

PART

1

The African IP Trust

Effective, supportive action by high profile individuals to assist African farmers and producers receive rightful and secure income through the use of IP business strategies formulated by Light Years IP.

“Africa is a rich continent and is by no means poor but it has not been able to capture its wealth and get an equitable share of its produce. This project is trying to do just that with the establishment of the trust.”

Lord Paul Boateng, Addis Ababa, Ethiopia, 2010.

5.1

The Purpose of the African IP Trust

5.2

The Functions of the African IP Trust: What will the AIPT do?

5.3

Changing the Power Balance

5.4

The African IP Trust and Stakeholders: The Maasai example
Case Studies

Objectives

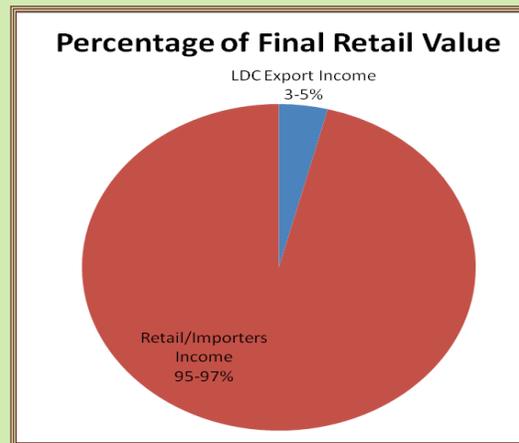
- 1) To understand the creation, purpose and functions of the African IP Trust
- 2) To gain insight into how the African IP Trust can help stakeholder groups
- 3) To consider ways the African IP Trust can advance its effectiveness for stakeholders
- 4) To understand the Maasai and specific strategies for the Maasai
- 5) To consider case studies and interventions: Ugandan Shea Butter example

2.1 What is The African IP Trust?

A highly credible, organization to support and enforce the rights of African farmers, producers, artisans and others whose incomes are diminished, and opportunities lost, by not being able to fully use their Intellectual Property (“IP”) for income.

Throughout Africa, Light Years IP research has found that Africans are losing about \$1.4 billion dollars per year to foreign countries, in just 14 products researched.

As the pie chart below demonstrates, throughout Africa, farmers and producers and artisans are receiving just 3-5% of the retail value of many of their distinctive products.



The African IP Trust seeks to help African producers of distinctive products achieve better negotiating positions and higher incomes by establishing their IP rights and managing the distribution of these products in foreign markets.

How will the African IP Trust help poor farmers, producers and artists?

The African IP Trust is based on promoting and helping African stakeholders to receive income gains using the principles and functions of IP Value Capture strategies.

The IP Value Capture strategies are designed by Light Years IP and based on intense field research, business planning, and market research. Light Years then works with stakeholder groups of producers, farmers, cooperatives, exporters and governments at the trade and ministerial levels to create IP business strategies to enable the farmers and producers to receive a higher share of the income generated by the IP their products hold in final markets. This often involves Licensing and Trademarks but purposes to include farmer and producer ownership of distribution in final markets so that more income and more secure income return to the Africans.

When it is time for a strategic intervention, the African IP Trust members will be called upon to take action.

The VISION of the AFRICAN IP TRUST

To best illustrate the types of interventions the African IP Trust could be called upon to make, let's turn to the vision of the African IP Trust vision and how the ideas of concerted intervention came to help the Ethiopian coffee sector.

Light Years IP exists to help large numbers of low-income farmers and producers in developing countries to improve income and alleviate poverty. We focus on Intellectual Property business strategies to capture substantially higher income and improved security of that income to the creators and owners – the farmers, producers and artisans. Our method, called IP Value Capture, is implemented by stakeholders with widespread training and education to reach the largest number of farmers and ensure the stability of income for future generations. Light Years works in East Africa (Ethiopia, Kenya, Tanzania, Uganda); Southern Africa, West Africa and the Caribbean.



Light Years IP Vision and Core Objectives:

The vision of Light Years IP was formulated by Ron Layton who drew on 20 years of working in development and 15 years in IP business to design IP Value Capture. Many development solutions fail if increasing production leads to over-supply and falling prices. In Africa, the challenge of oversupply is even more difficult for land-locked countries with high internal transport costs.

Light Years IP focuses on increasing income to developing country farmers and producers based on the retail value of the distinctiveness already present in their products. These qualities are assets of the farmers. We develop Intellectual Property business strategies, long used by western corporations, such as IP tools of trademarks, and licensing to control distribution and secure positioning.

2. Has the African IP Trust concept been used before?

The Ethiopian Fine coffee example

When Light Years IP set out to secure more fine coffee export income for Ethiopia, there were as many obstacles and barriers as there are coffee distributing companies and corporations. Many of these companies benefit from keeping Africans poor by taking most of the value of their products in foreign market wholesale and retail markets. These groups have little incentive to shed power and control easily.

In the case of Ethiopia, Starbucks believed they could control the brand Sidamo, an old Ethiopian brand (based on the location, Sidamo, in Ethiopia) of wonderful coffee, simply because Starbucks filed an application first under the law of trademark. Light Years IP, Ron Layton and his team, alongside the Ethiopian IP Office challenged Starbucks and worked hard to secure Ethiopian ownership of Ethiopian fine coffee brands. While a public campaign took place, it was ultimately the corporation's chairman, Howard Schultz, who conceded primarily since he realized that sustaining Ethiopian farmers was also good for Starbucks – paying more for the brands would enable the farmers to continue to produce fine coffee. Ultimately, Mr. Schultz conceded negotiating strength.

This example illustrates the value of what the new African IP Trust (AIPT) will do: Move importing and retailing businesses handling African distinctive products to negotiate due to the power of high-profile individuals and to apply social pressures coupled with mutually beneficial solutions, where possible.

3. The Functions of the African IP Trust

The African IP Trust could perform the following functions to enable and assist African stakeholders:

- ✓ Concerted letter-writing
- ✓ Coordinating Allies – groups of advocates such as OxFam; Students for Fair Trade; Church groups; and those groups concerned with the human rights violations of poverty that link closely to product IP vandalism.
- ✓ Fostering new Allies for the stakeholder groups based on AIPT member contacts
- ✓ Engaging the African IP Trust’s own networks of support - colleagues and influential others who may engage in dialogue, education or influence with corporations or companies that are taking profits from IP without realizing the IP ownership.
- ✓ Acting as a respectable, organized, coordinated group that together can exert influence upon companies
- ✓ Utilizing its collective skills from a cumulative 1000 yrs. + experience at negotiating solutions to recalcitrant social problems
- ✓ Support and reinforce stakeholders aiming to control brands and other IP and distribution
- ✓ Income gains and ownership of IP have been and are being realized. The AIPT will support stakeholders as challenges are made to their rights by the symbolic knowledge that an advocacy group cares to empower low income stakeholders
- ✓ Reducing the protracted challenges such as in the Ethiopian coffee project
- ✓ Develop processes for defining relevant stakeholders with a fair claim to ownership of brands and other IP instruments
- ✓ Help stakeholders to design organizing structures, suitable for each different situation, structuring the group ownership entities for their IP (brands, marks, designs, trade secrets, etc.), in transparent, participatory and legally robust ways
- ✓ Facilitate membership for all, to enable collective rights and ownership
- ✓ Campaign by persuading opposition groups or organizations, such as exemplified in the Ethiopian coffee initiative in the successful struggle over trademark ownership with “big coffee” in the U.S.
- ✓ Negotiate across national borders, all along the supply chain
- ✓ Provide an "umbrella" of protection for qualifying groups of owners, gradually extending this to millions of Africans

- ✓ Facilitate the transition from dependency toward IP ownership and improved negotiating positions

REFLECTION QUESTIONS

Please reflect on the above section of African IP Trust Functions and consider what are your own views.

Questions for Discussion

- ✓ What particular function speaks to your strength as an AIPT member?
- ✓ Are there functions listed that seem incoherent with your own vision?
- ✓ Are there additional support functions that you would include?

4. THE ACTIONS: What type of actions will the African IP Trust take to support African stakeholders?

The AIPT will provide support to the farmers and producers through concerted advocacy, including:

- Approaching the opposing company advocating cooperation with producers and focusing on mutual benefits
- Assembling wide-ranging groups of further advocates, including socially responsible allies and shareholders
- Strengthening the negotiating position of the producers and, if requested, support the producers in public debate on the issues
- Working towards a balanced negotiation which allows the producers to complete their IP Value Capture (IPVC) strategy and make substantial income gains, while the corporation realizes opportunities to benefit from stronger producers (such as being in a network of licensed distributors doing joint promotion).

Discussion Question: Consider if the AIPT would be asked to contribute to these actions, what resources would be needed to be most effective?

Considering the functions of the African IP Trust listed above, such as:

- Approaching the opposing company and advocating cooperation focusing on mutual benefits.
- What information would you as an African IP Trust member need to assist your work?

- Assembling Allies and groups of advocates who are socially responsible?
- What types of resources would be needed to do this effectively?
- Can you imagine some other Allies who would be interested?
- What type of information would you need to interest them effectively in the AIPT?

- Strengthening the negotiating power of the stakeholders
- How could you as an African IP Trust member help to strengthen the negotiating power of the stakeholders?

What does Success look like for the African IP Trust?

- The African IP Trust will positively counter the challenge among African countries that view the IP rights system as designed and being used against them rather than for their long-term interests and the deeply entrenched view that fairness will not accompany their efforts however appreciable those efforts may be.
- The harmonious negotiation of IP conflict situations involving producers and international corporations.
- Advancement in knowledge of the economic viability of IP, across Sub-Saharan Africa.
- Improved understanding of using mechanisms such as brand management, licensing and owning distribution outlets.
- The AIPT will provide the high profile functioning of an influential Board asserting the justice of rights ownership, public servants deeply experienced in advancing the economic interests of poor people.

- Demonstrable advance of improved IP fairness wherein IP works FOR Africans rather than against;
- Wider success in implementing IP Value Capture strategies, with strong enforcement, leading to dramatically improved income stability.
- Case Example: The Maasai people receive nothing for their IP. Their name is registered as a brand for cars, shoes and other products and services without their knowledge, authority or benefit. This situation is common among African tribal, cultural and artisan groups.
- The African IP Trust will assist the Maasai to reclaim their IP ownership with Light Years IP and serve as example to other indigenous people groups.

4. The African IP Trust & the Maasai

The Maasai are the first stakeholder group to seek the assistance of the African IP Trust!

1 Background of the Maasai

The Maasai are an indigenous people, and one of the most aesthetically familiar and positive faces of Africa. They are tall, independent, proud, and steadfast defenders of their tradition and culture. They are unique: they represent authenticity, respect and strength and number approximately 3.2 million across present day Kenya and Tanzania.

2 The Maasai Cause:

The Maasai name and brand is used to the advantage of many companies to add millions of dollars of intangible value to their brand, but with neither authority nor specific advantage to the Maasai. The brand involves millions of dollars in Intellectual

Property assets which could benefit the Maasai. According to research by Light Years IP, there may be as many as 2.4 million commercial users of the Maasai culture and name across the globe with such products as:

Land Rover

Maasai Barefoot Technology (MBT -- www.mbt-masaishoes.com)

Maasai images for tourism and adventure companies

Maasai red (in paints, wallcoverings, fabric)

Louis Vuitton shoes, handbags and other items

3 PROGRESS BY LIGHT YEARS IP

FORMATION OF A MAASAI INTELLECTUAL PROPERTY INITIATIVE

During extensive discussions with Light Years IP, elders in the Maasai have requested assistance to confront the offensive and inappropriate use of their name and image, and to seek ways to advance their communities through regaining some control over their iconic, cultural brand. In October, 2009, Light Years IP held an event for the Maasai in Washington, DC with the support of Congresswoman Diane Watson, and Attorneys from IP law firm, Arnold and Porter. During these meetings, plans were made to advance the Maasai interests. Since then, Light Years IP has secured a large grant from the UK charity, Comic Relief, and designed a project called The Maasai Intellectual Property Initiative (MIPI) which seeks redress for the Maasai of Kenya and Tanzania. It is aimed at helping the Maasai to secure licenses; Trademarks and reduce the offensive use of their name and image to return income to the Maasai for community benefit.

Training: Light Years IP provided extensive IP Value Capture training in Nairobi, Kenya; Arusha, Tanzania and Distance IP Training, reaching hundreds of thousands of Maasai, and targeted to reach 1.5 million Maasai by the close of 2012.

Stakeholder Formation: A new stakeholder group called the Maasai Intellectual Property Initiative was formed and registered in Tanzania.

Research into Commercialized Use: Comprehensive research has been done into companies misusing the Maasai name and image by senior investigative researchers

Letters have been written to offending companies, and with support from African IP Trust leaders, several companies are poised to publically recognize Maasai as the rightful owners of their IP

Support from Advocates such as Lord Paul Boateng and Mark Florman of the UK, and Congresswoman Diane Watson of the US

Support needed from AIPT:

- Letter writing to support the Maasai IP Initiative
- Interventions with high-profile companies misusing the Maasai brand
- Intervention when ready to support new Maasai products with high-profile companies
- A profile of support for African owned IP

As the Maasai achieve respect for their IP ownership, this translates into the Maasai capacity to receive licensed ownership and will result in income to the Maasai.

5. Power and Dependency



The African IP Trust affects the Power and Dependency Relationship

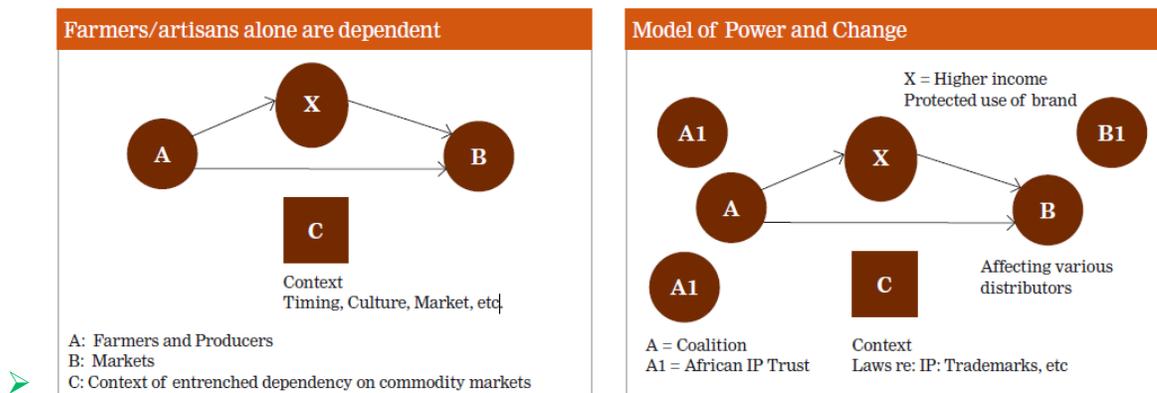
The African IP Trust will work to alter and change the power and dependency relationship inherent in Africa between farmer/producer and artisans and foreign importers.

Why are African farmers and producers exploited and receive only 3-5% of the price value from their distinctive products? The underlying cause of these low prices is the power of the importing companies and the mythology that this power cannot be broken. IP Value Capture can alter this deeply entrenched power and dependency framework and the AIPT can help affect power.

African farmers and producers (A) sell their products toward importers (B) in the context (C) of commodity markets, low and fluctuating prices dictated by foreign commodity markets. In any power and dependency situation, power is derived from:

- The producers perceived sense of dependency upon the importers
- The availability of alternatives for either A or B
- When A has many alternative choices, there is less dependency and usually more power on the part of A
- When B, the target has many alternatives, B can be more selective.
- To change power, A has only so many things A can do: Influence the importers; Change the pathway toward what A wants; Look for alternative Bs as in the case of markets and distributors; affect the context of how goods are sold; or build coalitions with other producers

This diagram demonstrates what happens when A is trying to influence or affect B alone. The second diagram illustrates the power of collective action, such as is one function of the African IP Trust.



6. Relationship between the Maasai Intellectual Property Initiative and the African IP Trust

The need for the Maasai Intellectual Property Initiative: Maasai stakeholder group

The Maasai Intellectual Property Initiative seeks to acquire the skills and mandate to:

- Pressure for the end to offensive use
- Issue formal, legal challenges to registered Trademarks using the tribal name
- Register its own trademarks and copyrights
- Pressure unlicensed users to stop or to ask for a license
- License new users and assert exclusivity wherever possible in licensing
- Create new products that are exclusive and fully Maasai owned for future promotion and licensing arrangements.
- The African IP Trust is an umbrella under which other groups such as the Maasai Intellectual Property Initiative can find voice, strengthened collective authority and action.

Exercise:

1 Consider the functions of the African IP Trust above. Which functions do you think would be a priority? How do you see yourself being able to facilitate?

2 Consider how do the entities of the African IP Trust and the MIPI advance power and negotiating capability for the Maasai?

Role-Play

The class will form into two groups: Maasai and African IP Trust members. In addition, two people will be designated scribes and observers to write down some of the quotes and observations.

Half of the students will adopt a name tag with the word Maasai on it.

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Over the next 30 minutes, the Maasai will pose questions to the African IP Trust members? What would the Maasai want and need to know?

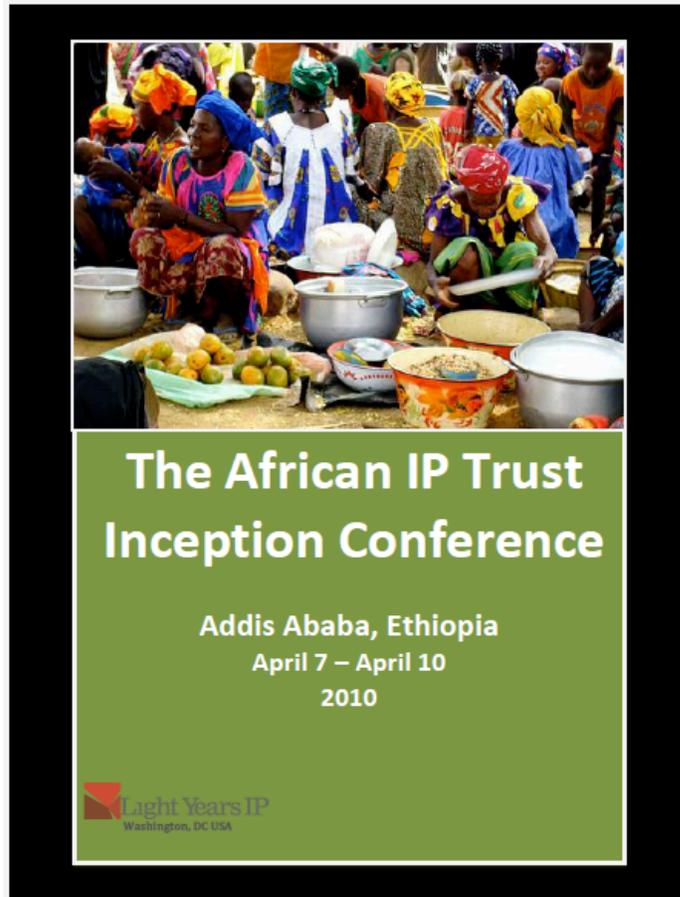
At the end of 30 minutes, we will hear from each group, as well as the scribe and observer and list the key questions and responses of the groups.

Section 3: Case studies:

1. Tanzanian Spices
2. Ugandan / S. Sudan Shea Butter

Summary/Conclusion

7. The African IP Trust & the Maasai



In April, 2010, an inception conference of the African IP Trust was held in Addis Ababa, Ethiopia. The purpose of the conference was to convene a group of high-profile human rights and civic leaders who were sympathetic to the exploitation of African rights, and also knowledgeable about and experienced in intervention strategies toward their welfare. The conference, conceptualized and hosted by Light Years IP was designed both to educate leaders in IP Value Capture strategies and methods, and to discuss and glean from leaders their viewpoints on how best to move forward on behalf of Africans seeking to advance or protect their IP rights.

Other goals of the conference were to discuss an organizing structure and define a mission and objectives for the African IP Trust to be owned by and managed by Africans. It involves a significant education component, of which training and stakeholder development and education is core. The initial grant was followed by a second grant for countrywide training in IP Value Capture. Light Years IP has selected Uganda and Tanzania for countrywide training which is now well underway as of September, 2011.

