be a stormy experience.

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