

Traditional knowledge—

BE CAREFUL WHAT YOU CLAIM TO OWN

By **LINDSAY MOORE**, PhD

As Chinese and Ayurvedic medicine and indigenous substances increasingly influence the creation of new foods and dietary-supplements products, it becomes important to understand how the *traditional knowledge movement* is shaping the structure of new products, and limiting the opportunity to capitalize upon the cultural knowledge of other cultures. What is this trend and what does it suggest for business strategy?

The classic example is Bikram Yoga, which has been popularized for years. The founder, Bikram Choudhury, is known for copyrighting a series of yoga *asanas* or postures, and for preventing others from using, without a license, this series of 26 postures with their attendant breathing practices. Under the law, copyrights are granted only to *original creations*. Because yoga, with its innumerable postures, is part of traditional Indian knowledge, possibly for thousands of years, many, including the Indian government (which is filing for copyright invalidation), feel that Mr Choudhury should not be allowed to *own* yoga postures, in any order or series.

In response, and because that which is part of the public domain cannot be owned as intellectual property, the Indian government has created a massive database showcasing its vast traditional knowledge and calling it to the attention of patent offices worldwide to forestall intellectual-property piracy.

In a contrasting example, last year Starbucks sought trademark protection for the word ‘Sidamo,’ which is the name of a specific regional coffee variety in North Africa. Just prior to the issuance of Starbucks’s trademark registration, the role of ‘Sidamo’ as a geographic indicator for coffee varieties was discovered when Ethiopia itself filed to register the names of its three coffee-producing regions: Yirgacheffe, Harrar and Sidamo. The Ethiopian government was seeking to maintain control over the names of its growing regions because it realized that by doing so, it could increase the value of its coffee exports, seizing a greater share of the profits of Western coffee retailers.

In an interesting twist on the same theme, hoodia, the recently discovered herbal appetite suppressant of the aboriginal San People in South Africa, offers an example in the dietary-supplements market. In this instance, as hoodia gained economic traction as a supplement, the South African government reportedly exercised a form of eminent domain upon one of its indigenous tribes to appropriate, patent and subsequently license this native botanical and its active ingredients to a western European corporation for commercialization as a dietary supplement.

Meanwhile, practitioners of Ayurvedic medicine in India condemn Westerners for passing it off as their own invention, trying to ‘patent’ their traditional knowledge, and, especially, commercializing it.

Whatever the ultimate legal disposition of traditional knowledge is, the point is that as the world becomes smaller and more global, traditional knowledge that is already public or in the oral tradition in other societies – whether it be of a spiritual

practice such as yoga, Ayurvedic medicine, ancient Chinese medicine or an herb such as hoodia – will not be ownable by private parties or enterprises in other countries as intellectual property.

In each of these cases the government has rightly or wrongly stepped in; asserted its respective intellectual-property rights; and endeavored to classify the knowledge as ‘traditional knowledge’ to prevent others from co-opting, misappropriating and commercializing it. This trend is likely to continue.

To many, the adoption and commercialization of traditional knowledge represents an opportunity for great commercial

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gain. But executives and investors should beware that enterprise heavily dependent upon traditional knowledge as its intellectual property may meet with opposition as public policy shifts. Absent special certifications, business may be less able to capitalize upon the trendy elements of other cultures as these cultures move to secure their knowledge asset rights from infringement. Even enterprises as big as Starbucks can lose apparently legitimate intangible rights, and the competitive advantages they confer may be short lived.

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