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Intellectual Property: It's Not Generally Intangible Any Longer — It is an Important Source of Value that Should be Considered When Extending Credit

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The onslaught of retail bankruptcy filings over the last few years has debtors and creditors realizing substantial sums on the value of their intellectual property, from traditional intellectual property, like trademarks, trade names & styles and copyrights, to domain names, commerce platforms and internet customer lists. Some say the worst of the 'retail apocalypse' may still be to come. In light of the changing retail landscape, distressed companies, lenders, and creditors alike should be thinking about how to unlock the potential value hidden in companies' intellectual property prior to and after a bankruptcy filing. This article examines the recent trends in the use of intellectual property in bankruptcy cases, how parties extending credit can perfect a security interest in intellectual property, and the recent use of trap door transactions by companies and creditors which have either unlocked the value in a company's intellectual property or kept such value out of reach of creditors.

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