

Trademarks, Copyrights and Trade Secrets: Are Your Company's Intellectual Property Rights Fully Protected?

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Intellectual Property (IP) protection is critical to promoting innovation. Without legal protection of the expression of ideas, businesses and individuals cannot realize the full benefits of their inventions and may focus less on research and development. Likewise, artists will not be fully compensated for their creations and culture will suffer as a result.

Interestingly, businesses and individuals are frequently unaware that they even own IP. There is often a misperception that only large corporations with profitable names, logos and brands are the only ones who really possess a need to safeguard intangible assets. In reality, anything written, visually created and unique to a business or individual is IP.

IP rights are worth protecting, both domestically and abroad, and the ramifications of not protecting IP can be serious.¹ To better understand these negative effects, below are six reasons why it is prudent to safeguard intangible assets.

1. Theft: It is repugnant to steal something that belongs to someone else. Nevertheless, people frequently take from others. And if you have not found a way to at least deter someone from taking your work, it may be copied and used to another's benefit.

2. Loss of Reputation: In situations where you are an expert in a field, when others use your work in fleeting or inappropriate ways, your reputation as an authority is decreased. And you may be connected to the negative work of the imposter. If your property has been used for illegal gain, you might find it difficult to prove that you were not involved. The public is often willing to attach guilt by association, so what started as a brilliant theory or invention may be turned into something unrespectable.

3. Loss of Income: Allowing others to use your work through complacency, negligence or plain ignorance will directly impact your earnings. If you have invented something that is unique or you have written something in your field of expertise, then someone else is reaping some or all of the profits. If they can better market your creation, they will undoubtedly become the leading source for the item and ultimately the biggest earner. In addition, your "brand" is being diluted.

4. Devaluation of Your Assets: Your IP is worth more if it is unique. But if others have stolen it, the value is quickly debased leaving you trying to defend why it is worth more. And you may

¹ See U.S. Chamber of Commerce, Global Intellectual Property Center at <http://www.theglobalipcenter.com/>

be faced with the unimaginable task of proving that you, and not the thief, rightfully own the content, graphics, lyrics, melody, invention or software.

5. Laws Differ Among Nations: Although international laws exist to prevent trademark and copyright infringements, the reality is prosecution is difficult. Not living in the same country as the offender will make litigation very difficult. Not only may it be costly, but some countries do not see these issues as criminal behavior. Trying to implore a court to take action against a foreigner may be even more difficult. Even in the best case scenario, where one obtains a judgment, the offender may not have anything to recompense the victim, so, basically, he/she walks away with impunity.

6. Prevent Others from Being Ripped Off: By protecting your IP, you help others to avoid scams and fake products.

Protecting your IP is crucial to the success of your business. The following are three primary forms of IP protection you should consider using:

I. TRADEMARKS

Trademarks identify the source of a good or service. Trademark protection can be lost if the source and product or service are confused, that is, if the trademark is used to identify the product rather than the source of the product. “Escalator,” “Zipper,” and “Thermos” trademarks were all lost this way. Instead of referring to an Escalator® brand moving stairway, the word “escalator” became the descriptor of the generic product. “Thermos” turned into a way to describe any “vacuum bottle.”

A trademark is created by using it. Registering a trademark provides notice to others who might adopt a mark that is similar to your mark. Anyone who does so can be liable for trademark infringement if there is a likelihood of confusion between the two marks.

II. COPYRIGHTS

Copyrights protect the expression of an idea. They are available for things such as text, music, videos, architecture, sculpture and computer programs.

III. TRADE SECRETS

Trade secrets arise out of state law. Most states, including Nevada, have adopted the Uniform Trade Secrets Act, so the law is nearly the same in every state. A trade secret is any technical or non-technical data, a formula, pattern, compilation, program, device, method technique, drawing, process, financial data or list of actual or potential customers of suppliers that is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who might obtain economic value from its disclosure or use.

One benefit of trade secrets is that you do not have to file an application to protect them. One need only have something that qualifies as a trade secret and take reasonable measures to protect it.