# What's the real value of natural personal care companies?

*Dr Shayne Nam – James & Wells Intellectual Property*

Natural personal care companies are expected to be a key target for investors in 2010, according to Organic Monitor's latest strategic insights report. Organic Monitor is a specialist U.K based research consultant company that focuses on the global industry for organic and related products.

The report profiles major deals that have taken place since 2005 and outlines the high profile brand Aveda by Estée Lauder. Aveda was founded by Horst Rechebacher in 1978. In 1970, Horst was introduced to the healing properties of Ayurveda (the Hindu science of longevity and aroma) on a trip to India. This was the inspiration for his company (hence the name Aveda). Aveda's first product, a clove shampoo, was formulated in a kitchen sink!

At the end of 1997, Horst sold Aveda Corporation to Estée lauder for $300 million in cash – Horst and his children were sole owners. Aveda has since evolved to become a global natural brand employing over 500 people with sales of $120 million (1996 est.) and a Standard Industrial Classification identifying 2844 perfumes, cosmetics and other toilet preparations. According to Organic Monitor's research, investors are looking to replicate Aveda's success.

When a company like Aveda is sold it will often sell for many times the value of its tangible assets. Why? Because a large proportion of the value of a company like Aveda (typically up to 80%) resides in its intellectual property. Aveda holds some 26 patents in various jurisdictions relating to a number of hair treatment compositions and methods as well as an extensive portfolio of trade mark registrations.

Investors place a high value on intellectual property rights because, in most cases, they confer a statutory monopoly. This means that the company has the ability to derive revenue from protected products, processes and brands for a defined period of time without being subjected to (illegitimate) competition. A company without this form of protection is not going to be as attractive to investors because competitors can replicate the products and/or services of the company without many barriers to entry – and the investment doesn't have enough protection.

So how does this apply to you? Most natural personal care companies that develop their own products will have some form of intellectual property to protect. This may include new ways of processing or combining actives, novel combinations of actives and/or other manufacturing know-how, as well as trade marks and the goodwill associated with them.

Most companies we deal with either have no intellectual property protection, or a portfolio developed on an *ad hoc* basis. Having an IP strategist from a specialist intellectual property firm conduct an IP audit can assist with recognising and rationalising opportunities / spend so that each item of intellectual property can be best used to contribute to the company's bottom line.

This process will usually start with an assessment of those assets the company has in its possession which gives it a competitive advantage. Much of this value may be unrecognised by the company itself. For example, did you know that it is sometimes possible to patent a new formulation which has a number of known natural compounds in it? If a combination of actives produces a result which is greater than the sum of its parts this is known as a "synergistic effect" and should be patentable. Alternatively, if ranges for key compounds/compositions which provide a particular benefit can be identified then they can be protected as a selection invention. These ranges need to be chosen so that the product performs exceptionally well within them and is not commercially viable outside the ranges. A number of natural product patents are selection inventions.

The auditor should also consider the intellectual property in light of the company's business strategies, to ensure there is a strategic use for it. These strategic uses can be can be broadly broken into four basic categories:

(a) **Commercialisation** by the company;
(b) **Storage** by the company pending the development of further technology that will enable the company to commercialise it;
(c) **Utilisation** for strategic positioning; or
(d) **Licensing** or **sale** to third parties.

Items (a) and (b) are self-explanatory.

In terms of items (c) and (d), intellectual property may have strategic value to a company, even though it has not been utilised within the company's operations. For example, non-core patents might be:

- retained because they are broad in scope and prevent competitors from entering the market for fear of infringing;
- used as leverage in the event the company is alleged to infringe one of those competitors' rights;
- kept in the company to make it more attractive for a potential merger and acquisition; or
- strategically as a contribution to a new joint venture.

Selling or licensing the intellectual property to non-competitors can make a serious contribution to the wealth of a company and generate new income streams for relatively little additional investment. Companies may also license intellectual property to non-competitors while continuing to use it in their own business.

Intellectual property protection goes further than just registration. An IP audit can also identify key steps that a company needs to take to ensure that it owns the intellectual property that it uses, or is at least entitled to use it, by looking at the company's processes and documentation. This is particularly important for companies which outsource any aspect of research, development, or design.

**Summary**

Intellectual property is an asset that can be of significant value to natural personal care companies, and can greatly enhance the value and profitability of the company. Therefore, it is well worth seeking professional advice from a specialist intellectual property law firm about what can be protected, and the best way to do so.

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