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LEGAL BRIEFS

## The ABC's of Intellectual Property

The notion that one's ideas and creations have economic value and, therefore, should be afforded some means of protection is the premise behind intellectual property law. In the United States, intellectual property is as old as the country itself--the foundation for intellectual property is set forth in the constitution. However, in today's "high tech" society, intellectual property has taken on all new importance. In this article, we shall discuss the four basic forms of intellectual property and their potential value to both you and your business.

### Copyrights

Copyrights are original expressions that can be reduced to a tangible medium. Such original works include, literary works, musical works, dramatic works, pantomime and choreographic works, pictorial, graphic and sculptural works, motion picture and other audio visual works, sound recordings, architectural works and compilations, collective and derivative works.

For all works created on or after January 1, 1978, copyright protection is automatic from the moment the work is created. So, if copyright protection is automatic, why bother spending the time and money to register a copyright with the U.S. Copyright Office? Registering a copyright provides *prima facie* evidence of ownership and validity of the copyright. Therefore, registering a copyright is a prerequisite for filing a copyright infringement case and for recovering statutory damages and attorney's fees when pursuing such an infringement case.

Finally, copyright protection does not last forever. In general, the basic term of a copyright is fifty (50) years beyond the life of the work's author.

### Trademarks

A trademark is a designation that indicates the source or origin of goods and distinguishes those goods from the goods of others. Similarly, a service mark identifies the source or origin of a service. The primary policy behind

trademark law is to protect consumers from confusion by discouraging and preventing the use of confusingly similar marks. Most any designation may serve as a trademark or service mark so long as it is distinctive and it functions to distinguish the source of a particular good or service.

Trademark rights are acquired and maintained by using the mark in connection with the goods or services. By filing and registering a mark with the U.S. Patent and Trademark Office, the owner of the mark obtains a nationwide right of priority over other users that adopt the mark after the application filing date. The owner of the mark does not have the right to stop the use of the mark by others who had been using the mark prior to the owner's filing date. The owner, however, can limit these prior users to using the mark only in the geographic area in which they were using the mark prior to the filing date.

Trademarks registered on or after November 16, 1989 have a ten (10) year term and are renewable for successive ten (10) year periods. Registrations that occurred prior to November 16, 1989 have a duration of twenty (20) years, but are subsequently renewable for only periods of ten (10) years.

Once a mark is trademarked, a trademark owner should take measures to ensure that its trademark rights are not lost. Loss of trademark can occur by abandonment of the mark --- failing to use the mark or, by making changes to the mark itself. Trademark rights are also lost if the mark becomes generic by having a once legitimate mark evolve into the common name for the product sold under it. THERMOS, BAND-AID and ASPIRIN are examples of terms that were once protectable trademarks, but are now deemed to be generic terms. Therefore, in order to maintain all of its trademark rights, a trademark owner must be vigilant in policing the use of the trademark. This includes ensuring that others do not use the mark or attempt to register a mark that is confusingly similar and guarding against having a mark become a generic term.

### Patents



Patents are granted to individuals who invent new and useful inventions. During a patent's term, its owner has the right to exclude others from making, using or selling, the patented item in the United States. Not all inventions, however, are patentable. An invention must fit into one of three classes in order for it to be patentable. The first class is utility patents and it is intended to protect processes, machines, manufactures and compositions of matter. The second class of patents is for plant patents and it protects asexually reproduced plants. And, the third class of patents is design patents and it protects ornamental designs.

Much like trademark protection, patent protection does not last forever. Effective June 8, 1995, plant and utility patents end twenty (20) years after the effective filing date of the patent application. Design patents have only a term of fourteen (14) years from the date of issuance.

Patent law is still a very specialized area of the law. Anyone interested in pursuing a patent should contact an attorney who is licensed to practice patent law.

#### Trade Secrets

Trade secret law provides businesses and individuals with a system to protect confidential information. It encompasses a broader area than either patent or copyright law and, offers the possibility of protection for extended periods of time. In fact, a trade secret if properly protected, can last indefinitely. For example, the Coca-Cola Company has been successful in protecting the formula for coca-cola as a trade secret.

The Uniform Trade Secrets Act, (U.T.S.A.), which has been adopted in Maryland, defines trade secrets as information that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by, other person who can obtain economic value from its disclosure or use. In order to maintain a trade secret, one must exert efforts to maintain the secrecy.

An important means by which trade secrets are protected are through the use of confidentiality agreements. Confidentiality agreements are agreements that prevent parties from disclosing information that they

do not want in the public domain. A common example arises in the employer-employee context in which employers often require employees to sign a confidentiality agreement as a condition of employment. These agreements put the employee on notice of what information the employer considers a trade secret. In addition, they serve as evidence of proper steps to maintain a trade secret.

Intellectual property plays a vital role in today's high tech business-climate. Not only is it important for you to protect your business' intellectual property, but it is equally important that you do not infringe upon the intellectual property rights of others. Such action or inaction can have extraordinary economic consequences to both you and to your business.