

## PROTECT YOUR USA BRAND AND PRODUCTS, AVOID KNOCKOFFS AND INFRINGEMENTS

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What comes to mind when you see golden arches? A swoosh? A red target? What images pop into your head when you hear Mac, Dell, Rip Curl or Oakley?

With or without an associated logo, a name or brand can be a powerful marketing tool. The public associates and distinguishes products through brands.

A recognizable brand and quality products or services are some of the most important assets a business has. Patents then protect the unique novel aspects of the products that are associated with the brand. Copyrights can protect the design of the products, the advertising and the web site presence.

Collectively, trademarks, copyrights and patents are referred to as intellectual property. In order to gain brand value, it is important to prevent others from using the same or a similar brand. Failing to prevent other businesses from using the same or similar brands can lead to loss of sales due to consumer confusion. You can protect your rights to a brand by filing for trademark protection, and in some cases, copyright protection for any design element of the brand.

A United States trademark, also referred to as a service mark when it protects a service, is filed with the U.S. Patent and Trademark Office. If a name or symbol is unique and not confusingly similar to any other marks, the office will grant the trademark a registration.



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The registration gives the owner exclusive rights to use this mark in commerce nationwide for the classification of goods and/or services it is registered for. If another business uses the registered mark to cause consumer confusion for profit, the rightful owner has the protection to combat this activity.

Another type of intellectual property protection is copyright protection. Copyrights cover the expression in an artistic work, which can include designs and also textual works and Web sites.

If a copyright is filed prior to another business or person using or infringing upon that copyright, the owner of the copyright has more leverage to file a lawsuit for infringement and would be entitled to a more definitive set of damages and, potentially, attorney fees.

It is true that a common law copyright vests when a work is created. However, in America copyright infringement cannot be initiated until the copyright has been filed with the U.S. Copyright Office. There are several treaties

and conventions which many foreign countries adhere with allowing U.S. Copyrights to be recognized in those particular countries.

A common pitfall many businesses encounter is employing third parties to create logos, artistic works or Web sites. If such employment occurs, the person who is contracting for the creation of the artistic expression needs to have an agreement with the third party to assign all rights in that copyright to the business. All assignments must be done in writing and must clearly state that all copyrights have been transferred to the person contracting for their creation.

The third category of intellectual property rights is patents. A patent protects the utilitarian function or design aspects of an invention or product.

In order to obtain a patent, the invention must be something new, novel and not obvious in light of all previous similar products. A patent must be filed within a year of the invention's disclosure to the public. If not, all exclusive potential patent rights are legally released to the public domain. Furthermore, now with the recently enacted America Invents Act it is more important to file right away. Now the inventor who files first is granted the protection rather than in the old system which granted protection to the first to invent.

If a business has an invention it believes may be patentable, it is of utmost importance that the company seek legal advice to

ensure that protection is pursued as soon as possible after its disclosure or sale to the public.

Once a patent is filed, it goes through a rigorous review called prosecution by the U.S. Patent and Trademark Office (“USPTO”). The majority of the time, the USPTO’s examiners will issue official actions or rejections, which need to be argued by an attorney in order to obtain the patent.

If a patent is granted by the office, the protection extends only to the U.S. and to imports coming into America. If a business wants patents in foreign countries, this

protection must be pursued within a year after filing the U.S. patent.

The best way to avoid knockoffs and unfairly competing brands is to protect your intellectual property upfront. If you have a business and are thinking of acquiring copyrights, trademarks or patents from another company or individual, you need to make sure that all the transfer documents are correctly drafted and that the agencies who govern these rights are advised of the new ownership. Trademark and Patents can also be filed in foreign countries. Our firm can assist you with any of these filings.

Your business also needs to confirm that it has licensing or related agreements in place with any third parties your business employs.

Even with all the above protections in place, your company is still not immune from knockoffs. However, you will be in a much stronger position to combat such knockoffs of your brands and products.

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