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HMRC internal manual

Corporate Intangibles Research and Development Manual

From: [HM Revenue & Customs](#)
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CIRD220500 - Patent Box: relevant IP profits: marketing assets return figure: notional marketing royalty

CTA10/S357BKA

The notional marketing royalty ('NMR') is the percentage of relevant IP income which the company would pay a third party for the exclusive right to exploit the relevant marketing assets if the company were not otherwise able to exploit them.

Relevant marketing assets

Relevant marketing assets are marketing assets that are exploited in generating the relevant IP income and which come under the following headings:

- anything in respect of which proceedings for passing off could be brought,
- equivalent rights recognised under the law of another country,
- signs or indications of geographical origin of goods or services, and
- information about actual or potential customers which is used for marketing purposes.

Passing off action

In general there are three elements necessary for a trader to take a passing off action:

- there must be goodwill or reputation attached to a trader's goods or services;
- there must be misrepresentation by another likely to lead to the public to believe the other's goods and services are goods and services of the trader; and
- these misrepresentations must cause damage to that goodwill, or be likely to do so.

The misrepresentation may include use of a mark, trade name, a get-up or any other features which are associated in the minds of the public with the trader's goods or services and which are distinctive of them.

This will include any trade mark (registered or unregistered), as well as design rights, 'trade dress' and any sign which distinguishes goods or services of one undertaking from those of other undertakings. This includes words (including personal names), designs, letters, numerals or the distinctive shape of goods or their packaging.

Goodwill

The determination of the notional royalty payable for the marketing assets should therefore include consideration of the value of the goodwill associated with these features of the trader's business, goods and services.

Marketing features such as jingles, celebrity endorsements and marketing campaigns are not assets in their own right, but may contribute to this goodwill and therefore act to increase the value of the marketing assets with which they are associated.

Goodwill is local in character, and if a claimant carries on business in a number of countries, then the trader may have separate goodwill in each country. So S357BKA extends its scope to equivalent goodwill outside the UK if it is similarly protected by equivalent laws.

A trader's goodwill may be enhanced by the geographical association or origin of the products. Signs indicating this may in some circumstances be protected by passing off actions, but S357BKA requires their value to the business to be brought in even if they are not.

Customer information

S357BKA also includes information about customers used for marketing purposes. This will include the value of databases referring to actual or potential customers. But it does not include information about customers used not for marketing purposes, but for the purposes of better designing a product or service to meet the needs of a particular customer or market.

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