Protect Your Greatest Asset: Your Intellectual Property

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Over the years I've worked with a number of entrepreneurs to help them protect one of their greatest assets: their intellectual property. As an entrepreneur, perhaps the most valuable part of your new business is your intellectual property—the idea that you are building your business around.

Copyright is a form of protection that is provided to the authors of both published and unpublished "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. The Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, and to display the copyrighted work publicly. As a general rule, the term of protection for copyrighted works created after January 1, 1978, lasts for the life of the author plus an additional 70 years. For certain other works, such as anonymous works, pseudonymous works, or works made for hire, a different term of protection exists—a term of 95 years from the date of first publication or 120 years from the date of first creation, whichever expires first.

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A copyright protects the form of expression rather than the subject matter of the writing. In other words, copyright protects the way that an idea is expressed from copying by others but does not protect the idea itself.

No filings are required to obtain rights under the Copyright Act. However, copyrights may be, and often are, registered by authors in the Copyright Office of the Library of Congress. This registration is required in order for United States citizens to take certain actions to protect their copyright rights, including pursuing infringers in federal court.

A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a good or product. The terms "trademark" and "mark" are commonly used to refer to both trademarks and servicemarks. Trademarks may last forever, provided that periodic renewal forms and the required fees are submitted.

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling or providing the same goods or services under a clearly different mark. Trademarks which are used in interstate or foreign commerce may be registered with the United States Patent and Trademark Office ("PTO"), provided that the mark is not confusingly similar to a pre-existing registered mark.

Trademark rights exist in several different forms. "Registered" trademarks have been applied for through the PTO and the PTO has allowed the mark to be registered. The rights provided by a registered trademark are nation-wide. Trademark rights may also be more easily obtained at the state level or merely through long use of a mark, but such rights are generally more limited in scope.

A patent for an invention is the grant of a property right in the invention itself to the inventor, issued by the PTO. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed or, where an application is based upon an earlier application, from the filing date of the earlier related application. For a patent to remain enforceable by an inventor throughout its term, the inventor must pay maintenance fees at certain points during the lifetime of the patent. A patent granted in the United States is effective only within the United States, U.S. territories, and U.S. possessions and is not effective an any other country.

The property right conferred by the patent grant is the right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States. A patent does not grant the inventor the right to make, use, offer for sale, sell or import an invention—it only gives the inventor the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the inventor must enforce the patent without aid of the PTO, generally through the federal courts.

There are three types of patents: (1) utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or an improvement thereof; (2) design patents may be granted to anyone who invents a new, original, and ornamental design; and (3) plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Patent rights are statutory rights that exist solely through the patent statute. In order to obtain a patent, an inventor must file an application with the PTO and the application must pass an examination to determine whether the statutory requirements for obtaining a patent have been met by the inventor.

If intellectual property is an important part of your business, you should speak to an intellectual property attorney early in the life of your business about the steps necessary to protect that valuable asset and to prevent others from benefitting from your blood, sweat, and tears.

Derek Prestin has a range of expertise and experience unique to Western and Northern Wisconsin. He counsels and advises clients on intellectual property law, business law, and real estate law in addition to assisting developers of sand mines and processing facilities with state and local regulatory and ordinance filings and analysis. As a patent attorney and former patent agent, Derek helps clients protect their ideas from unauthorized use by others. He counsels and advises individuals and businesses on patent, trademark, copyright, and general intellectual property issues that arise as part of the operation of a business.