

INTELLECTUAL PROPERTY AS A MARKETING TOOL IN THE CREATIVE INDUSTRY

*Ishan Puranik**

Abstract

Intellectual Property as a marketing tool in the creative industry Intellectual Property Rights (IPRs) are no longer confined solely to ethical or moral concerns regarding creative ownership. They are progressively entwined with the commercial interests of individuals and businesses. While Trademarks and Trade Secrets have historically carried marketing implications, recent observations from both Intellectual Property and non-legal scholars highlight the consumer attraction power of other rights like Copyrights and Designs. This research paper intends to explore how intellectual property rights play a pivotal role in the marketing process. It achieves this by delving into the theoretical aspects of intellectual property and substantiating its findings with real-world instances from prominent contemporary companies. The study adopts a descriptive and exploratory research approach, drawing its conclusions from an in-depth review of existing literature. The study demonstrates that IPRs have become integral to the most prevalent and frequently employed marketing strategies prevalent in today's business landscape. These rights significantly influence diverse aspects such as pricing, product design, purchasing methodologies, and more. Reference is made to several different concepts of marketing such as Porter's five force analysis, market share manipulation and more, and is then compared with how Intellectual Property rights can play an important role in those concepts. In conclusion, the paper concludes that Intellectual Property Rights can form effective tools for all stages of the marketing process.

Keywords: *IPR, Marketing, Creativity, Assignment, Licensing*

* V Year, BBA LLB Hons., NMIMS Kirit P. Mehta School of Law, Mumbai Campus.

INTRODUCTION

The creative industry functions on the existence of intellectual property rights. Without intellectual property rights, creators have very little incentive to create. While it is true that some create to satisfy an inner craving/calling, intellectual property rights are what makes the pursuit of such things sustainable from an economic standpoint, and even for those creators falling within the former category, intellectual property rights provide them with moral rights that help them maintain the integrity of their work, as well as their recognition of authorship in that.

The law does not provide any standard of quality that a creative work should fulfil to get protection, copyright protection for all creative works exists by default as soon as they are created. Each version or draft of a story or script enjoys protection equal to that of the final one. The quality of the work is only relevant towards its commercial success, for this reason, creators and creative industry businesses invest large amounts of money and time into developing good ideas into better stories that will be commercially successful. Movies are often marketed based on the people involved in this process (For example, advertising for movies directed by Christopher Nolan or Quentin Tarantino prominently displays this fact). However, over the last few years, we have seen a trend of movies being marketed – not based on their story, contents or the persons involved in the development, (through usual trailers, posters, etc.) but also based on the underlying rights or materials that these movies are based on. For example, the Barbie movie, the Percy Jackson series etc. Both of the two most anticipated movies of the year (Barbie and Oppenheimer) were based on pre-existing intellectual property rights that were adapted into movies¹.

INTELLECTUAL PROPERTY RIGHTS, MARKET AND PERCEPTION SHARE

Above all else, the goal of marketing is to make one company more successful than its competitors. Every market has a limited number of buyers at any given moment, the dominance of a particular seller can be measured and quantified by the number of sales made by a particular business within that industry that take place during a specific period – the number of sales that are made by an individual company divided by the total sales within the industry over

¹ Condé Nast, “39 Major 2023 Movies Based on Books” *Vanity Fair*, 2023 available at: <https://www.vanityfair.com/hollywood/2023/10/2023-book-to-movie-adaptations> (last visited November 18, 2023).

a specific period represents that company's 'market share'. Marketing is thus conducted to improve or at least maintain the market share of a company.².

Intellectual Property Rights can help companies improve or maintain their market share in both scenarios in the following ways:

Firstly, *intellectual property rights make it harder to enter into an industry* thereby maintaining the existing market share. To penetrate such industries, a company would have to bring about a product that is not being produced by any other company at a suitable price, this is a difficult feat in the first place, made further difficult by:

- Existing patents that are held by larger companies, force smaller companies to undertake higher amounts of investment to find disruptive solutions,
- Preventing smaller companies from utilizing existing technology by shielding it with patent rights, hinders innovation as all innovation is based on what already exists³.

Secondly, intellectual property rights help companies improve their market share in two ways - first by creating unique selling propositions and then by driving out copycats and counterfeiters, this was most notably seen in the case of *Two Pesos, Inc. v. Taco Cabana, Inc.*⁴ *Through the enforcement of intellectual property rights, companies effectively establish somewhat of a monopoly over their unique features - a recent example is that of Apple's 'Magsafe' chargers and technology - which unlocks a new level of convenience when it comes to utilizing wireless charging technology.* Companies having intellectual property rights over their unique offerings can litigate against other companies that try to copy/reproduce their features without their permission.

Thirdly, intellectual property can provide companies with an advantage when they try to enter into new industries ('category extensions') or expand their offerings within the current industry ('line extensions'). Companies with strong intellectual property protections in one industry are more likely to successfully expand into other industries based on the reputation and goodwill garnered during their work in the previous industry⁵.

² Robert D. Buzzell, Bradley T. Gale and Ralph G. M. Sultan, "Market Share—a Key to Profitability" *Harvard Business Review*, 1975.

³ Kazunari Sugimitsu, "Intellectual Property as a Marketing Tool," 13 *日本知財学会誌* 4–14 (2017).

⁴ Winnie Won Yin Wong, "Ambience as Property: Experience, Design, and the Legal Expansion of 'Trade Dress,'" 9 *Future Anterior* 88–105 (2012); *Two Pesos, Inc. v. Taco Cabana, Inc.*, U.S., 1992, DV.

⁵ James G. Conley, Peter M. Bican and Holger Ernst, "Value Articulation: A Framework for the Strategic Management of Intellectual Property," 55 *California Management Review* 102–20 (2013); James G Conley and John J Szobocsan, "Snow White Shows the Way" *Managing IP*, 2001.

Another notable element that can be perceived when it comes to market share is that of 'perception share'. To explain this concept, we can look at the marketing practices of the audio engineering company 'Dolby'. Dolby started as a small startup in the United Kingdom. The unique aspect of Dolby is that it is as well-known as some of the major audio-product brands, however, it is a very small number of direct-to-consumer offerings and initially, it had none at all, instead Dolby created valuable technology, patented it, and then licensed it out to various other manufacturers that were selling to consumers. Dolby's licensing terms mandated that all audio devices using their technologies should have a button or switch that the user must activate to start the Dolby technology embedded in the device and this switch must be branded with the Dolby name and logo. Every time the consumer pressed the said button, the sound quality improved, which led to the psychological association of 'Dolby' with good quality of sound. Consumers identified and perceived that all the good audio products incorporated Dolby technology, thereby improving Dolby's 'perception share'. Naturally, due to the additional license fees, these products would be priced higher than those that did not bear the technology. Dolby doubled down on this strategy by entering the movie industry, they created and patented technology that was used to record, edit, and store audio for movies and other audio-visual productions. The cult classic Star Wars was the first movie to license and use Dolby technology for recording and sound mixing, each poster promoting the movie bore the Dolby logo and a premium audio experience was promised to the public, and such an experience was delivered thereby further improving the perception share of the Company⁶.

The term 'perception share' can thus be defined as the proportion of the consumers in a market that *prefers or would prefer* purchasing the products of a particular company over those of another.

INTELLECTUAL PROPERTY AND MARKETING THEORY

Marketing theories provide frameworks that companies can take to make business decisions to achieve their various goals, the possession of intellectual property rights makes it easier for companies to make certain decisions, such as entering into new industries or market segments. A reference to *Porter's 5 force analysis* helps us understand how having intellectual property rights can provide certain advantages to companies contemplating entering new industries. Porter's five-force analysis is traditionally used to assess the competitiveness of a broad

⁶ Andy Sherman, "Decoding Dolby's DNA" *Intellectual Asset Management*, 2019; Pamela Hawkins Williams, Dotcy Isom Iii and Tiffini D Smith-Peaches, "A Profile of Dolby Laboratories: An Effective Model for Leveraging Intellectual Property" 19.

industry and how an individual company is positioned within it⁷. The possession of intellectual property rights provides notable benefits under every factor.

1. **Industry competition:** The larger the number of companies within an industry, the less freedom that an individual company has to charge higher prices. If all companies are offering a variation of a product with no disruptive and/or unique distinctions, then consumers will opt to purchase the cheapest and/or most accessible option. However, if there are a smaller number of companies providing the particular service, then there is a large scope for the companies to charge higher prices, i.e., if there is a scarcity of supply of a product, then consumers can be forced to pay a higher price. Companies can however create unique products and thereafter protect the design, functionality, and other aspects of the product through the use of intellectual property rights, if a company can monopolize a unique selling proposition, then it can effectively create a new market segment in which it is the sole entity. Thus, the unique selling proposition can be monopolized.
2. **Threat of New Entrants:** The higher the number of companies entering into a market segment, the slower the market share of any one company will grow. New entrants effectively ‘dilute’ the market by increasing the number of sellers and increasing the bargaining power of the sellers. The possession of intellectual property rights by existing players in the market can make it more difficult for new entrants to find their footing. It forces innovation and disruption on the part of the new entrants and removes the scope of them copying something that other players are already doing and protecting with intellectual property rights.
3. **Bargaining power of buyers:** The bargaining power of buyers increases when the product being sold does not have any unique characteristics and a similar product can be obtained elsewhere, possibly at a lower price. Selling a generic, saturated product puts the company under the control of the buyers. Through the use of intellectual property rights, a firm can create an identity that provides the buyers more than other competitors are capable of doing.

⁷ “Porter’s 5 Forces Explained and How to Use the Model,” *Investopedia* available at: <https://www.investopedia.com/terms/p/porter.asp> (last visited October 8, 2023).

4. **Bargaining power of suppliers:** A supplier of raw materials is also a business, if the demand for a raw material is high, then the supplier can raise prices, if it is low, they will have to reduce prices.
5. **Threat of substitution:** Substitutes need not refer to goods in the same industry, a substitute may be any good or service that fulfils a particular need. An example is that of theatres and online streaming services. Online streaming services fulfil the desire to view a particular piece of media/entertainment and hence are a threat to theatres. By using intellectual property rights, in a particular way, you can bring some unique value to your consumer base, and then they are less likely to move to your competitors. E.g., Adobe's software enjoys a very low threat of substitution, not only because it is the industry standard, but also because no substitute is as powerful as the Adobe Creative Suite.

With the growing relevance of intellectual property rights across the globe, people of the legal fraternity are increasingly finding new ways to apply intellectual property rights to differentiate and deprive their competitors of potentially game-changing features.

INTELLECTUAL PROPERTY RIGHTS IN THE CREATIVE INDUSTRY

'Creative Industry' for this paper refers to all industries that provide content and experiences to consumers for entertainment and enjoyment. This includes industries like movies, television, print media (books, magazines, etc.) and other modern forms of entertainment.

Since the formalization of intellectual property laws, intellectual property rights have been of paramount relevance in the creative industry. They serve as a cornerstone, safeguarding the fruits of creativity and innovation. These legal mechanisms, including copyrights, patents, trademarks, and trade secrets, not only protect the intellectual assets of artists, writers, musicians, and inventors but also provide a vital economic incentive. By granting exclusive rights, intellectual property rights allow creators to monetize their work through licensing, royalties, and sales, thereby fueling further artistic endeavours and investments in the industry⁸. Moreover, they play a pivotal role in preventing unauthorized use and ensuring creators maintain control over their creations, fostering a climate of respect and fair compensation. Beyond economic benefits, intellectual property rights contribute to cultural preservation, encourage competition, facilitate international trade and collaboration, and stimulate job

⁸ Joseph E Stiglitz, "Economic Foundations of Intellectual Property Rights," 57 *DUKE LAW JOURNAL* 32 (2008).

creation and economic growth. In essence, Intellectual Property Rights are the bedrock upon which the creative industry thrives, balancing protection and innovation to the benefit of creators, businesses, and society at large⁹.

The relevance of intellectual property rights has now expanded even further from merely protecting and incentivizing artists to create things, to becoming the very concept that the whole industry is dependent on.

INTELLECTUAL PROPERTY AS A MARKETING TOOL IN THE CREATIVE INDUSTRY

The growing importance of intellectual property in OTT streaming

When over-the-top platforms ("platforms") first came up, they were very small in number and the key differentiating factors between them were the technical merits and differentiations between each platform, such as the image quality of media that was being streamed, the loading and/or buffering times of the websites and the videos, and most importantly the aspects of personalization that each service was offering, this led to platforms having higher bargaining power when it came to studios, because the more technically advanced and feature rich platform would help studios to bring their content in front of more people. However, as more and more platforms were launched, both the consumers and the producers had more choices to choose from, thus restricting the ability of these platforms to take risks. Studios who were creating content and subsequently licensing it to these platforms were now being courted and lobbied by multiple different platforms to choose them as distributors and therefore had more bargaining power and could choose who to give their content to, instead of platforms choosing whose content they wanted to host. Content that was being licensed from studios and producers was only available for distribution by the platform for a brief period i.e., the license period – and once the license period ended the platforms could not do much to prevent a studio from leaving their platform and joining another¹⁰.

The multiplicity of platforms and the limitations of consumers also forced them to choose which platform to subscribe to, as subscribing to all of them was no longer a rational choice – and as technical differences became more and more equivalent the primary consideration to be

⁹ “Making a Living in the Creative Industries,” available at: https://www.wipo.int/copyright/en/creative_industries/index.html (last visited October 8, 2023); “Using Intellectual Property as a Driver of the Creative Economy,” *Puntos sobre la i*, 2023 available at: <https://blogs.iadb.org/innovacion/en/using-intellectual-property-as-a-driver-of-the-creative-economy/> (last visited October 8, 2023).

¹⁰ Mark Litwak, *Dealmaking in the Film & Television Industry: From Negotiations to Final Contracts* (Silman-James Press, 1994).

made while making the purchase was the content offered by each service. Studios now had the upper hand because a platform, despite its technical merits, would only be able to attract new and maintain existing customers by having a steady stream of new content that was being published by them. If a consumer no longer found any value in the existing content of a service, they would simply move on to the next one, while a large part of this need for content would be met by existing content coming from studios, platforms could rely on the uncertainties that came along with licensing agreements, moreover waiting for a studio's license to end with other platforms before they could start offering such content on their own was not a sound strategy to ensure that consumers stuck around. These problems gave impetus to the platforms entering the business of producing content themselves - such content would in all practicality be solely exploited by the platform creating it, i.e., the platforms would have a monopoly over these pieces of content - at least in the regions where these platforms were active. While this was a sound solution, to the problems being faced by the platforms, they soon realized that conceptualizing, developing and then producing a piece of content was an incredibly heavy time and resource-consuming process that was associated with a high amount of risk. If a show did not do well the platforms would face a huge loss, not only in the form of loss of investment but also because a lack of 'good' content would result in consumers leaving the platform for others. So, we had now entered into an era of over-the-top content where platforms had begun producing original content that would, for its lifetime, be shared and published by the platform itself however such content carried a large amount of risk. To mitigate the risk that was borne by producing original content these platforms needed to produce content that would not only be perpetually on their platforms but was also guaranteed to do well, at least initially – and thus they turned to adaptations¹¹.

Adaptations refer to the conversion of a literary or artistic work from one mode of expression to another, for example, the creation of a movie based on the story and contents of a book that has been previously written. An adaptation gives producers of content slightly more security as they bring along with them, a set of fans and an audience that is guaranteed to watch these shows, if the show does not succeed then the platform can simply discontinue it later, but at least they can recoup their initial investments. To adapt the studio wishing to produce the content must first procure the rights to the underlying content through an assignment of the intellectual property rights to produce such content. Once the assignment is done the studio can

¹¹ Andrew Liptak, “Why Hollywood is turning to books for its biggest productions” *The Verge*, 2017 available at: <https://www.theverge.com/2017/1/26/14326356/hollywood-movie-book-adaptations-2017-expanse-game-of-thrones> (last visited October 8, 2023).

begin using elements from the underlying content to create new content, begin promotion of the content and undertake other activities. In this instance, the mere fact that the content is based on something that has existed and has a large audience is a useful way to market the new content. The Walt Disney Company, through its streaming platform, has completely embodied the creation of new content based on its existing characters and storylines, and most of the content published to its over-the-top platform (Disney+) is based on pre-existing works within Marvel's roster of intellectual properties. The catalogues of most major streaming platforms' original content are largely comprised of movies or television shows based on books, or other forms of pre-existing media.

CASE STUDY: NOSTALGIA AS A MARKETING TOOL AND THE BARBIE MOVIE

Intellectual property rights have also enabled the ability to monetize and exploit nostalgia - nostalgia has significantly influenced and benefited the creative industry in several ways. Firstly, by pulling audiences to theatres or their preferred mode of content consumption. Nostalgia often resonates with people's emotional connections to their past. Creative works that tap into this nostalgia can engage audiences on a deep, emotional level. When people feel a connection to a piece of media or art from their past, they are more likely to engage with it, share it, and support it, whether through purchasing products, attending events, or consuming content. This is the reason why reboots or adaptations of old pieces of content do so well in the modern day even if they aren't good pieces of art in themselves¹²; Secondly, nostalgia can revive and reignite pieces of content or properties that were once extremely popular but have not seen the limelight in many years, nostalgia has fueled the revival of popular franchises and properties. Creative industries, such as film, television, and gaming, have capitalized on people's love for classic characters and stories by reintroducing them to new generations. This not only attracts existing fans but also introduces these beloved franchises to a new audience, ensuring their longevity. For example, Disney recently greenlit the production of a web series based on the book series 'Percy Jackson and the Olympians' and signed a deal with the author which included publishing a new book as part of the series.

The best example of nostalgia being at work in the creative industry is the recent success of the Barbie movie. It is a testament to the fact that intellectual property serves as an effective marketing tool. By licensing its properties under the Barbie brand, Mattel (the company holding

¹² Scott Mendelson, "Disney's 'Star Wars' Has Been Swallowed Whole By Nostalgia" *Forbes* available at: <https://www.forbes.com/sites/scottmendelson/2020/12/19/disneys-star-wars-has-been-swallowed-whole-by-nostalgia/> (last visited October 2, 2023).

the intellectual property rights to the brand) was able to attract generations of people that are or have purchased a Barbie doll in the past. The success of the movie was able to boost the sales of the dolls¹³. Following this immense success, Mattel has decided to further enhance its content portfolio by commercializing even more intellectual property rights¹⁴.

Nostalgia marketing is a powerful tool that can be used to evoke positive emotions and memories in consumers. It is especially effective when targeting older generations, who may have strong emotional connections to brands and products from their childhood¹⁵.

The Barbie movie marketing team used nostalgia marketing effectively in several ways, including:

1. **Leveraging the brand's iconic imagery and characters:** The marketing campaign featured classic Barbie elements such as the pink logo, iconic dolls, and Dreamhouse. This helped to evoke a sense of nostalgia in older fans, while also introducing the brand to a new generation.
2. **Creating social media campaigns that appeal to millennials:** The movie's social media campaigns were designed to appeal to millennials, who grew up with Barbie. These campaigns featured humorous memes, behind-the-scenes photos, and exclusive interviews with the cast and crew.
3. **Hosting events that celebrate Barbie nostalgia:** The movie's marketing team hosted several events that celebrated Barbie nostalgia, such as a pop-up Barbie Museum and a Barbie-themed brunch. These events helped to create a sense of community and excitement among fans.

The Barbie movie marketing campaign is a good example of how nostalgia marketing can be used effectively to promote a new product or service. By leveraging the brand's iconic imagery and characters, partnering with nostalgic brands, and creating social media campaigns that

¹³ Parija Kavilanz, "Barbie toy sales shoot up 25% after film's release | CNN Business" *CNN*, 2023 available at: <https://www.cnn.com/2023/09/13/business/barbie-toy-sales-circana/index.html> (last visited November 14, 2023).

¹⁴ Alex Barasch, "After 'Barbie,' Mattel Is Raiding Its Entire Toybox" *The New Yorker*, 2023; Q. ai-Powering a Personal Wealth Movement, "Barbie Owner Mattel Plans 45 More Toy Movies As IP And Nostalgia Trend Continues" *Forbes* available at: <https://www.forbes.com/sites/qai/2023/07/06/barbie-owner-mattel-plans-45-more-toy-movies-as-ip-and-nostalgia-trend-continues/> (last visited September 16, 2023).

¹⁵ Olly, "Power of Nostalgia! Barbie Marketing Captivates a Generation" *303*, 2023 available at: <https://303.london/blog/the-power-of-nostalgia-how-barbie-movie-marketing-captivates-a-new-generation/> (last visited October 8, 2023); "The 'Barbie' Movie: Nostalgia Marketing Done Right," available at: <https://www.linkedin.com/pulse/barbie-movie-nostalgia-marketing-done-right-dreamteamlk/> (last visited October 8, 2023).

appeal to millennials, the marketing team was able to generate excitement and anticipation for the film.

From a professional perspective, the Barbie movie marketing campaign demonstrates the following key principles:

- **Nostalgia marketing can be a powerful tool for reaching and engaging consumers:** By evoking positive emotions and memories from their childhood, nostalgia marketing can create a strong connection between consumers and a brand or product.
- **It is important to tailor nostalgia marketing campaigns to the specific target audience:** In the case of the Barbie movie, the marketing team focused on appealing to both older fans and a new generation of children. This was achieved by leveraging a mix of classic Barbie imagery and characters, as well as partnering with nostalgic brands.
- **Social media is a powerful platform for nostalgia marketing:** By creating humorous memes, behind-the-scenes content, and exclusive interviews, the Barbie movie marketing team was able to engage fans and generate excitement for the film.
- **Nostalgia marketing can be used to create memorable and immersive experiences for fans:** The pop-up Barbie Museum and Barbie-themed brunch were examples of events that allowed fans to connect with the Barbie brand in a new and exciting way.

The relevance of intellectual property rights to nostalgia marketing is that they allow brands to protect their iconic imagery and characters. In the case of Barbie, Mattel owns the intellectual property rights to the brand, which means that it has exclusive control over how Barbie is used in marketing and other commercial activities. This allows Mattel to ensure that the Barbie brand is used in a way that is consistent with its values and that appeals to its target audience.

For example, Mattel has strict guidelines for how Barbie can be portrayed in marketing materials. Mattel also works closely with its partners to ensure that they are using the Barbie brand in a way that is consistent with its values. This helps to protect the Barbie brand and ensure that it remains a positive and iconic symbol for children and adults alike.

Overall, the Barbie movie marketing campaign is a good example of how nostalgia marketing can be used effectively to promote a new product or service. By following the key principles

outlined above, brands can create nostalgia marketing campaigns that resonate with consumers and drive results¹⁶.

CASE STUDY: MERCHANDISING'S DEPENDENCE ON INTELLECTUAL PROPERTY RIGHTS

Merchandising is the process of creating and selling products that are based on popular media and entertainment brands. This can include products such as toys, clothing, accessories, and home goods. Merchandising can be a very lucrative business, but it is only possible because of intellectual property rights protection.

Intellectual property rights protection is essential for merchandising in the media and entertainment industry to thrive. It protects the investments of brand owners and ensures that consumers have access to high-quality merchandise. Without intellectual property rights protection, merchandising companies would be able to use popular media and entertainment brands without the permission of the brand owners. This would lead to a proliferation of counterfeit and pirated merchandise, which would damage the reputation of the brands and harm consumers.

Here are some specific examples of how intellectual property rights protection is used in merchandising:

1. A toy company cannot produce and sell action figures based on a popular movie without the permission of the movie studio. The movie studio owns the copyright to the movie, which includes the exclusive right to produce and sell merchandise based on the movie.
2. A clothing company cannot produce and sell t-shirts with the logo of a popular TV show without the permission of the TV network. The TV network owns the trademark to the logo of the TV show, which includes the exclusive right to produce and sell merchandise with the logo.
3. A home goods company cannot produce and sell coffee mugs with the image of a popular cartoon character without the permission of the cartoon studio. The cartoon

¹⁶ Olly, "Power of Nostalgia! Barbie Marketing Captivates a Generation" 303, 2023 available at: <https://303.london/blog/the-power-of-nostalgia-how-barbie-movie-marketing-captivates-a-new-generation/> (last visited October 8, 2023); Murjani Rawls, "'Barbie' is the right example of using IP beyond your standard nostalgic mentions" *DraftKings Network*, 2023 available at: <https://dknetwork.draftkings.com/2023/7/18/23798066/barbie-review-2023-margot-robbie-mattel> (last visited September 16, 2023); "'Barbie' makes history with \$1 billion box office | CNN Business," available at: <https://edition.cnn.com/2023/08/06/business/barbie-box-office-history/index.html> (last visited October 2, 2023).

studio owns the copyright to the cartoon character, which includes the exclusive right to produce and sell merchandise with the image of the character.

Merchandising in the media and entertainment industry is heavily dependent on intellectual property rights protection. Intellectual property rights protection protects the investments of brand owners and ensures that consumers have access to high-quality merchandise. By carefully considering and managing the intellectual property rights risks associated with merchandising, merchandising companies can protect themselves and their brand partners, while also providing consumers with high-quality merchandise¹⁷.

GAPS AND SUGGESTIONS

It is important for companies, especially those in the creative industries, to understand that Intellectual Property is an asset as valuable as (and sometimes more valuable than) real property. Rights can be licensed, leased, sold, bought, and enforced in ways that can create huge amounts of profit and also prevent others from creating such amounts of profit. The following suggestions, if implemented by companies can lead to greater levels of success, especially in terms of market share:

- 1. Conduct strong and reliable intellectual property audits**
- 2. Build and constantly review your intellectual property portfolio**
- 3. Explore adding to the portfolio through methods beyond self-creation**
- 4. Utilize existing intellectual properties in your marketing efforts to create unique and inimitable messaging**
- 5. Utilize your uniqueness to grow your market share**

CONCLUSION

In conclusion, this article has explored the pivotal role of intellectual property rights (IPR) in the creative industry and their significant impact on marketing strategies. It has examined how IPR not only incentivizes creators but also safeguards their works, ensuring both economic sustainability and the preservation of artistic integrity.

¹⁷ "Disney leverages entertainment IP for business success - IPWatchdog.com | Patents & Intellectual Property Law," *available at*: <https://ipwatchdog.com/2015/05/22/disney-leverages-ip/id=57608/> (last visited October 8, 2023); "Disney Repeats as Top Global Licensor With \$54.7B in Retail Sales – The Hollywood Reporter," *available at*: <https://www.hollywoodreporter.com/news/general-news/disney-repeats-as-top-global-licensor-547b-retail-sales-1229916/> (last visited October 8, 2023).

Furthermore, we've delved into a recent trend in marketing, where movies and other creative works are promoted not only based on their content but also on the underlying rights or materials they are based on. This practice, exemplified by the Barbie movie and the Percy Jackson series, demonstrates the evolving landscape of marketing in the creative industry.

The article has also highlighted the relationship between IPR, market share, and perception share. Intellectual property rights empower companies to maintain their market share, create unique selling propositions, and expand into new industries or categories. Moreover, they can shape consumer perception, as seen in the case of Dolby, where branding and technology intertwine to establish a strong reputation.

In the context of the creative industry, IPR serves as both a protection mechanism and a foundation for marketing endeavours. It enables creators to monetize their work, fosters innovation, and ensures fair compensation. Moreover, it has become a central concept in the industry's functioning, influencing everything from adaptation strategies to merchandising efforts.

As we navigate the evolving landscape of the creative industry and the integration of IPR into marketing practices, professionals and stakeholders must understand the intricate relationship between intellectual property rights and the industry's success. By embracing these principles and adapting to emerging trends, the creative industry can continue to thrive, balancing protection and innovation for the benefit of creators, businesses, and consumers alike. Intellectual property rights are not merely legal constructs; they are the lifeblood of creativity and commerce in the creative industry.