

Managing Intellectual Property in a Crisis (Part 2)

PUBLISHED ON
March 31, 2020

(Note: This is the second of a three-part series stressing the importance of intellectual property protection in difficult economic times. You can [read Part 1 here](#), and watch for Part 3 tomorrow.)

Maintaining intellectual property first requires identification of intellectual property your business already possesses. Intellectual property rights are classified into various categories, each protectable by different legal instruments such as patent, copyright, trademark and trade secret.

In the U.S., a patent provides protection for novel and useful processes, machines, manufacture or compositions of matter. Once issued, the patent provides the owner the right to exclude others from making, using, selling and/or importing a product that is covered by that patent. It is important to recognize that this protection is one of exclusion, granting a company's innovations value and validity.

The federal government further provides intellectual property protection for an original work of authorship in literary, audio-visual and other works of expression in the form of copyright. The owner of a copyrighted work may exclude others from reproduction, distribution, public performance, public display, or preparation of derivative works. Fundamentally, a copyright will protect an original and creative way an idea or procedure is expressed from the moment it is fixed in a tangible medium of expression. Unlike patent protection, registration with the U.S. Copyright Office is not required. Nevertheless, a registration of a copyright provides additional benefits to a business, including statutory damages and evidence of the ownership of the work. Often, we see that technology is not just protected by copyright or patents, but rather both, since systems are generally a combination of software and mechanical implements.

Trademark and unfair competition laws protect the trade identity associated with the goods and services of a business. Assuming that a trademark qualifies for protection, rights to a trademark can be acquired in one of two ways. Actual use of the mark in connection with the sale of goods and services establishes ownership, at least with respect to geographic area of use. However, by being the first to register the mark with the United States Patent and Trademark Office (USPTO), the owner of the mark receives additional benefits, including nationwide constructive notice of ownership, an ability to bring infringement suits in federal court and prima facie "incontestability," establishing the exclusive right to use the mark. Trademark laws provide owners with judicial remedies to prevent others from using confusingly similar marks.

A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others. A trade secret or confidential information has an indefinite life if it can be kept secret and confidential. A court decides whether a piece of information qualifies for trade secret protection by examining a variety of factors, including how well known the information is to the general public and the steps taken by the owner to protect it from

being disclosed.

These items for patents, copyrights or trademarks are general, but each business likely will have specific questions on how they can apply to each business. If you have questions about your own potential intellectual property, please [contact me](#) or any member of the [Barley Snyder Intellectual Property Practice Group](#).

DISCLAIMER: As we face an unprecedented time of legal and business uncertainty, we are working to provide updates on the status of important legal news related to COVID-19. It is important to note that the situation is changing rapidly and the information provided in our alerts is not intended to create an attorney-client relationship. The information contained in our alerts is for general informational purposes only and should not be construed as legal advice or a substitute for legal counsel. If you have questions about your legal situation or about how to apply information contained in this alert to your situation or about how any other information found on our website may affect your business, you should reach out to one of our attorneys. We assume no responsibility for the accuracy or timeliness of any information provided herein or by any linked site. As information changes rapidly, users are strongly advised to verify any information before relying upon it.

WRITTEN BY:



Joseph R. Falcon, III

Partner

Tel: (610) 889-3697

Email: jfalcon@barley.com