

INTELLECTUAL PROPERTY: Is it Mine?



Presented by:
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Summary

- What is intellectual property?
- Where do I find it?
- I've found it, now how do I protect it?
- How can it make money for me?
- How can I avoid infringing on someone else's IP?

What Is Intellectual Property?

Essentially, Intellectual
Property is MONEY.

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It is a vital asset of your
business and gives it much
of its value.



The 7 Different Categories of IP



- 1) Trademarks
- 2) Service Marks
- 3) Trade Dress
- 4) Trade Secrets
- 5) Copyrights
- 6) Patents
- 7) Internet Domain Names

Trademarks

The official definition:

A trademark is a symbol, word, color, sound or any combination of these elements that is used in conjunction with the sale of goods.

Shortcut equation:

Word, symbol, etc. + goods = trademark



Trademarks in the Real World

Marks you may recognize:

“DELL” for computers



For cell phones

“KONG” for dog toys



For cleaning products

“NIKE” for shoes



For sewing machines



And, of course, the ‘swoosh’ for shoes

Trademark Symbolology



The following symbols are used with trademarks to designate their protection status:

® - this is only used on marks that have been registered with the USPTO

™ - this is used on marks that have not been registered but for which protection is sought or claimed

Service Marks

The official definition:

A service mark is a symbol, word, color, sound or any combination of these elements that is used in conjunction with the sale of services.

Shortcut equation:

Word, symbol, etc. + services = service mark



Service Marks in the Real World

Marks you may recognize:

“Blackberry” for cell services

“PetSmart” for pet store services

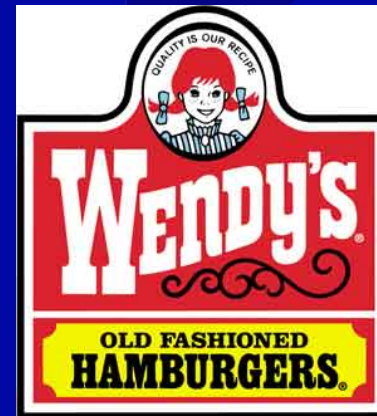
“iTunes” for sale of pre-recorded music



For television programming services



For airline services



For restaurant services

Service Mark Symbolology

The following symbols are used with service marks to designate their protection status:

® - this is only used on marks that have been registered with the USPTO

SM - this is used on marks that have not been registered but for which protection is sought or claimed

Trade Dress



Trade dress is “essentially [a business’s] total image and overall appearance. It creates a visual impression which functions like a trademark.” It can include:

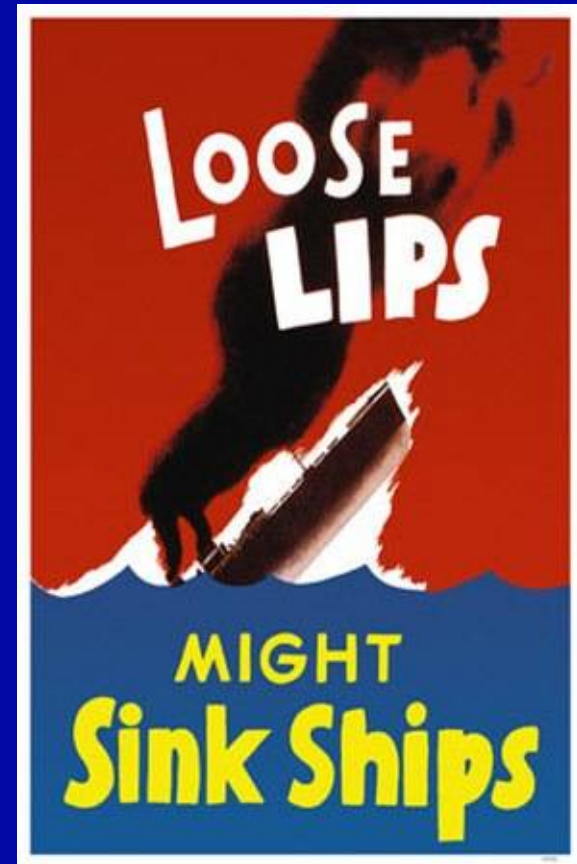
- Size
- Shape
- Color or color combinations
- Textures
- Graphics
- Sales techniques
- Layout

Trade Secrets

A trade secret in Louisiana is:

1. “information, including a formula, pattern, compilation, program, device, method, technique, or process” that
2. Is valuable because it is a secret, and
3. Is subject to reasonable efforts to keep it a secret.

Source: La. R.S. § 51:1431



Copyright

A copyright is a bundle of exclusive rights that are given to the author and/or owner of “an original work of authorship fixed in any tangible medium of expression...” from the moment of fixation.

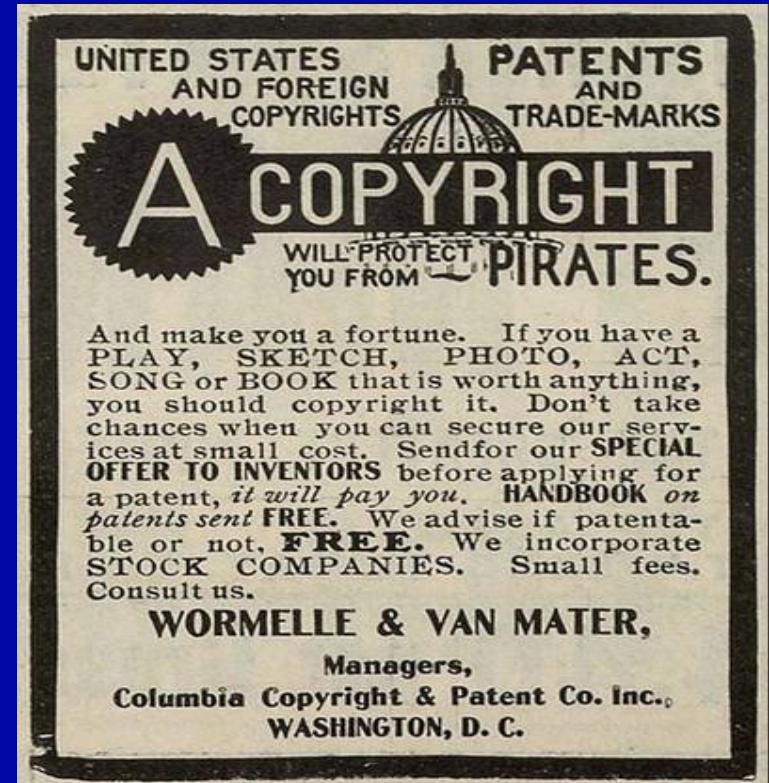


Copyright's Exclusive Rights

What are the exclusive rights granted to the owner of a copyright?

If you own the copyright in a work, you can:

- 1) make copies of the work,
- 2) distribute the copies of the work,
- 3) revise the work,
- 4) perform the work,
- 5) display the work, and
- 6) perform sound recordings



What types of work can be copyrighted?

- 1) literary works (books, screenplays, articles, etc);
- 2) musical works;
- 3) dramatic works;
- 4) pantomimes and choreographic works;
- 5) pictorial, graphic and sculptural works;
- 6) motion pictures and other audio visual works;
- 7) sound recordings; and
- 8) architectural works



Patently Speaking

A patent is a property right granted by the US government to an inventor for the invention allowing that inventor to “exclude others from making, using, offering for sale, or selling” the invention in the US or importing it into the US for a limited period of time.

There are 3 types of patents:

1. Utility patents: for a new and useful process, machine, article of manufacture, or composition of matter or any new & useful improvement
2. Design patents: for a new, original and ornamental design for an article of manufacture; and
3. Plant patents: invention and discovery of a new variety of plant.

Internet Domain Names

Domain names are the not themselves a category of IP, but can be protected by IP, usually as a trade or service mark. Case in point:

- www.realtyman.com – registered mark
- ups.com – registered mark

The key is that you use it as a mark!



Where, oh Where Can My IP Be?



Now you know what you're looking for when trying to determine what IP you have. The next question is:

Where do I find it?

The answer is: **EVERYWHERE!**

Looking in All the Right Places

Here are just some of the places you should look to identify your IP:

- ✓ websites (photos, text)
- ✓ Print ads (billboards, photos, text)
- ✓ Logos and designs
- ✓ Slogans
- ✓ Domain names
- ✓ Pricing lists
- ✓ Recipes
- ✓ Client lists
- ✓ Formulas
- ✓ jingles/songs
- ✓ Product names
- ✓ Radio/TV ads
- ✓ Product designs
- ✓ Product packaging
- ✓ Training programs
- ✓ Business names

Protecting Your Assets

Even though you've found these assets, they aren't going to be worth much unless you protect them from infringement by others. And the best protection is to be proactive rather than trying to protect your work after someone starts to infringe on it. One size does not fit all, though. The type of protection required depends upon the IP involved.



Protection is Job #1: Trademarks/Service Marks & Trade Dress



- While a trade or service mark is not required to be registered to be protected, registration makes a big difference in enforcing your rights.
- First to file Wins (most of the time)
- Trade dress may also be registered
- Apps are taking approximately 6 - 9 months from start to finish assuming no issues
- App fee from \$275 - \$325
- Use TM/SM otherwise

Trademark Protection = Constant Vigilance

Securing a registration for your mark is very important and dissuades a lot of people from infringing your mark. But, how do you prevent others who are not stopped by your registration?

- Make it hard to get an electronic copy of your logo
- Monitor ads, internet pages and keyword searches by your competitors
- Subscribe to a clipping service that alerts you of uses of your mark
- Take appropriate steps to stop infringement when it first starts, including cease and desist letters and litigation.

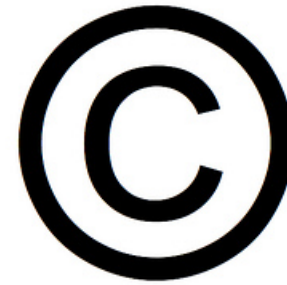
Copyright protection starts from the moment of fixation which means that it belongs to the author and is valid against infringers.

Remember to use the © notice from the start:

“© Year, Name of Author/Owner of Copyright. All Rights Reserved.”

You do not have to have a registration to use this notice.

Protection is Job #1: Copyrights



copyright

all rights reserved



Do Not Pass Copyright Office, Do Not Collect on Copyright Protection

- Even though copyright protection starts from the moment of fixation, registration at the US Copyright office is the ticket to enforcing those rights.
- Registration must be filed for within 3 months of publication to be able to claim statutory damages in any infringement lawsuit.
- Registration filed after 3 months limits you to damages you can prove.

Only You Can Prevent Copyright Theft!



Most copyright infringement is opportunistic – you give them the opportunity to steal it by not making it hard to copy your work. So how do you make it hard to steal?

- Disable the right-click save option for all website photos, images, videos and logos.
- Subscribe to a clipart or sound service that alerts you when certain pictures or text or songs are being used by others.
- Be aggressive about notifying others of their infringement on your copyrighted works.
- Be vigilant!

Protection is Job #1: Trade Secrets

What you should not do:



Or, in other words, do not do anything that would make the secret no longer a secret

Trade Secret Protection:

“Can you keep a secret? Good, so can I.”

If you have any IP that can be considered a trade secret – a client list, price information, recipe, formula – and it is a secret, you need to keep it a secret. Failure to protect your secret will mean that it is no longer considered a trade secret and you cannot go after someone for stealing it.

Keeping It a Secret

How do you keep it a secret?

- ✓ limit the people who know the secret or have access to it, including through password protection and designating specific items as ‘confidential’.
- ✓ make employees sign confidentiality / non-disclosure agreements.
- ✓ make third party suppliers sign confidentiality agreements

When Good Websites Go Bad

E-commerce is a wonderful thing, but what happens when someone tries to be like you on-line? Here's what you do:

- image theft: Fix it with DMCA or copyright suit!
- Cybersquatting: someone has registered your trademark as their domain name. Preempt, but then fix it with ICAAN dispute resolution and civil lawsuit!
- Typosquatting - someone has registered a slight variation in your trademark as a domain name that catches when people misspell your domain name. Preempt, but then fix it with ICANN dispute resolution!

Patently Protected

- The best way to protect a patent is to get it registered.
- The best way to get it registered is to use a patent attorney.
- The Patent Attorney should have a degree in the sciences
- They should be registered before the PTO

Make Your IP Make and Save You money

Your IP is now protected and secure. How do you exploit it?

- **CONTINUE TO PROTECT AND ENFORCE YOUR RIGHTS!**
- Be proactive and regularly evaluate if you have IP that needs to be registered/licensed
- Be vigilant and take the appropriate action to deter third parties from infringing

Infringement Goes Both Ways

You have become vigilant about protecting your IP. But, are you guilty of infringing someone else's IP?

The easiest way to avoid inadvertently infringing someone else's IP is to make sure that you know where it comes from, who owns it and if you have permission to use it.

Some tips:

- ✓ Use your own IP (which you know you own)
- ✓ Make sure that whoever has gotten the IP for you has gotten the appropriate permission/rights
- ✓ Use professional photography/music licensing sites where you know that you have the appropriate rights clearance.

Thank You!

If you have further questions or would like to consult me about your IP situation, you can contact me at (985) 629-0789 or via email at estubbe@hardycarey.com

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