



Every Business Has Intellectual Property

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You and your neighbor have been tinkering in your garage for weeks and you are ecstatic that you have finally developed a new product... a hair dryer. You know you want to develop a business around your hair dryer idea, but what is the next step?

One of the first steps to consider is protecting your business' intellectual property. You may be thinking to yourself... "But my business doesn't have any intellectual property. It's not like I invented a light bulb!" **EVERY BUSINESS HAS INTELLECTUAL PROPERTY** (even if you don't think your business does)!

Every business needs to actively manage its intellectual property. Actively protecting your intellectual property provides a competitive edge, impresses investors, and saves money on legal fees later. Furthermore, it may prevent you from losing the right to protect your IP as once you disclose your intellectual property to the public then you can't "un-ring the bell" and may be prevented from receiving protection on your IP as a result.

What types of intellectual property exist? The following types of intellectual property protection are available: (1) trade secrets, (2) patents, (3) copyright, and (4) trademarks. But how do you know what types of intellectual property your business possesses? The different types of intellectual property protection are described below for your reference.

Trade secrets have economic value if they are not generally known. Anything non-public which provides competitive value can be protected as a trade secret. In order to protect your intellectual property as a trade secret, you need to identify the secret, assess the risk involved if the information were to become public, and reduce the risk by: (1) creating a plan to keep the information a secret, (2) execute the plan, and (3) enforce the plan. How long does a trade secret last? A trade secret will last as long as you keep the information a secret. An example of a well-known trade secret is the recipe for Coca-Cola®.

Patents provide a right to exclude others from making, selling, using, or importing an invention. The general process for obtaining patent protection includes drafting and submitting a patent application, defending the application, and then the United States Patent and Trademark Office will issue a patent. A patent application must be filed within 1 (one) year of disclosing the invention to the public. How long does patent protection last? Generally, 20 years from the filing date of the earliest U.S. or international application to which priority is claimed.

Copyrights protect original works of authorship that are fixed in a tangible medium. Copyright protection provides the owner with the exclusive right to engage in the following and authorize others to engage in the following: (1) reproduce the work in copies; (2) prepare derivative works based upon the

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work; (3) distribute copies of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) perform the work publicly; (5) display the work publicly¹. Copyright protection attaches to a work as soon as it is fixed in a tangible medium. Registration with the U.S. Copyright Office is not required in order to obtain copyright protection. However, registration with the U.S. Copyright Office provides benefits to the copyright owner such as the ability to receive statutory damages and attorney's fees when copyright infringement has occurred. How long does copyright protection last? Generally, copyright protection on a work created on or after January 1, 1978 is protected from the date it was created and fixed in a tangible medium to the date the creator of the work dies plus 70 years².

Trademarks are used in commerce to identify a source of a good or service. When a trademark is used correctly it increases in value over time. Typically, businesses file for trademark protection of their business and/or product(s) name. Additionally, there are three types of trademark protection: (1) common law; (2) state trademark registration; and (3) federal trademark registration. A common law trademark is an unregistered trademark. Common law trademark rights are developed by using a mark in commerce. However, common law trademark rights are limited to the specific geographic region in which the mark is used. State trademark rights are based on a trademark registration issued by the government of a state. Federal trademark rights are based on a trademark registration issued by the United States Patent and Trademark Office. Further, a federal trademark application may be filed as an "actual use" application if the mark is currently being used in commerce, or it can be filed as an "intent-to-use" application if the mark is not being used in commerce but the applicant intends to use the mark in the near future. How long does trademark protection last? Trademark protection will last for as long as you use the mark in commerce.

Now that you understand the basics of intellectual property law and have a grasp on the four types of intellectual property that are available to you and your business, the next step is to contact your intellectual property attorney to determine which type(s) of intellectual property protection would be best suited for you and your business. It is important to keep in mind that no one can protect every aspect of their intellectual property so you need to determine the best strategy for you.

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¹ Section 106 of the 1976 Copyright Act (17 U.S.C. §106)

² However, if the work is a work of corporate authorship then copyright protection lasts 95 years from publication or 120 years from creation, whichever is shorter.

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