

Banking on Intellectual Property; the Future of Banking

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It could be argued that the traditional way of doing business has resisted technology for years. This is now changing. The physical storage of data on business premises, physical attendance for signing of transactional documentation as well as document verification were often considered to be barriers, by central banks, which, could be said, to the evolution of technology in financial services. Today, mobile apps, cloud storage and facial recognition are the new norm. Technically speaking, money exchange houses could do away with all branches, yet regulations still impede their ability to become fully efficient and optimally streamlined. Financial institutions are increasingly looking to strike a balance between anti-money laundering/Know Your Customer regulations and the offering of smart services with minimal operational costs. In the past, customers may have preferred one bank over another due to its branch network or strength of assets. Today however, the choice is influenced by user friendly apps and quicker access. The exploitation of intellectual property rights by financial institutions has expanded from the mere branding of slogans, names and colours to the development of software and investment in FinTech. For this reason, financial institutions will also need to secure their intellectual property rights in order to protect their investment and brand.

These changes have encouraged many banks to re-brand and move away from their traditional long names to adopt smarter and more catchy trademarks while continuing to serve the brand promise and purpose. Whether it be CITI, FAB or ENBD, smart branding represents the first step in an institution's drive towards innovation. Re-branding is not easy to achieve given the international reach of banks in a very crowded trademark space for financial services. Class 36, being the core class for financial services, is shared, among others, with insurance companies, banks, exchange houses, investment firms and real estate developers. Word marks such as NATIONAL, FIRST, TRUST and abbreviations usually face trademark

opposition challenges when attempting to be registered. Furthermore, mergers and acquisitions in the financial sector require banks to ensure their trademarks are capable of protection in new territories which may be included as a result of the merger or acquisition. Launching a brand or re-branding, therefore necessitates a wider geographical scope of trademark due diligence than the current territory of operations. Innovation in banking transactions has led to banks investing in financial technology. A report established that “US banks are future-proofing by actively investing in Fintech start-ups. In 2019 YTD, US banks have participated in 24 equity deals to FinTech companies. This follows a record 2018, where US banks backed 45 equity deals to FinTech startups — a 180% increase from 2017.” [1] These investments ranged from payment and settlement solutions, software for customer-facing and backend operations, lending, blockchain and RegTech.

These ventures have opened up the financial sector to intellectual property beyond trademarks in order to address copyrights and patents. As such, intellectual property audits in the course of mergers, acquisitions or even investing in start-ups, require the assessment of different types of intellectual property assets. The purpose of these ventures allows banks the potential for high returns from the future profits of these start-up investments, as well as the ability to establish strategic partnerships. Investment in intellectual property asset-based start-ups also enables banks to open up their platforms to third party access in what is known as ‘Banking as a service’. Banking as a service is defined as “the process of digitally connecting FinTech companies to banks via APIs. This connection allows companies to build consumer banking products on top of banks’ regulated infrastructure gives companies access to banking toolkits, so they can integrate regulated banking products into existing consumer apps.” As such, consumer apps could benefit from direct linking of their bank accounts. [2]

The brick and mortar model of banking growth has done away with the evolution of technology and utilisation of intellectual property backed start-ups. While in-house counsel is traditionally required to have banking and corporate experience, the need for specialist intellectual property experts has become an important part of any bank’s systems and processes going forward.

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[1] <https://thefinanser.com/2019/08/where-top-us-banks-are-betting-on-fintech.html/>

[2] <https://www.cbinsights.com/research/what-is-banking-as-a-service/>