BASICS OF INTELLECTUAL PROPERTY

OTT STAFF

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BASICS OF INTELLECTUAL PROPERTY
WHAT IS INTELLECTUAL PROPERTY?

Copyright

Trademark

Service Mark

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COPYRIGHTS

Creator of original work

Bundle of rights, including the right to:
• reproduce a work
• create adaptations of a work (derivative works)
• distribute copies of a work
• publically perform a work
• publically display a work

Doesn’t cover ideas and information. Only form or manner that they are expressed
**TYPES OF WORK**

Protection for original *works* of expression fixed in a tangible form, including:

<table>
<thead>
<tr>
<th>literary</th>
<th>musical</th>
<th>photography</th>
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</thead>
<tbody>
<tr>
<td>graphic</td>
<td>audio/visual</td>
<td>toys, dolls</td>
</tr>
<tr>
<td>pictorial</td>
<td>jewelry</td>
<td>websites</td>
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<tr>
<td>paintings</td>
<td>sculpture</td>
<td>blueprints</td>
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<td>games</td>
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<td>plays</td>
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<tr>
<td>software</td>
<td>architecture</td>
<td>databases</td>
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• Arise automatically with fixation of the work in a tangible medium
• Only need to register if suing for infringement
• Very easy to register (go to website and follow instructions)
• Statutory damages (up to $100,000 / infringement) and attorney’s fees
LILLY PULITZER VS OLD NAVY
LILLY PULITZER VS OLD NAVY
LET’S PLAY A GAME
PHOTOGRAPH VS. SCULPTURE

Copyright infringement or not?
PHOTOGRAPH VS. SCULPTURE

Yes!

Copyright infringement or not?
INSTAGRAM VS. SCREENSHOT

Copyright infringement or not?
INSTAGRAM VS. SCREENSHOT

No!

Copyright infringement or not?
Trademarks

Distinctive sign or indicator to identify products/services

Can (theoretically) last forever

Name, word, phrase, logo, symbol, image, or combo of these elements
TRADEMARK ADVANTAGES

• Help identify the source of a product the customer will receive
  • Tie products and/or services to an overall corporate image
  • Can be the most valuable asset
• Rights are acquired through correct use (common law rights)
  • Rights extend to geographical area of operation and reasonable zone of expansion
• Territorial: US registration does not extend protection to other countries.
STRENGTH OF TRADEMARKS

• Depends on distinctiveness

Coined | Arbitrary | Suggestive | Descriptive
------|-----------|------------|----------------
Xerox® | Apple®    | Coppertone®| American Airlines®
Exxon® | Baby Ruth®| Coca Cola® | University of Alabama®

• Prevents a likelihood of confusion
  • Similarity of marks
  • Similarity of products
  • Actual confusion
  • Type of purchasers
HYDROX COOKIES

• Look like Oreos, but were actually first.
  • Launched in 1908, they were discontinued in 1999
• Ellia Kassoff grew up eating Hydrox Cookies
  • Built business bringing brands back from the dead
• Problem: Hydrox was trademarked
  • Originally by Sunshine then passed to Kellogg’s
• Had to show proof that Kellogg’s wasn’t using it
• Wrote Kellogg’s consumer affairs
  • Forwarded the letter to the U.S. Patent and Trademark Office
Even T Swift gets in trouble

- Sued by Robert Kloetzly, boss of California-based Lucky 13, who says she ripped off his rock and roll fashion line.
  - Noticed selling t-shirts and greetings cards with a shamrock design saying Lucky 13, a reference to her birthday and favorite number.

- Aiming her products at the same edgy, tattooed crowd that buy his clothing, jewelry, body spray, car plates and other items.
  - Swift reached a confidential settlement with the firm.
SERVICE MARKS

Identify service rather than product

Must pass test of distinctiveness not present with trademark

Advertising of service where is no “package” to trademark
EXAMPLES OF SERVICE MARKS

• Delivery vehicles - trucks of plumbers or on moving vans.

• Possible to use a service mark consisting of a sound in the process of delivering the service.
  • MGM - uses the sound of a lion's roar
  • RKO - uses a Morse code signal for their motion pictures.
Inventor discloses invention to public & meets "patentability tests"

Government grants a "limited monopoly" on invention
WHAT DO PATENTS PROVIDE

• A property right it is a right to exclude others.
  – Tangible: real property, personal property
  – Intangible: right of publicity, right of privacy

• A patent is an intangible property right and the right is defined by the claims.

• Exclude others from making, using, selling, offering to sell, or importing the claimed invention.
**PATENTABILITY TESTS**

• **Must cover statutory subject matter**
  • Process, machine, manufacture, or composition of matter, or any new/useful improvements
  • Can’t be abstract ideas, laws of nature, or natural phenomenon

• **Must be useful**
  • Must be capable of being made or utilized

• **Must not be anticipated**
  • Must be new or novel

• **Must not be obvious**
  • To one skilled in the art
TYPES OF PATENTS

• Utility – new and useful process, machine, manufacture, or composition of matter, or improvement
  • 20 year lifetime
  • 90% of the patent issued by the USPTO

• Plant - new and distinct, invented or discovered asexually reproduced plant
  • Cultivated spores, mutants, hybrids, and newly found seedlings

• Design - new, original, and ornamental design embodied in or applied to an article of manufacture
  • 14 year term of a design patent is subject to change in the near future
EXAMPLE

Head Athletic Trainer

Engineering Students

Office of the Vice President for Research & Economic Development
Office for Technology Transfer
• Apple sued Samsung over patent infringement
  • 3 utility
  • 4 design
• Jury found Samsung knowingly infringed
• Apple was awarded ~$290 million
• Samsung mobile phone sales 2011-2012: ~$692 million
Most Famous Design Patent

- Issued on Feb. 18th, 1879
  - French sculptor
- Patent allow to create and sell replicas
  - Fundraising effort
- Seen by millions every year
MOST FAMOUS DESIGN PATENT

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I have a provisional patent, therefore I have a patent.
PATENT MYTH #1

• This is not true!

• Provisional Patents do not exist.
  • Provisional Patent Application
  • “Rough Draft”
  • 1 year to convert or file final draft
I cannot tell anyone about my idea until I have secured a patent.
PATENT MYTH #2

• This is not true!

• Conversation cannot be enabling
  • Don’t give details that allow someone to recreate
  • If you do commit an enabling disclosure, this could impact your ability to receive a patent
PATENT MYTH #3

I can patent any idea I have, no matter what.
PATENT MYTH #3

• Again….not true!

• Prior Art Check
  • Has it been done before?
  • Is it readily available information?
  • Can your idea be distinctly differentiated

• Reduction to Practice
  • Can’t just be a concept
  • Need to show proof it can be created and utilized
PATENT PROCESS

Determine type of patent
- Provisional
- Utility
- Design
- Plant

File via written application

Determine "claims"
What you want to protect

Wait 3-5 years

Cost range $10k-$30k
TRADE SECRET

1. Not known to public
2. Provides economic benefit to holder
3. Reasonable efforts to maintain secrecy

ONLY PROTECTED WHEN NOT DISCLOSED

Non-compete and non-disclosure contracts with employees
POPULAR TRADE SECRETS

Coca-Cola

KFC®

WD-40®

Krispy Kreme Doughnuts®
Non-Disclosure Agreements

- Legal contract between at least two parties
  - Outlines confidential material, knowledge, or information
  - Agree not to disclose information
  - Protect any type of confidential and proprietary information or trade secrets
- It is also possible for an employee to sign an NDA or NDA-like agreement with an employer.
  - Restricting employees' use and dissemination of company-owned confidential information.
COMPETITIVE ADVANTAGE

Strategic advantage over rivals

Intellectual property is considered business asset

Provides benefit to owner to the extent that is has or can create value

Can be barrier to entry for other companies
QUESTIONS?