

Multi-Peril IP Insurance Abatement Policy Case Study

IPISC's mission is to promote efficient and effective Claim resolution by building a strong working relationship with the Insured, and by doing all that is possible, within the terms of the policy, to help support the Insured in enforcing and/or defending their Intellectual Property (IP) rights. The following is a Case Study depicting how the Multi-Peril Intellectual Property (MPIP) insurance policy would respond in the event of a loss of the underlying insured, IP lawsuit under the Abatement policy. For additional questions about IPISC's Litigation Management Services and Claims, please contact IPISC or an insurance professional.

EXERCISE EQUIPMENT INDUSTRY

Situation

A small manufacturing company produces and distributes exercise equipment, including an elliptical exerciser, sports equipment, a competitive model, compound bow and other outdoor activity related products. The company is adding to its base of products with a new, in-line vibrational Chi machine.

Risk

The company has spent considerable time and money developing its own line of unique products, some of which have gained significant market share. Competitors grew envious of the new products and, rather than encourage the introduction of similar competitive products, the company has licensed out its most popular sports equipment item, a competitive model, compound bow. However, because of the significant profits generated by its elliptical exerciser the company has elected to maintain its proprietary market share through patents.

Risk Management

The Insured did not want to use the counsel suggested by IPISC's claims manager, quickly running through policy limits. The Insured has since offered to tell any future claimants that they should have listened to the claims manager and begun the case with the counsel suggested by IPISC. The Insured would have had longer staying power and preserved Policy limits.

Subsequent Development 1

A third party sued the company's largest licensee for patent Infringement of one of its patents, which allegedly covered the licensed-out compound bow. The lawsuit went to trial, the licensee lost, and the court imposed an Injunction against future commercial production of compound bows.

Subsequent Development 2

A competitor began manufacturing an exact copy of the elliptical exerciser, and the policy holder was forced to sue for Infringement of its patents covering the exerciser. The case went to trial and, in an adverse holding, the company's patents were found to be invalid and/or not infringed. The competitor was free to continue manufacturing exercisers leading to a Loss of Commercial Advantage to the company.

Benefits 1

Abatement: The Abatement Insurance Policy reimbursed the company for its Litigation Expenses incurred when bringing the Infringement case against the competitor. The company experienced the benefit of being able to bring an enforcement action and avoided using its own working capital.

MPIP: The MPIP Insurance Policy reimbursed the Loss/Cost directly caused by the Loss Due to Business Interruption, which was a consequence of the Injunction prohibiting further commercial activity. Since there was an Injunction imposed against the licensee, the Loss Due to Business Interruption is the license royalty rate multiplied by 80% of the projected future sales for the next year, based upon the past three years sales record. Thus, if the past three years sales are showing an increase the projected future sales will be increased, while if the past three years sales are showing a decrease, the projected future sales will be decreased.

Benefits 2

Abatement: The Policy reimbursed the company for its Litigation Expenses incurred in bringing the Infringement case against the competitor. The company experienced the benefit of being able to bring an enforcement action without having to use its own working capital, which was needed for continued operations.

MPIP: The Policy reimbursed the Loss/Cost directly caused by the Loss of Commercial Advantage because the elliptical exerciser was no longer patent-protected i.e. it was off-patent. The amount of reimbursement is 80% of provable Loss of Business Income resulting from a competitively-induced reduction in sales price of the exercisers after the Adverse Holding as compared to the company's sales price before the Adverse Holding. The Loss of Commercial Advantage is the incremental difference between the last year's seasonally adjusted sales price and the projected future sales price for the next year, multiplied by 80%. Accordingly, if the last year's sales were showing an increase, the projected future sales would be increased. If last year's sales were showing a decrease, the projected future sales would be decreased.

Reimbursement was made under the Policy, since the Named Insured was receiving compensation from the licensee because of Commercial Activity.