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**INTELLECTUAL PROPERTY OVERVIEW**

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# TYPES OF INTELLECTUAL PROPERTY

- Patents
- Copyrights
- Trademarks
- Trade Secrets

# PATENTS

- Bargain between inventor and federal government
- What do you get? A monopoly over your invention for 20 years
- What does society get? Your invention is added to the public storehouse of knowledge

# What Can You Patent?

- A process, machine, manufacture, or composition of matter that is:
  - Novel
  - Non-obvious
  - Useful

# Novelty

- The invention has not been made known to the public through use or publication.
- Anticipation requires that the prior invention contain each feature of your invention.
- Prior invention can be obscure (foreign inventions; college dissertations.)
- USPTO limitations and full disclosure.

# Non-obviousness

- Your invention has to produce “new and unexpected results”.
- Commercial success of invention.
- Long-felt but un-met need
- Failure of others to come up with invention

# When to File Application?

- One year rule: application must be filed within one year of your public use or disclosure of invention
- Provisional application – one year to file full application

# Who owns your invention?

- Make sure employees have confidentiality/invention assignment agreements

# Patent Litigation

- Infringement
- Validity (prior art, inventorship, PTO disclosures, enablement, best mode)
- Claim Construction
- Cost (prior art search, experts, discovery)
- Damages

# What is a mark?

- Identification of source. Answers the question: where does this product come from?
- Word
- Symbol
- Stylized word
- Tagline or slogan
- Color

# How to obtain trademark rights?

- Use of mark in commerce on product.
- Expanded rights available through federal registration.
  - Nationwide rights.
  - Notice to world of your rights.
  - Eventually incontestable rights.

# Selecting the right mark

- Make sure the field is clear.
- Make sure the field will remain clear.
- Scale of distinctiveness.
  - Arbitrary
  - Fanciful
  - Suggestive
  - Descriptive
  - Generic

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Scope of Protection

# How close is too close?

- Likelihood of confusion
  - Similarity of marks (sight, sound, meaning)
  - Similarity of products
  - Commonality of distribution channels
  - Strength of senior mark
  - Instances of actual confusion
- Dilution

# How to build a strong mark

- Select an arbitrary or fanciful mark
- Use your mark with a distinctive logo or design
- Invest in advertising
- Use the <sup>TM</sup> or ® symbol as appropriate
- Enforce your rights against infringers

# What is a trade secret?

- Information that provides a competitive advantage in the marketplace and is treated as confidential.
- Information that you hide from your competitors
- Customer lists: time, sweat and money
- Most at risk when an employee leaves and goes to work for a competitor

# How is a trade secret different than a patent?

- Trade secret protection can last forever; patent protection only 20 years
- A trade secret does not need to meet the patentability requirements
- Trade secret protection does not give you exclusive rights to your invention; a patent does give you exclusive rights

# How to protect trade secrets?

- Covenants not to compete
- Identify
- Educate
- Label
- Lock

# COPYRIGHTS

- Original works of authorship fixed in a tangible form of expression
- Exists immediately upon creation
- Lasts for life of the author + 70 years
- Advantages of registration:
  - Necessary before a lawsuit for infringement of the copyright can be brought
  - Statutory damages (if registration made within three months after publication)