

World Of Intellectual Property Rights

Know Your Rights

Protect Your Rights

Enforce Your Rights

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Intellectual Property Rights

In this article, we will briefly introduce and explain the main elements of Intellectual Property.

Intellectual Property (IP) is an intangible property. It is something you, your mind has created. It can be a design, a logo, a name, a number, a business model, a novel, a story, an article, a music composition, lyrics, research, and so on...

Broadly IP can be classified into three different categories. ***Trademark, Copyrights and Patent.***

What is a Trademark?

A Trademark can be anything that helps a business to distinguish its goods/products or services from other competitors from a consumer perspective. A Trademark can be a word, a phrase, a symbol, a design, a logo, sounds bites, or a color scheme. It can be registered when one is already using the mark in the business or when one intends to use the mark for his / her business. The roar of the MGM lion, the pink of the Owens-Corning insulation, and the shape of a Coca-Cola bottle are famous and recognizable trademarks.

Why Trademark?

A Trademark has been, and continues to be used by almost all successful businesses in the history of trade and commerce, as an effective marketing and branding tools.

At the time of starting any new business, small or big, it is advisable to check the availability of name, design, color scheme, or logo of the business for Trademark for two reasons:

If you discover that your business's name, design, color scheme or logo is unique and is not being used in the commerce in the same trade or business, then you might consider registering it as a trademark, to identify your goods or services from others in the commerce, and to put others on guard that no other business entity can use it for the similar business or services.

If you discover your business's name, design, color scheme or logo is similar or confusingly similar to some other trader in the same line of businesses then you must take legal assistance to determine whether use of such name would infringe somebody else's Trademark's rights so as to avoid litigation which may be very costly.

Just like other physical property, a Trademark needs to be protected from unauthorized use as well. Registration of Trademark is not compulsory but registration gives better protection and ability to claim monetary damages upon infringement in the court of law.

The process of Trademark registration can get tricky. Some words, a phrase, or logo/design are not registered until they acquires distinctiveness, i.e. consumers relate the mark/name with certain product/services, while some of the marks are not permitted for registration as they may be considered obscene, scandalous, offensive marks, etc. One needs to be very cautious and is always advisable to seek legal assistance to understand more of their particular situations.

Use of ® or TM or SM

An entity can use symbol ® next to their trademark when that mark is approved and registered with Federal Register. Conversely, an entity could use TM or SM symbols, when they are either using the trademark that are not registered and/or are in a process of registering it. One cannot use any sign of trademark notice like ®, TM or SM, if they are not actually using mark in the business.

Where to register Trademark?

A Trademark can be registered with State Register and/or with Federal Register. State registration protects your Trademark within the territory of respective States and federal registration protects your Trademark in all the States.

There are certain benefits of state registration over federal registration and vice versa. State registration is faster and cheaper than federal registration; federal registration gives protection on national scale while state registration gives protection only within that states; the standard of enforcement of state registration is different from that of federal, filing of intent to use application with federal register, etc. You should seek legal assistance to understand the different provisions of state registration and federal registration and for protection of one's mark.

What are Copyrights?

A copyright is a legal right over original artistic or literary work. Copyright is an expression of ideas or creation. Any original work in the form of paper; architectural drawings; paintings; sound; visual and music recording on tape, disc, or any other format; maps; sculptures; dramatic work; movies; novels; songs; poems; music composition; musical notes; lyrics; computer programs; data sets; photographs; designs; pictures; etc. can be copyrighted.

Copyright can get tricky. One small creation creates many derivative rights and one needs to be aware of complexities to protect it commercially. Let's try to understand it this with an example: a song with a video can have a bundle of copyrights. First, the lyrics, then the composition of music; the visual effects for the same song; taping audio/video of the song, each creates one more set of copyrights and so on. Once a copyright is created, one cannot use it without the proper authorization from the legal owner of that copyright with some exception like fair use. Fair use is a very complex term and one need to seek legal assistance to understand it that exception applies to your particular scenario better before taking shelter of it.

Use of ©:

You can use symbol © immediately once you have finished a creation. One does not have to wait for the registration of that copyright before they can use the notice mark ©. The only pre requisites is that the creations is in a tangible form which is visible directly or visible with help of any device or machine.

How to protect Copyrights?

Ownership of Copyrights vests in the person who creates first. Copyright does not need registration but registration helps to give legal protection to your ownership. It helps in bringing legal action if anyone uses work similar to your work or infringes your right in the creation. Registration of Copyrights helps to ascertain date of creation and authorship of creation which is a crucial element to create exclusive rights in your favor. One can challenge an existing copyright if they believe that their date of creation or authorship was before an existing copyrights holder.

Where to register Copyright?

Unlike, Trademark, copyright is registered only federally i.e. at library of congress. There are no two types of registration like state and federal.

What is Patent?

A Patent is a license granted by an appropriate authority over an invention that is unique and capable of being sued commercially. A patent can be granted to any newly innovated product or component; to an industrial process or manufacturing design, technique or process; and to computer programming of unique business methods. It needs to be new, non-obvious and useful. Examples can include biological patent, chemical patent, software patent, business method patent, etc.

Patent can be classified into utility patent, plant patent, and design patent. Utility patent deals with processes for example manufacturing process whereas design patent deals with the visual characteristics of an object for example an ornamental design. Plant patent rights are granted to those who have invented or discovered and asexually reproduced a distinct new variety of plant.

Symbol notice for Patent:

There are no symbol for patent like trademark and copyrights. Patent is given a serial number and that is required to be displayed on your invention once approved for registration. Unlike, trademark and copyrights, procedural part for registration of patent is more complex especially utility patent.

Where to Register Patent?

Unlike Trademark, patent can be registered only federally. There is no two different registration available like state registration and federal registration. One may register their patent with United States of Trademark and Patent Office.

The life of every Intellectual Property Rights (IP), i.e. Trademarks / Copyrights / Patents, varies from Country to Country. Some rights expire in some years and some are for subject to renewal. One must take legal help to protect and enforce their rights.

If your business is global in nature then you might want to protect your IP worldwide, if so, then one needs to register their IP in different countries and comply with each country's law.

It is very important that you protect your rights. You can protect your rights by registering your rights, taking opposition action against the registration of identical or confusingly similar mark before respective registry, raising objection to register some other author's rights similar to your rights, or by taking infringement action before appropriate authorities.

With that note, we conclude this article. However, before leaving we would like to leave you with a quote that impresses the importance of IP and IP protection in today's global world.

Recent court decisions show how patents can protect small businesses. The U.S. Supreme Court ruling forced the software giant Microsoft to pay \$290 million to i4i, a small Canadian tech company for a patent on XML editing technology that is alleged Microsoft used in its software package.