



FIND IT. USE IT.
IT'S A GOOD BET
YOUR COMPANY
POSSESSES
INTELLECTUAL
PROPERTY IT ISN'T
EXPLOITING.
HERE'S HOW TO
IDENTIFY THOSE
ASSETS AND TURN
THEM INTO NEW
BUSINESS

By Leigh Buchanan



Photograph by David Arky



Think of your company as a couch, with rich deposits of coins, pens, keys, and jewelry buried be-

neath the cushions and deep inside the cracks. Think of Andrew J. Sherman as a couch cleaner eager to shake out those cushions, excavate those cracks, and dig right down to the springs to bring to light anything of value.

Sherman, a partner in the Washington, D.C., office of the law firm Dickstein Shapiro and general counsel for the Entrepreneurs' Organization, is a jovial, bearlike fellow with a stock of stories larger than Scheherazade's. Most of his tales are about intellectual asset management, which roughly speaking means making the best possible use of everything a business knows. So for example, Sherman tells how Procter & Gamble, disappointed by the queasy reception for its fat substitute, Olestra, gave the substance new life as a cleanser for contaminated soil. He describes how Duke Energy licensed to other utilities a safety device it invented to prevent workers from falling off transmission towers. And he recalls the time his firm audited the intellectual property portfolio of a big-name IT company and found the company was using only 200 of its 800 patents.

All Sherman's stories share the same punch line: "...and they realized they could cash in on something they'd taken for granted."

Mention "intellectual asset" in a corporate word association game and most players will snap back with "patent" or "trademark." But the category is much broader, extending to such things as customer information, software code, databases, business models, brands, homegrown processes, and employee expertise. Sherman likes to quote Baruch Lev, a professor of accounting and finance at New

York University's Stern School of Business, who once calculated that approximately 85 percent of a company's value resides in such intangibles. Unfortunately, many of those assets go unexploited because they are hard to inventory, manage, or even recognize. "What drives me nuts personally and professionally is to think about all that good stuff being wasted," says Sherman, shaking his shaggy head. "All that innovation. All that intellectual capital. It's just sitting there collecting strategic dust."

The problem of unexploited intangibles came to prominence in the late 1990s. One-to-one marketing had transformed customer data into coin of the realm, the U.S. Patent and Trademark Office began protecting business models, and the buzzword brigade huffed loudly about "knowledge management" and "human capital." At the height of the Information Economy, "thing-ness" had grown passé.

Then in 1999, Harvard Business School Press released Kevin G. Rivette and David Kline's *Rembrandts in the Attic: Unlocking the Hidden Value of Patents*. That provocative title—which Sherman borrows freely, using proper attribution of course—emerged as a metaphor for the whole field of intellectual asset management. Inspired by companies like Dow Chemical, which according to *Rembrandts* used the results of an intellectual property audit to raise its patent licensing fivefold to \$125 million, CEOs began rifling their organizations for treasure. Some found valuables that had come aboard, largely unnoticed, during mergers and acquisitions. Others unearthed dormant data that could be revived by technology.

The *Rembrandts* phenomenon at first chiefly preoccupied large corporations with commodious attics. But small businesses

**ONLY OFFER
INTANGIBLE ASSETS
IF THEY ARE
PROTECTABLE.
NO ONE WILL BUY
THE COW IF HE CAN
JUST TAKE THE COW.**



What's in a Name?

Max Azria, of the billion-dollar clothing company BCBG Max Azria, used his brand as collateral for a \$53 million loan.

can conceal forgotten Rembrandts, too, or at least harbor works by lesser masters, says Sherman. He estimates that 75 percent of companies of all sizes seeking to grow organically can do so by better exploiting their intangibles. “The opportunity may be something you do really well for yourself that others can benefit from,” he says. “Or maybe it’s something that didn’t work for you but instead of abandoning it, you take it another step and see if it has an application in other industries.”

Entrepreneurial companies will naturally approach such opportunities as they would any other, committing resources based on expected returns. But at least part of what they need, by definition, already exists in-house, and so the required investment may be low. Sherman calls this strategy “capital-efficient growth” because it minimizes the need for R&D and new employees.

“You have to squeeze more juice from the orange,” says Sherman. “Then you find things to do with the peel and the pulp.”

Intellectual asset management is a process, one that starts with the hunt. Large companies like Sun Microsystems and Dow Chemical mount full-scale audits in which experts comb through patent portfolios, searching for unexploited IP. Small companies typically get by with less formal reviews. Sherman compares the process to managing physical inventory. “Companies know how much raw material and finished products are in the warehouse,” he says. “They know how many pieces of equipment they own. They need to treat their intellectual assets the same way.”

Switching from industrial to agricultural metaphors, Sherman recommends companies begin by “harvesting,” his term for cross-functional brainstorming in which participants comb through ev-

ery aspect of the business looking for value. The exercise exposes pockets of expertise while broadening employees’ perception of corporate competency. They learn to ask: What else do we do, or know, or know how to do? And who might be willing to pay us for that? Sherman has led dozens such sessions, approaching them like a chef from *Door Knock Dinners*, an old Food Network show on which culinary artists would descend on the homes of average citizens, empty the cupboards, and concoct banquets out of canned soup, potato flakes, and chunky peanut butter. Not every larder conceals riches, Sherman concedes. But participants are often surprised by the opportunities they’ve overlooked.

Once the company identifies potential assets, Sherman advises them on erecting appropriate barriers with patents, trademarks, copyrights, nondisclosure agreements, and the like. He stresses that the decision to offer intangibles outside the business should depend on how protectable they are. No one will buy the cow if he can just take the cow—and perhaps try licensing the milk himself.

Such exercises are effective, but businesses that want to exploit every scrap of value will go further. Sherman urges companies to forge “cultures of innovation” that prevent intangible assets from becoming invisible in the first place, by focusing everyone on their creation. To achieve that, walls must come down between functions and formal and informal channels of communication must be established to ensure constant cross-fertilization of ideas. Employees must learn to recognize intellectual assets and know to enlist counsel when they see such assets brewing. Someone needs to direct innovation from the executive suite—Sherman likes the title chief innovation officer. And human resources de-

Back at You
Bob Massie's Marketing Informatics buys vast amounts of data. Now Massie wants to sell it to his own supplier.

partments must hire and reward employees who keep the IP storehouse well stocked.

The payoff from such rigor may be a valuation far above the sticker price of even several Rembrandts. Sherman is working with a company poised for acquisition by an \$8 billion corporation for a price barely hinted at by the target's unimpressive earnings. "What's making this attractive to the buyer is the intellectual capital that the founder has developed over the last 25 years," says Sherman. "What makes the negotiation interesting is we are focused on the value of these assets in the hands of the buyer, not the seller."

As businesses get smarter about valuing intangibles, potential customers, acquirers, and investors will likely apply a whole new math to their dealings. What they see, they will know, is only part of what they'll get.

To successfully mine their companies, CEOs must recognize ore when they see it. The following categories of often-overlooked intellectual assets are the right places to start digging.

BRANDS THIS IDENTITY IS BIG ENOUGH FOR THE BOTH OF US

Brand extensions may be the most visible means of exploiting intangibles. Businesses with great brands can license their names and logos, or franchise their operations, or co-brand with noncompetitive, strategically suited partners. Each year Harley-Davidson and Coca-Cola derive millions of dollars in royalties from the sale of products bearing their insignias. Starbucks licensed its name to Jim Beam for a coffee-flavored liqueur; Iams co-branded pet insurance. And who can forget the late lamented Hooters Air?

Brands don't have to be global or even household names to be desirable. Few people have heard of Los Angeles-based Vampire Wines, for example. But that didn't stop the \$2.5 million beverage marketer from co-branding with New Line Cinema for *Blade: Trinity* and with Sony Pictures for *Underworld Evolution*. In both cases, the studios placed movie logos on the company's energy drink, Vamp, a promotion for which they paid Vampire Wines nothing. "But we used the co-branding to close a deal to get Vamp into the 7-Eleven chain nationwide," says CEO and founder Michael Machat. Machat adds that revenue rose more than 50 percent after *Blade: Trinity*, and he thinks a good deal of the jump had to do with the promotion. More recently Vampire worked out a deal with Rhino Records to promote an album of goth music.

Sometimes brands can even be used as collateral. Three years ago, the Los Angeles-based fashion house BCBG Max Azria Group sought \$53 million to extend its wholesale and retail channels—in particular to expand the number of BCBG Max Azria stores. (The company has 150 retail outlets in the U.S.) An investment banker suggested that the business might be able to collateralize some of its intellectual property to secure a loan, an unusual strategy in the fashion and entertainment industries despite the glamour of those



brands. "We found the idea interesting as a possible way to raise inexpensive, long-term capital," says designer Max Azria, who is sole owner of the nearly \$1 billion business. "We were able to secure reasonably priced long-term capital from a major institutional investor—a major insurance company. Associating ourselves with such a high-quality lender helped us in future financing."

BCBG Max Azria licenses its trademark to other companies for some products, such as footwear; the licensees then pay BCBG Max Azria a percentage of sales in royalties. The company created a special-purpose subsidiary to hold the trademarks and related licensing income; the loan was secured through the subsidiary's assets. The subsidiary had a high credit rating and consequently received favorable interest rates.

"We always believed in the importance and value of the company's trademarks," says Azria, who borrowed the acronym BCBG (for *bon chic, bon genre*, or good style, good attitude) from Parisian slang. "We are strong believers that advertising, marketing, runway shows, and media exposure all work toward increasing the value of the brand and the trademarks."

PROPRIETARY DATA INFORMATION MAY WANT TO BE FREE, BUT OURS WILL COST YOU

Companies today suck up data like a Hoover sucks up Christmas tree needles, investing tens of thousands of dollars to answer questions about their customers, markets, and industries. Once that data is collected, however, few businesses look hard for ways to package and sell it.

Restaurant Technologies is an exception. The \$150 million company, based in Eagan, Minnesota, supplies cooking oil to fast-

food chains, grocery stores, and restaurant chains. A few years ago it equipped the tanks in its customers' restaurants with telemetry systems that track their oil usage. The system sends alerts to Restaurant Technologies so that if a chicken joint is running unexpectedly low, a delivery person can be at the door before the first drumstick of the day hits the fry basket.

After eight months using the system, Restaurant Technologies' leaders realized they were amassing a wealth of data on oil usage that could be valuable to customers. So they began posting information about each restaurant's consumption to protected websites. Now management at a restaurant chain can track anomalies in the usage at outlets, and Restaurant Technologies sells its own expertise to help them diagnose and fix problems. Are restaurants unintentionally using too much oil, thereby wasting money and producing unacceptably greasy fries? Are they dumping excessive amounts of oil at night, perhaps because careless employees are letting contaminants fall into the vats?

Restaurant Technologies is also aggregating and comparing data to identify best practices—when to change the oil in a french fryer, for example. The company plans to use those benchmarks to offer menu-consulting services.

"We're making customers more efficient in how they use oil and reinforcing our own position as experts in oil management," says Jeff Kiesel, the company's CEO. That expertise is something clients will pay for: Restaurant Technologies has successfully raised prices 20 to 25 percent on the basis of its enhanced services. Customers have been so receptive that last month Restaurant Technologies acquired the company that developed its sensor and data-management systems and will soon offer monitoring and consultation services on

everything from refrigerator temperatures to drive-through times. "We're developing an operational dashboard for restaurants," says Kiesel. "This is going to be a major value-add."

Other businesses use data to raise their profiles rather than profits. Three years ago, SurePayroll, a \$16 million provider of online payroll services, based in Glenview, Illinois, was mulling how to compete with industry behemoths ADP and Paychex. "We realized we had something of extreme value that we could tap into," recalls co-founder and president Michael Alter. Payments from 17,000 small businesses to contractors and employees course through the company's systems, providing answers to questions of urgent importance to economists and financial analysts: Are small businesses hiring or firing? Are they more reliant on contractors than in the past? Are new employees commanding higher wages? "Even the statistics from the Department of Labor don't accurately answer these questions," says Alter. "Those statistics are based on surveys, and surveys never give entirely accurate results. Paychecks, on the other hand, never lie."

After analyzing its data, the company packaged the results under the label SurePayroll Small Business Scorecard. It now publishes the scorecard every month and sends it to members of the financial community and the press. SurePayroll's economic indicators have appeared in prominent business publications, and that recognition has helped the business secure partnerships with banks and insurance companies, through which it offers its services. "By packaging something that we owned but had overlooked, we created something of value," says Alter.

HOMEGROWN PRODUCTS AND PROCESSES WE DO THINGS A LITTLE DIFFERENTLY HERE

Some things companies invent to make their own lives easier can make others' lives easier also. Licensing a homegrown product or process can produce a nice revenue stream—if it doesn't squander competitive advantage.

Consider Morpheme, a nine-employee London-based developer of video games for wireless devices. The company designs products like Wizard Pinball and the cell phone version of *The Fast and the Furious* and sells them to both consumers and major carriers like Sprint and Verizon. The games run on all kinds of mobile devices—trouble is, they run much better on some than on others. Morpheme's leaders grew tired of spending time and money developing games for platforms that handled them poorly. "Rather than try to hand-tune every game for every device, we wanted to know what was good and bad on each phone in advance," says Morpheme's CEO and co-founder, Matt Spall. "That way we could develop the game to make it run better on a particular device or decide not even to bother."

So in 2001 Morpheme's chief technical officer developed software that tests a phone's ability to run games and other programs. (There was already such a product on the market, but Spall judged it imprecise for his purposes.) Soon Morpheme began licensing its product, dubbed MorphMark, to two large wireless-service carriers, which use it to gauge whether devices can run their own content offerings. Since then a game publisher and a handset manufacturer have also licensed MorphMark. Those li-

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censes produce just a smidgeon of revenue, says Spall, and that won't change unless Morpheme decides to offer customer support. "But it's created recognition in the marketplace that our programming is of very high quality," he says. "It's created a higher profile for us."

Bob Massie has identified an even more intriguing market: his own vendor. Massie is founder and CEO of Marketing Informatics, an \$11 million provider of soup-to-nuts direct marketing campaigns, based in Indianapolis. The company builds customer lists, designs direct-mail pieces, and prints and dispatches those pieces for businesses and academic clients.

Last year Massie started toying with a new idea. Marketing Informatics buys data on U.S. households from the credit bureau Experian. To make that data useful for clients it has devised an unusual statistical modeling technique that draws on practices from the social sciences. The technique begins with an analysis of the demographic, psychographic, and financial characteristics shared by the population within geographic clusters. It is the inverse of traditional models, which start with a marketer's parameters and then seek out clusters of people with the stipulated characteristics. "We used Experian's data to solve a unique problem for a customer that led us to this new way of thinking," says Massie. "We're refining it to the point where it can be automated and effectively mass produced."



larly if you're not direct competitors. Licensing-in, as Andrew Sherman calls it, is especially attractive when companies are missing just one or two pieces of a larger puzzle.

Jim Kelly knew he didn't possess all the pieces he needed to target the U.S. Hispanic market in 2004. Yes, the company he worked for had the resources and expertise to create suitable products. But its name, Pulaski Furniture, didn't exactly evoke balmy nights at the hacienda. (The name comes from its location: Pulaski, Virginia.) So Kelly hitched Pulaski's wagon to a star—specifically the star of the Univision television network's best-known personality, Cristina Saralegui. "She's like the Spanish Oprah," says Kelly, who was Pulaski's executive vice president of product development and marketing at the time. (Last year Pulaski merged with Samuel Lawrence Furniture. Kelly now runs a division of that company and is also an owner.) The resulting product line, Casa Cristina, conflates Saralegui's personal taste in décor with styles popular in Spanish-speaking countries.

Casa Cristina, which now produces a fifth of the revenue at Pulaski, wasn't Pulaski's first successful foray into licensing-in. A year earlier the 300-employee company had created a line of Americana bearing the *Antiques Roadshow* name. "We liked *Antiques Roadshow* because it's all about discovery and value," says Kelly, who struck a royalty deal with WGBH, the public television station that owns the show. Drawing on a CD with images of 50,000 items featured on the program, Pulaski designed 250 bedroom and din-

JUST BECAUSE YOU DON'T OWN THE LOGO OR FORMULA OR TECHNOLOGY YOU NEED DOESN'T MEAN SOMEONE WON'T LET YOU USE THEIRS.

The customer for whom Marketing Informatics devised the system is a mortgage company, but Massie says the technique works for marketers in any industry. Marketing Informatics has a policy of serving only one client in each vertical market, so it could have safely targeted competitors. Rather than address that diffuse audience, however, Massie hit on the plan of selling the technique to Experian, essentially becoming a supplier to his supplier. Experian could then license the model out again. "We're saying, 'Here's a product we're developing from your raw materials,'" says Massie. "Why not add it to your own cafeteria?"

Experian is interested; it has provided data on 140 million households for Marketing Informatics to work with. Massie's people will soon be feeding it into the new model. "It would put us in partnership with a data giant," says Massie, "and be a significant piece of residual revenue for us."

OUTSIDE ASSETS YOU COMPLETE ME

Intellectual asset management isn't only about what you can do for others. It is also about what others can do for you. Just because you don't own the logo or formula or technology your product needs to soar doesn't mean someone won't let you use theirs—particu-

larly if you're not direct competitors. At its peak a few years ago the Roadshow brand represented about 10 percent of the company's revenue.

Most recently Pulaski enlisted an army of plush toys to help it press more aggressively into the youth market. Last year the company launched a line of Build-a-Bear youth bedroom sets, and sales have exceeded the company's most optimistic expectations. "Selling this to retailers was one of the easiest jobs I've had in my life," says Kelly.

Kelly looks for three attributes when evaluating outside brands. They must be widely trusted. They must resonate with Pulaski's products. And they must help the company sell not just *in*, to retailers, but also *through*, to consumers. That last requirement means brands that lend themselves to event marketing. When Pulaski launched its Roadshow line, for example, the program's appraisers showed up at dealerships to offer consultations on jewelry. Personal appearances by Saralegui boosted sales on Casa Cristina by 40 percent for some retailers. Next up: Build-a-Bear events, at which shoppers will visit Pulaski dealers to assemble stuffed toys for themselves or for charity. "A lot of the time we spend talking to the retailer," says Kelly. "With these brands we can talk to the consumer." **1**

Leigh Buchanan is an Inc. editor-at-large.