

# Global Policy: Intellectual Property ("IP") Policy

<b>Issuer</b>	Legal, Compliance & Intellectual Property
<b>Author</b>	Group Head of IP
<b>Approved by</b>	ExCo
<b>Issue date</b>	August 21 2017
<b>Revision history</b>	First issued August 21, 2017 Revised in <a href="#">Click here to enter a date</a> Amended in <a href="#">Click here to enter a date</a>
<b>Publication via</b>	BCnet

## **Limitations and Disclaimers**

This Policy is the Company's general guideline and management reserves the right to apply different terms, as determined in management's sole discretion. Nothing in this policy shall apply to the extent it would be inconsistent with any applicable law.

At the time of publication of this Policy, laws and practice around digital rights, Copyright, Designs, Patents and Trademarks are dynamic and are expected to continue to develop. Management reserves the right to apply a specific Policy/practice in a specific country/region.

## Global Policy: Intellectual Property (“IP”) Policy

### Table of Contents

1	Introduction and aims	3
1.1	What is “IP”?	3
1.2	For whom is this IP Policy	3
1.3	Ownership and use of IP rights	3
2	Respecting third party rights	4
3	Patents	4
4	Trademarks	5
4.1	Trademarks (registered or filed at the time of this Policy)	5
4.2	Correct use	6
4.3	Assessing possible new trademarks	6
4.4	Monitoring violations and Oppositions	7
4.5	In-market use / infringement	7
5	Other intellectual property rights	7
6	Agreements with third parties	7
6.1	Confidentiality	7
6.2	Licensing	7
6.3	Exclusivity	8
7	Disputes – escalation & litigation	8
8	Monitoring and Reporting	8

# Global Policy: Intellectual Property (“IP”) Policy

## **1 Introduction and aims**

### **1.1 What is “IP”?**

IP refers to concepts protecting the products of human intelligence and creation, and describes a wide variety of intellectual property created by inventors, musicians, authors, artists, marketers etc.

IP is protected in law by patents (for inventions), copyright (for created works) and trademarks (for commercial signs such as names, logos & shapes). These protection mechanisms enable recognition or financial benefit from inventions, creativity & marketing investment. “IP” covers numerous rights, some registered, such as patents and trademarks, others typically subsist and are unregistered, such as copyright, know-how (or trade secrets) and software. It is possible for more than one IP right to protect our products and services.

Our IP rights represent valuable assets which contribute to competitive advantage, product or service differentiation, and the opportunity for premium pricing and enhanced margin.

The aim of this policy is to support the company to:

- a) protect and enforce our own IP assets where appropriate and at reasonable cost, and
- b) maintain our freedom-to-operate from disputes with third parties by timely risk assessment and calculated intervention.

### **1.2 For whom is this IP Policy**

Operationally, the principal stakeholders within BC are Innovation/R&D, Brand Management, Marketing and Process Development (OSCO).

### **1.3 Ownership and use of IP rights**

Generally, our registered IP rights are held in the name of Barry Callebaut AG<sup>1</sup>. Barry Callebaut AG (or other BC Group companies which own registered IP rights) may conclude inter-company licence agreements with other BC Group companies to license the IP rights (for the avoidance of doubt, the agreements may cover unregistered IP rights). In return for licensing the IP rights, Barry Callebaut AG may receive an arm’s length compensation by way of royalty income. In view of potential tax consequences of IP ownership and exploitation, Group Tax must be involved in matters around ownership and intra-group licensing.

The management of our registered IP rights falls within the responsibility of the Corporate Legal department, specifically Group IP. Group IP must be involved in all matters around

---

<sup>1</sup> IP rights may be held in the name of other BC Group companies such as Barry Callebaut France SAS, Barry Callebaut Nederland BV and Barry Callebaut Schweiz AG

## Global Policy: Intellectual Property (“IP”) Policy

registered and unregistered IP rights. In view of the broad applicability and scope, this Policy will outline key principles.

### **2 Respecting third party rights**

A fundamental principle is that we respect and do not knowingly infringe valid third party IP rights. Such rights may be held by competitors, customers, suppliers or other third parties.

Therefore a timely assessment of risks and opportunities is needed. Consequently Group IP needs to be involved by Brand, Communication, Marketing and R&D managers to check for possible IP issues around new opportunities.

### **3 Patents**

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the owner with the right to decide how and whether the invention can be used by others.

A patent provides a territorially- and time-limited (maximum 20 years) right to prevent third parties from unlicensed use of the invention. A patent therefore provides the opportunity for a degree of exclusivity.

Our Policy with regard to patents is to preserve know-how (i.e. our trade secrets), and only apply for patent protection where we see very good chances to obtain commercially useful protection. In relation to competitors, Group IP monitors 3<sup>rd</sup> party patent rights in order to identify potential risks for BC in the future.

Group IP and R&D liaise to identify and capture relevant internally-generated know-how, as well as to keep abreast of the technical literature (non-patent & patent) in order to be aware of what is already known publicly, whether or not patented by others.

R&D perform initial subject matter searches to gain insights into what is known. Group IP can support with more detailed searches, in order to identify protection opportunities and risks from third party patents.

Our patenting activities, including costs, are agreed upon between Group IP and R&D. For all innovation projects, own protection opportunities need to be assessed. For this assessment a specific form, the Improvement / Innovation Summary (see Annex 1) should be completed as a precursor to structured discussion with Group IP and other stakeholders. Where it is decided to retain R&D output as a trade secret, this can be evidenced by way of a secret deposit, e.g. “i-Depot”.

Detection of possible infringements of our patent rights requires market information and is addressed by the IP Committee.

### **4 Trademarks**

## Global Policy: Intellectual Property (“IP”) Policy

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Our Trademarks represent valuable assets. They serve to distinguish our products and services from those of competitors. Protection of our trademarks affords the right to exclusive use, and thus third parties may not use our trademarks for identical or similar goods and services, and may not dilute our well-known trademarks.

Although company name, domain name and trademark Registers are not formally linked, some country-level domains are available only to holders of corresponding trademarks in the respective country. Further, recovery of domains registered in bad faith, also hashtags, is typically facilitated by having trademark registrations in place. In this way, our trademark registrations provide a vital platform for digital activities.

Valid protection requires official registration, correct use, maintenance and defence before regional (e.g. EU) and national IP offices around the world, and in national courts where necessary. For a large portfolio of trademarks this can be expensive and therefore we aim to strike a balance between the benefits of registration and the costs involved with full protection, maintenance and enforcement of the trademark.

### 4.1 Trademarks (registered or filed at the time of this Policy)

Many of our trademarks have been registered and used for decades, some for over a century.

“Van Houten” cocoa powders have been sold since 1848, and “Cacao Barry” cocoa since 1842. “Callebaut” chocolate-making commenced in 1911.

A selection of our trademarks by business area are listed in the table below:

Beverages & Vending	Decorations & Specialities	FM & Cocoa	Gourmet	Corporate	Cocoa Sustainability
Bensdorp	Mona Lisa	Acticoa	Alunga	Logos for	Cocoa
Caprimo	Snobinette	Barry Callebaut (also company “Housemark”)	Cacao Barry	Barry Callebaut & Cabosse	Horizons trademarks
Le Royal	Chocolate Masters		Callebaut		
Ögonblink			Carma		
Van Houten	Full Fill Factory	Bensdorp	Chocolate Academy	special Projects e.g. ChocoVision conference	owned by Cocoa Horizons Foundation
	CocoaBran	Terra Cacao	(World) Chocolate Masters		
			Chocovic		
			Inaya		
			Mycryo		
			Ocoa		
			Selbourne		
			Van Leer		

### 4.2 Correct use

In order for a trademark to remain legally valid and enforceable, correct use is essential. Incorrect use may result in the loss of trademark rights, e.g. if the mark becomes generic.

## Global Policy: Intellectual Property (“IP”) Policy

In particular, a trademark must be recognizable as such. For this, the following must be observed:

### *Do’s*

- > make the trademark stand out from the rest of a text, e.g. in capitals or bold
- > use a TM superscript (™) if a trademark application is pending or we consider the slogan/mark our property, or an “R” superscript (®) if registered. It suffices to do this once, i.e. the first mention
- > use in the same form as registered.

### *Don’ts*

- > do not use the trademark in plural
- > do not use the trademark as a noun or verb

### Incorrect

Chocolate academies  
the world chocolate masters  
callebaut  
cocoa barry

### Correct

“Chocolate Academy” centre  
“World Chocolate Masters” competition  
“Callebaut” chocolate, “Callebaut” fondant  
“Cacao Barry” chocolate

## **4.3 Assessing possible new trademarks**

Where a new name, slogan or theme is contemplated, initial searches must be undertaken by the respective brand/marketing manager to ascertain whether it is already used by others. Invented words should be checked by marketing for negative connotations in major languages.

Group IP has access to the necessary tools to carry out detailed searches of short-listed words in trademark registers to check availability, i.e. the level of risk presented by identical or similar 3<sup>rd</sup> party trademark registrations.

Group IP will handle the filing of new trademarks. The geographical scope of the filing is decided together with the respective brand manager/marketing lead. In parallel with new trademark filings, URL/domain names should be registered if available (coordinated in parallel by Marketing and IM).

## **4.4 Monitoring violations and Oppositions**

In order to avoid “dilution” of our trademark rights and market confusion caused by later-filed but similar trademarks, Group IP monitors possible collisions via external database subscriptions. Phonetically or visually similar trademark applications are reported as collision notifications, also to the respective brand manager; together with the region / national contacts, Group IP will initiate and coordinate intervention action as necessary, e.g. opposition.

## **4.5 In-market use / infringement**

Region and national sales and trade marketers are responsible for the detection and internal reporting of third party use of our (or confusingly similar) trademarks. Group IP

## Global Policy: Intellectual Property (“IP”) Policy

must be informed (directly or via Regional Legal Counsel) of suspected infringements, and will initiate and coordinate appropriate follow-up actions where necessary.

### **5 Other intellectual property rights**

Group IP advise on own opportunities and third party risks around other IP rights as listed in Annex 2, together with technical specialists as appropriate.

### **6 Agreements with third parties**

It is essential as well as good practice to identify what – if anything – we already know in a particular field (technical “know-how”) when interacting with suppliers, service providers and customers. We go to a service provider or supplier because of their expertise, and it might be appropriate to concede their pre-existing know-how in a particular area.

#### **6.1 Confidentiality**

Where necessary, and following initial exchanges without a confidentiality obligation, confidentiality (or “non-disclosure”) agreements are executed between Barry Callebaut entities and third parties, including customers, service providers and suppliers. Principal considerations should include the scope of information disclosed (what know-how is considered to be confidential?) and necessity of such an agreement (who is disclosing confidential information to whom?).

Typically a reciprocal (2-way) agreement is justified. However, it may be more appropriate to enter into a 1-way confidentiality agreement with a third party in which we formally waive interest in confidential information from that party. This should prevent diffusion of our know-how with that from the third party.

#### **6.2 Licensing**

Where we require access to 3<sup>rd</sup> party know-how or patent rights in order to maintain commercial freedom (or *vice-versa*) a licence may be necessary. Likewise where a customer wishes to use one of our trademarks on labeling, a formal licence is required. Group IP should be consulted on intended in-licensing of third party rights, as well as on licensing of Barry Callebaut IP to third parties. As a matter of policy, we do not permit customers to apply a “made with Barry Callebaut” cocoa or chocolate logo on packaging, absent exceptional circumstances and senior management (ExCo) approval.

By way of example, use of “Cocoa Horizons” (trademarks owned by the Cocoa Horizons Foundation) by customers is governed by appropriate agreements.

#### **6.3 Exclusivity**

## Global Policy: Intellectual Property (“IP”) Policy

Legal commitments on IP, or innovation-exclusivity, whether incoming or outgoing, should not be concluded without prior approval of Group IP and Legal. Further, there may be competition law aspects to consider.

### **7 Disputes – escalation & litigation**

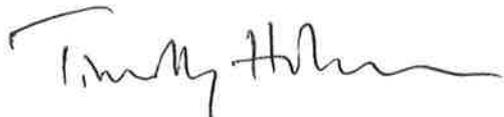
Actual or threatened disputes, whether we are enforcing rights or defending against alleged infringement, and possible solutions (& costs) will be addressed within the Group Legal, Compliance & Intellectual Property function (escalated to the Chief Financial Officer depending on materiality level), together with the respective business area / Region. In case internal alignment is not reached, escalation is contemplated to a) ExCo, or b) AFRQC Board Committee.

### **8 Monitoring and Reporting**

This policy is issued by Group Legal, Compliance and Intellectual Property following review and approval by the Heads of Gourmet and Food Manufacturers / Specialties Marketing, Chief Innovation Officer and Chief Operations Officer, and is implemented and controlled by the IP Committee, chaired by the Head of IP.



Antoine de Saint-Affrique  
CEO



Timothy Holman  
Group Head of IP

## Global Policy: Intellectual Property ("IP") Policy

### **A. Annexes to IP Policy**

A1 Improvement / Innovation Summary

A2 Other IP Rights

A3 Company Name Rights

A4 Glossary

**Global Policy: Intellectual Property (“IP”) Policy**

**A.1. Annex 1 IMPROVEMENT / INNOVATION Summary**

Project / Short title: \_\_\_\_\_

1. Summarise scientific & technical findings

Include essential & optional components / parameters; flow-chart process

2. Advantages, improvements ...

Which findings were surprising or unexpected?

3. Potential applications / uses etc

within food industry (or other fields), or internally e.g. a more economic process

4. Who else, if anyone, was / is involved ...

this will help in a preliminary inventorship determination in case we apply for a patent

a) within Barry Callebaut?

b) externally?

e.g. academic partner, consultant, development partner company (include date of contract)

5. Relevant information in the public domain

include marketed products, and third party and own patent & non-patent publications

6. Potential barriers

e.g. competitors' or suppliers' products

7. Proposal(s)

prepare & file patent application yes / no / not yet

publish (where? e.g. Research Disclosure) yes / no / not yet

retain as know-how / trade secret yes / no

capture as i-Depot yes / no / TBD

conduct patent search to assess risks to freedom yes / no / TBD

Initial by R&D personnel & respective Group Manager \_\_\_\_\_

Add other remarks as applicable, e.g. potential obligation to offer to major customer

## Global Policy: Intellectual Property (“IP”) Policy

### **A.2. Annex 2 Other intellectual property rights**

#### a) Copyright

Copyright subsists in creative works which are original, e.g. an advertisement; a song (lyrics, music, performance) or a picture/photograph (e.g. for a brochure). A practical consequence is that permission must be obtained in advance of use of background music, e.g. at a trade fair, and royalty fee paid.

#### b) Designs

Designs protect the external appearance of an object, e.g. packaging. To be validly registrable, a design has to be new and have individual character.

#### c) Domain Names (“DN”)

BC owns many top-level and country-level domains which serve as platforms for our websites and digital activities. The domain names are administered via Corporate IM. Group IP is involved in contentious matters such as domain recovery. It is good practice to secure DNs in parallel with new trademarks where available.

#### d) Software and database rights

Copyright and other IP rights can subsist in software and (important) databases.

#### e) Trade secrets

Technical know-how may constitute a trade secret if not known outside the company. Other examples of trade secrets are certain recipes, production processes, project management methodology, and software.

#### f) Geographical Indications (“GI”)

A GI is a sign used on products having a specific geographical origin and which possess qualities or a reputation which are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. Lead on use of GIs is with QA/Regulatory Affairs with Group IP supporting.

#### g) Registration data exclusivity

Within the European Union, Regulation 1924/2006 provides the mechanism to protect food- and nutrition-related health data. At the time of this Policy, BC owns exclusive rights to two “Health Claims” on cocoa flavanols, e.g. “Cocoa flavanols help maintain the elasticity of blood vessels, which contributes to normal blood flow”. Lead in this area is with R&D, with QA/Regulatory Affairs and Group IP supporting.

#### h) “Certification” and “Collective” Trademarks

Group IP can advise on the suitability of establishing such trademark arrangements. It is more likely that we are licensee under such marks, e.g. “SWISS” (a Collective trademark) by virtue of our membership of Chocosuisse, the Swiss Chocolate Industry Association.

Global Policy: Intellectual Property (“IP”) Policy  
**A.3. Annex 3 Company Name rights**

ASM Foods

Barry Callebaut

IBC

La Morella Nuts

Before changing a company name, e.g. following an acquisition, appropriate consultation should take place between the respective Region / Country Finance department and Group IP.

## Global Policy: Intellectual Property ("IP") Policy

### **A.4. Annex 4: Glossary**

Many concepts in IP date back to the Paris Convention of 1883.

Copyright	a right subsisting in an original work of authorship
Design	external appearance of an article
EPO	European Patent Office
EUIPO	European Union Intellectual Property Office
Inventor	person(s) who made the invention
Opposition	intervention against the validity of a granted IP right
Patent	a registered, time- and territorially-limited right on an invention
PCT	Patent Cooperation Treaty
Priority date	effective filing date of the first application of a registered IP right
Priority period	period starting from the priority date during which the applicant of a registered IP right enjoys a priority right for the purpose of filing in other countries: 6 months for designs & trademarks; 12 months for patents
Service mark	a trademark for a service or range of services
Trademark	traditionally a badge of origin, now more generally a sign capable of distinguishing goods and services of one undertaking from those of other undertakings, which apart from its function as a badge of origin, can also have other functions such as to guarantee the quality and advertising
USPTO	United States Patent & Trademark Office
WIPO	World Intellectual Property Organisation
Word mark	a trademark in the form of a word
Word/device mark	a trademark using a combination of word and logo
© symbol	assertion of copyright in e.g. promotional material or a website
® superscript	indication that the trademark is registered
™ superscript	indication that use of a mark is as a trademark (registered or not)