

Protecting the Intellectual Property of a Small Business

What is intellectual property? The legal definition of intellectual property is property that is the creative product of the mind, which includes the law of copyright (works of authorship), trademark (ownership of brands and marketing efforts), and patents (inventions of the mind). A small business may have intellectual property that includes a corporate logo, a tag line or slogan, a product name, software that the corporation developed, a product that is uniquely produced by that company, etc. Since these types of intellectual property may be the foundation of your business, and may be the money maker that keeps your business going, you want to protect that property from anyone else using it as theirs, or using it in such a way as to make your product appear inferior.

Copyrights

Copyrights are awarded to published or unpublished literary works, music, stage plays, artwork, jewelry, computer programs, movies, television shows, computer games, and photographs and videos (including selfies!), and covers how an idea or story is presented, not necessarily the story or idea itself. Once the idea or story is put into a fixed or tangible form (not just written form), including if it can be accessed by a machine or device, it is automatically copyrighted. A work is properly copyrighted by putting the author's or corporate name, the © symbol and the date on the document so that there is no question as to who owns the copyright. A copyright does not have to be registered with the U.S. Copyright Office, but if there is ever a need to bring legal action to protect your copyrighted work, it may be easier if the work is registered. If you are publishing stories, you should register your copyright with the U.S. Copyright Office. Copyrights last for the life of the author plus 70 years.

Trademarks

Trademarks are awarded to a company's product or brand, and can be a word, name, symbol, or device. Trademarks can be designated as such by placing the well-known TM mark on a word or symbol. Doing this provides you with some protection by indicating that the name or logo is owned by a particular entity.

A company should take the added step of registering its trademark with the U.S. Patent and Trademark Office, and receiving the ® symbol. The registration of your trademark means you are recognized as the true owner of the trademark, and gives you exclusive rights to use that trademark. Trademark registration usually lasts for ten years before renewal is required to maintain ownership of the trademark.

Service Marks

Service marks are another type of intellectual property that describes the service of a company as opposed to the company's trademarked product or brand, and are usually slogans that describe the business. Because the service is described by the service mark, the service mark is usually used in advertising of the service. Like trademarks, placing the SM designation next to your service mark indicates ownership, but registration with the U.S. Patent and Trademark Office provides more protection.

Patents

Patents are awarded to inventions, and are granted by the U.S. Patent and Trademark Office in exchange for the public disclosure of the invention. There are three types of patents, and the duration of the patent is usually 20 years. *Utility patents* may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof. *Design patents* may be granted to anyone who invents a new, original, and ornamental design for

an article of manufacture. *Plant patents* may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.¹

The process of applying for a patent can be lengthy and complex. The individual responsible for the invention can file for the patent, but due to the complexity of the process and the importance of the correct registration of the patent to a company's success, the filing process should be done by a registered patent attorney or patent agent who is familiar with the intricacies of the patent filing process.

No matter how big your company may be, your intellectual property may be the most valuable asset you have, and it must be protected. Contact The Law Firm of Robert D. Schmitter, LLC and we can help keep your IP your own. <https://schmitterlaw.com>

¹ U.S. Patent and Trademark Office, <https://www.uspto.gov/patents-getting-started/general-information-concerning-patents>