

Protecting the Intellectual Property of Your Business

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Your business may benefit from the protections offered by intellectual property law, regardless of the type of business you have or the type of goods or services your business provides. Intellectual property law includes the following four areas: patents, trademarks, copyrights, and trade secrets. General information for each of those areas is provided below.

Patents

A patent provides the owner the right to prevent others from making, using, selling, offering to sell, and importing into the United States the covered invention for a limited period of time.¹ Patents protect many types of inventions. For example, a patent can protect a device or an apparatus,² such as a medical device or a dental instrument. A patent also can protect a process, such as a manufacturing process, or a business method, such as Amazon.com's® one-click payment method.³ Additionally, a patent can protect software or chemical compositions.⁴ Moreover, a patent can protect the aesthetic appearance of a useful article, such as the shape of a beverage container, or certain types of plants, such as new varieties of roses.⁵

An invention must meet three requirements to qualify for a patent.⁶ First, the invention must be useful.⁷ Second, the invention must be “new” or not previously known by others.⁸ Finally, the invention must be “non-obvious” or sufficiently different from what was previously known such that it would not have been obvious to someone in the relevant industry of the invention.⁹ Businesses must file a patent application with the U.S. Patent and Trademark Office to request a patent prior to commercializing or publicizing the invention.¹⁰

Trademarks

A trademark provides the owner the right to prevent another from using a mark that is likely to be confused with the owner's mark.¹¹ Trademarks protect many types of marks. For example, a trademark can protect word marks, such as Gucci®, or symbol marks, such as the Nike® swoosh mark.¹² A trademark also can protect devices, such as the Pillsbury® Doughboy, or slogans, such as Got Milk®.¹³ Finally, a trademark can protect colors, such as Pink® insulation, or sounds, such as the Intel® chimes.¹⁴

A mark must generally meet two requirements to qualify for a trademark. First, the mark must distinguish the owner's goods or services from others.¹⁵ For example, a business using the mark “apple” to sell computers would qualify for a trademark, but a business using the mark “apple” to sell apples would not. Second, the mark must not be likely to cause confusion with other existing marks.¹⁶ Businesses do not need to register their mark to obtain federal and state law protection.¹⁷ Many businesses choose, however, to register their mark with the U.S. Patent and Trademark Office, or the Oregon Secretary of State, to obtain various benefits of registration.¹⁸ For example, federal trademark registration provides notice to others of the owner's claim of ownership. Additionally,

federal trademark registration allows the owner to enforce their mark in areas of the United States where they are not using their mark.¹⁹

Copyrights

Copyrights provide the owner the right to prevent others from copying, distributing, publicly performing, and publicly displaying the copyrighted work, and preparing other works derived from, or based on, the copyrighted work.²⁰ Copyrights protect many types of creative works. For example, copyrights can protect books, motion pictures, sound recordings, sculptures, computer programs, or buildings.²¹

A work must meet two requirements to qualify for a copyright.²² First, the work must be an original work with some creativity.²³ Second, the work must be fixed in a tangible medium, such as written down on paper or recorded on a computer disk.²⁴ Businesses do not need to register their creative work to obtain copyright protection.²⁵ Businesses must, however, register their creative work at the U.S. Copyright Office before bringing a lawsuit against someone violating their copyright.²⁶

Trade Secrets

Trade secrets give the owner the right against the acquisition or disclosure of its trade secrets by improper means, such as theft or bribery.²⁷ Trade secrets protect many types of information.²⁸ For example, trade secrets can protect drawings, cost data, or customer lists. Additionally, trade secrets can protect compositions, such as the secret recipe for KFC® chicken or the secret formula for Coca-Cola® soda.

Information must meet two requirements to qualify as a trade secret.²⁹ First, the information must have independent economic value because others do not generally know it.³⁰ Second, the business must take reasonable efforts to maintain the secrecy of its information.³¹ For example, the business may require third parties, such as its contractors and vendors, to first sign confidentiality agreements before providing those parties with its trade secrets. Additionally, the business may require identification badges and restrict entry to areas containing trade secrets to personnel with the proper identification badges. Businesses do not register their trade secrets with a government entity, and are able to enforce their rights by showing that the trade secrets exist.³²

Conclusion

A business can use intellectual property law to protect their inventions, marks, creative works, or secret information, which can increase their competitive advantage over other businesses. An intellectual property attorney can help explore which areas of intellectual property law are best suited to protect your business. Additionally, an intellectual property attorney can explain in further detail the process for obtaining and enforcing rights under those areas.

¹ See 35 U.S.C. § 271(a) (2006).

² See 35 U.S.C. § 101 (2006).

³ See *id.* For the Amazon.com® 1-Click Patent, see U.S. Patent No. 5,960,411 (issued September 28, 1999).

⁴ See *id.*

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- ⁵ *See id.*
- ⁶ *See* 35 U.S.C. §§ 101-103 (2006).
- ⁷ *See* 35 U.S.C. § 101 (2006).
- ⁸ *See* 35 U.S.C. § 102 (2006).
- ⁹ *See* 35 U.S.C. § 103(a) (2006).
- ¹⁰ *See* 35 U.S.C. §
- ¹¹ *See* 15 U.S.C. § 1114 (2006).
- ¹² *See* 15 U.S.C. § 1053 (2006).
- ¹³ *See id.*
- ¹⁴ *See id.*
- ¹⁵ *See id.*
- ¹⁶ *See id.*
- ¹⁷ *See* 15 U.S.C. § 1125 (2006). *See* O.R.S. § 647 (2005).
- ¹⁸ *See* 15 U.S.C. § 1115 (2006). *See* O.R.S. § 647 (2005).
- ¹⁹ *See* 15 U.S.C. § 1115 (2006).
- ²⁰ *See* 17 U.S.C. § 106 (2006).
- ²¹ *See* 17 U.S.C. § 102 (2006).
- ²² *See id.*
- ²³ *See id.*
- ²⁴ *See id.*
- ²⁵ *See* 17 U.S.C. § 411 (2006).
- ²⁶ *See id.*
- ²⁷ *See* O.R.S. § 646.461 (2005).
- ²⁸ *See id.*
- ²⁹ *See id.*
- ³⁰ *See id.*
- ³¹ *See id.*
- ³² *See id.*