



Vacant stares and ownerless goods

What happens to a company's intellectual property rights when the company is dissolved?

Sometimes not all loose ends are tied up neatly and companies are dissolved whilst still owning assets. What happens to those assets if they are not bought prior to dissolution can appear mysterious, but even following the dissolution of the company the assets may continue to exist. In this article we discuss the processes that can be used in England and Wales to obtain intellectual property assets from dissolved companies.

Falling into "bona vacantia"

When a company goes into insolvency it may own intellectual property assets along with its physical assets. At the end of the insolvency process the company is dissolved and it may still own some or all of those assets. When this happens the dissolved company's assets, including any intellectual property rights, are deemed ownerless assets, called "bona vacantia", and they automatically pass to the Crown, subject to the dissolved company being restored (we consider company restoration in more detail below).

The focus of this article is on assets post-dissolution of a company. However, it is worth noting that assets may fall in to bona vacantia pre-dissolution. This will happen if a liquidator dealing with an insolvency considers assets (including IP) to be "onerous property" and disclaims those assets.

Onerous property includes property which may give rise to a liability to pay money for example, a liability to pay renewal fees to maintain registered trade marks, patents or designs.

If the dissolved company was registered in England and Wales, part of the Government Legal Department called the Bona Vacantia Division (BVD) will, in general, be the division responsible for handling bona vacantia intellectual property assets. There are different organisations responsible for this in Scotland and in relation to companies registered in the Duchies of Cornwall and Lancaster, but all apply a similar process and for the purposes of this article we will consider the approach of the BVD.

Acquiring bona vacantia assets

It is possible to purchase intellectual property rights from the BVD. If you are interested in doing so you will need to write to the BVD setting out details of the intellectual property rights that you wish to acquire, why you are interested in purchasing the intellectual property and what your future intentions for using it are. Perhaps surprisingly, the BVD will not necessarily know that an asset has fallen into bona vacantia and so it is for the prospective buyer to satisfy the BVD that the rights they want to acquire are bona vacantia.



The prospective buyer may need to provide evidence of the ownership (such as an extract from the UKIPO identifying the IP asset) and that the former corporate owner has been dissolved.

Even though the prospective buyer has brought an asset to the attention of the BVD there is no guarantee that the BVD will sell to that interested party. Rather, the BVD will make an independent assessment of the correct manner of disposal. Any sale of bona vacantia assets made by the BVD will be based on an open market valuation of the assets, and will be for no less than the BVD's set minimum consideration amounts (which start at £1,000 for a UK trade mark or patent), plus costs.

The risk of buying a bona vacantia asset sits with the buyer. The BVD will not transfer intellectual property rights with any title guarantee or provide any representations or warranties in connection with the intellectual property rights, and so buyers need to rely on their own due diligence and will not have recourse to the BVD later in the event that any dispute arises in connection with the intellectual property.

When restoration of the dissolved company is possible, the BVD may ask the former members or liquidator of the company if they intend to restore the company before deciding to sell the IP rights.

Restoring a company

If a company has been struck off by the Registrar but was trading at the time that it was dissolved then it can be restored by administrative restoration via an application to Companies House made by a director or shareholder of the company. Administrative restoration is only available in a narrow range of circumstances and the alternative is to apply to the County Court to restore a dissolved company.

The court has power to grant restoration where a company has been wound up, dissolved following an administration or struck off by the Registrar or voluntarily.

The pool of potential applicants eligible to restore a dissolved company by court order may be large because it includes:

- any person who, had the company not been dissolved, would have been in a contractual relationship with it;
- any person with a potential legal claim against the company;
- any creditor at the time of dissolution; or
- a former shareholder, director or liquidator.

In either case, the application must be made within 6 years of the date of dissolution of the company and the applicant must apply to the BVD to obtain consent to the company's restoration where property has vested in the Crown.

When a dissolved company is restored the company is deemed to have continued in existence as if it had not been dissolved, and so bona vacantia no longer exists and any assets automatically revert to the company. If assets have already been disposed of then the BVD will pay to the company whatever consideration they received from the sale, less the costs they had in dealing with the asset.

When might you consider using these procedures?

Company dissolution can impact the availability of intellectual property rights in a multitude of situations e.g. the creator of your company logo has been dissolved and you never got around to obtaining an assignment of the copyright in the design, or a corporate restructuring exercise takes place in your organisation and you later discover that intellectual property rights are still registered in a dissolved group company's name.



Where a company is in financial distress it may be easier to acquire IP assets from the company administrators or liquidators before the company is dissolved, particularly as they may otherwise disclaim assets which are considered a burden on the insolvent company's estate (a large patent portfolio with costly annuities for example), meaning that the assets are not available by the time that the company is dissolved.

However, if that is not possible there may also be intellectual property that is not disposed of before the company is dissolved, in which case the mechanisms described in this article for acquiring that IP may be just the ticket.

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