

VIRTUAL MONOPOLY

Foreword

The economy is dumbing-up. The signs are all around. Truly unique, differentiated and just downright innovative products and services create waves and give rise to the promise of mega-tsunami returns! Breakthrough creativity which both captivates the mind and inspires the soul is becoming the last great, untapped source of sustainable advantage. This creative upshift is happening with good reason. During the eighties pretty much every company embraced quality, in the nineties they reengineered their business processes and set up in-house knowledge (or at least, information!) systems. Doing things faster, smarter, more reliably has now become the expected norm: It no longer provides much by way of market excitement or sustainable advantage. Future gains will be incremental at best. The time has therefore come to stop tinkering with 'in the box' company organisation stuff and to start creating 'out of the box' innovative product, service and business concepts. Creative advantage has become the new Holy Grail.

With creative advantage goes the power to shake up tired old industries. Look no further than the Dyson vacuum cleaner which challenges all our pre-conceptions of what a vacuum cleaner should be and do: Those vibrant colours, that funky shape ...!! There is no bag, but instead the patented 'dual cyclone' suction technology. And what of the industry response to Dyson's creative leap forward? Not waving, Electrolux responds with comparative advertising¹ which paints the Dyson cleaner in a negative light. But drowning, Hoover introduces a me-too Vortex product which the UK courts² find to have

infringed Dyson's 'dual cyclone' patent. Creative advantage talks, the competition balks!

Now here's the rub: On its own, creative advantage cannot form the basis for strong, sustainable business advantage. What really matters is the ability to build proprietary, exclusive business space around that creative advantage by establishing effective barriers to competition. Intellectual property in the form of patents, trade marks and copyrights etc. is the most powerful mechanism for protecting creative advantage. The Dyson vacuum cleaner is a great product, but its sustained market success owes much to the patent on its core 'dual cyclone' technology. The patent sealed in the creative promise by defining exclusive boundaries which the court was prepared to enforce. This book will show you how to power up your own creative advantage to establish strong, exclusive business spaces through the strategic use of intellectual property.

Exclusivity is however only part of the picture. Intellectual property has become a media hot topic. The business press sizzles with stories of patent madness, cybersquatting, brand warfare and the napsterization of content. But in focusing on battles and controversy, there is a risk of missing the more fundamental shifts at play which are about more than just legal rumpus. The truth is that in the face of increasingly fluid global markets shaped by digital networks and extreme buzz, companies are having out of necessity to create islands of proprietary exclusivity. These islands are not permanent, but they at least provide the company with some breathing space in which to glean returns on their investment in developing new products and services.

Innovative mechanisms for enhancing those returns are also being formulated.

This book takes a radical look at the bigger picture. For the first time, the new economics of virtual monopoly is defined. Intellectual property acts as the enabling currency, thereby taking on a dynamic business character quite distant from its dusty, legal existence of old. The new economics offers unrivalled flexibility in terms of company and relationship structures, business models and opportunities for profit generation. These are explored in detail both from a large and small company perspective. Virtual monopoly economics also enables wholly different types of company such as ARM Holdings and Scipher whose business models are centred entirely on intellectual property. These radical 'intellectual property company' forms are groundbreaking but they have at least one precedent in the form of the Menlo Park 'invention factory' of Thomas Edison.

The new economics of virtual monopoly allows genuinely original companies to beat (or just engage differently with) old-style companies that have access to capital and economies of scale, but lack real creative spark or energy. The new economics redefines the balance of power in relationships between established companies and upstart creative players. Consider for example, the effort that Microsoft has invested into wooing small, cutting-edge games designers to provide games for its new Xbox console. Microsoft has access to vast development capital, but in the absence of quality games they know that their console will fail. Conversely, talented games designers that occupy exclusive creative spaces (defined by brands and copyright) know that they can strike great deals with even the biggest players.

The new economics of virtual monopoly empowers the creative company. But as with all sources of powerful advantage, there are challenges and risks. It is impossible to ignore the threat posed by business trends towards me-too, fast-follower and copycat products and in the extreme by Napster-like digital piracy. The trends exploit gaps in intellectual property protection - either product-specific or inherent in the legal framework - which enable copyists and pirates to scavenge off the creativity of the true originals. On the other hand, it should not be forgotten that intellectual property gives rise to legally enforceable monopoly rights which can be used to aggress competitors and exert control over markets. Abuses are possible in which powerful rights holders unduly control entire markets. Drug patenting in Africa is a particular point of sensitivity. This book openly discusses the new challenges and risks, in addition to the growing opportunities. It does not hold back in calling for a balanced approach and the careful, responsible stewardship of virtual monopoly power. This is after all an era of creative advantage not one of dumbed-down, old-style capitalism and corporate muscle.

The new era is one in which breakthrough creative advantage combined with the strategic use of intellectual property can deliver the promise of sustainable returns for any company regardless of size. The rewards of the new economics of virtual monopoly are there for the taking: It is time for your company to get dumbed-up too!

Preface – NOTES

1. Electrolux v. Dyson, [1999] ETMR 903.
2. Dyson Appliances Ltd v. Hoover Ltd, decision of the UK High Court, October 2000.