

INTELLECTUAL PROPERTY FOR BUSINESS OWNERS

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WHAT IS INTELLECTUAL PROPERTY?

- Intellectual property (IP) refers to legal rights granted to intangible creations of the mind.
- IP can...
 - prevent consumer confusion
 - safeguard a company's use and sale of a new invention
 - protect a company's expressions, whether in a book, in software code, or any other medium of expression
 - protect confidential business information that makes a company competitive

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CATEGORIES OF IP

- There are **five** different types of intellectual property
 - Copyright
 - Patent
 - Trademark
 - Trade Secrets
 - Trade Dress
- Each category has a different function and provides different rights
 - It is important to understand the distinct differences in order to fully protect your company

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COPYRIGHT

- **Copyrights** protect original works of authorship that are fixed in a tangible medium of expression
 - printed on paper, recorded on tape, coded on a disc
- Copyrights do not protect ideas, they only protect the particular way an idea is expressed in a tangible medium of expression (book, painting, video)
- Licensing the copyright allows a third party to alter, supplement, or otherwise change a copyrighted design

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COPYRIGHT CONT.

- **Three** requirements to get a work copyrighted:
 - Must be in a tangible medium of expression
 - Must be original
 - Must have a minimal amount of creativity
- No action required to obtain copyright protection, it happens automatically when the original work is first made
 - Can be reinforced with an added “©” or “All rights reserved”
- Examples of works protected by copyright:
 - Software code
 - Graphic design displayed on your premises or Web site
 - Original instruction manuals

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PATENT

- **Patents** offer very powerful protection for new products or inventions
- A **patent** is an exclusive right granted by the federal government that entitles the inventor to prevent anyone else from making, using, selling, or offering to sell the patented process or product in the United States for a specified period of time
 - They grant a temporary monopoly over an invention for 18 years
 - Prohibits others from making or selling the patented item

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PATENT CONT.

- There are a number of strict requirements necessary to render something patentable
 - The invention is useful, novel, and cannot be an obvious extension of previously existing technology
- How to get a patent:
 - Need to fill out an application describing the invention in detail
 - Very costly and time-consuming, but strong IP protection
- If you have created a new technology, you must file a patent within one year of first disclosing the technology to a member of the public, or you will lose your rights to apply for a patent

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TRADEMARK

- A **trademark** is any word or phrase, name, symbol, sound, or device that identifies and distinguishes one's company's products from those of others
 - Example: Nike's "swoosh" symbol, McDonald's "I'm lovin' it" slogan are trademarks
- Acquiring trademark rights requires use of the mark in commerce
- Trademarks and the rights to use a trademark can be bought or sold

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TRADEMARK CONT.

Obtaining a Trademark

1. Seek distinctiveness- how do these marks uniquely identify this company?
2. *Make sure no one else has trademarked it*, do a search on LexisNexis
3. Create rights in the trademark
 - a. Use it on the product, in advertising, promotional materials, use it in commerce

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TRADE DRESS

- What about qualities that aren't words or symbols but still identify goods and services?
 - **Trade dress** is a type of trademark that protects the “look and feel” of a product and its company's overall image in the marketplace
- **Trade dress** protection requires:
 - Inherent distinction
 - “must be unusual and memorable, conceptually separable from the product, and likely to serve primarily as a designator of origin of the product.” (Duraco Products Inc. v. Joy Plastic Enterprises Ltd., 40 F.3d 1431 (3d Cir. 1994)), **or**
 - Secondary meaning (consumers associate the design feature with a single source of origin)

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TRADE DRESS CONT.

- Trade dress protection can not be applied to features that are functional rather than ornamental
 - A utility patent is strong evidence that the product's design is functional and would not be protected under trade dress

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TRADE SECRETS

- **Trade secrets** are pieces of information that derive actual or potential economic value from the fact that it is not known or readily ascertainable by others
 - Make a reasonable effort to maintain secrecy
- A company should require anyone who is being told confidential information to sign a **Nondisclosure Agreement**
- Without an **NDA**, they can share a company's trade secrets or other information that gives the company a competitive edge

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TRADE SECRETS CONT.

- If a patentable method will be profitable for more than 18 years, then protecting it as a **trade secret** will give it protection for as long as the trade secret is used and kept a secret

Social Media and Trade Secrets:

- You need to have clear social media policy about disclosure of trade secrets and confidentiality to avoid being vulnerable to losing your trade secrets or revealing confidential information
- Educate any employee with trade secret knowledge about social media and confidentiality

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CONSULTATIONS

- Make an appointment for a complimentary 30 minute consultation (offer valid now through December 31st)

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ANY QUESTIONS?

- Please, ask away!

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