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To protect intellectual property, you have to understand how to manage it

Most entrepreneurs will tell you that one of their main goals is to protect their intellectual property, but they often confuse the different types of intellectual property and the methods used to protect each type. Armed with more knowledge, entrepreneurs can better understand the intellectual property they own and learn to manage it strategically.

Gizmos

A "gizmo" is the type of intellectual property commonly known as an "invention." There are two types of protection for inventions: patents and trade secrets.

First, entrepreneurs can protect their inventions by obtaining a patent on the invention. A patent -- granted by the U.S. Patent and Trademark Office (PTO) -- is an official grant of intellectual property rights given to the inventor. A patent gives the right to stop others from making, using or selling the invention and lasts for a term of 20 years.

Under the Patent Act, patentable subject matter includes: "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." Note that improvements are included in the definition of patentable subject matter.

Generally, the inventor does not have intellectual property rights on the gizmo until the PTO issues the patent. The resulting patent represents a balance between the rights of the inventor and the public, since the patent process requires the inventor to describe the best way to practice his invention, which allows others to build on the inventor's knowledge and advance science.

But many inventors do not want to reveal the best way to practice their inventions because they believe that such a revelation will make it easy for competitors to reverse engineer the inventions and therefore avoid the patent. This problem introduces the second type of protection for gizmos: trade secrets.

Trade secrets, like patents, provide protection for inventions. Trade secrets protect inventions by prohibiting any unauthorized disclosure of the invention. An invention -- usually a process -- is eligible for trade secret protection if it is an invention that cannot be discovered by observing or examining a product after the product leaves the factory, and the inventor takes reasonable steps to maintain the secrecy of the invention.

To qualify for protection as a trade secret, the inventor must take reasonable steps to maintain the secrecy of the invention, including requiring employees to sign confidentiality agreements and limiting disclosure to disclosure only on a need-to-know basis.

The problem is that a "secret" known by more than two people usually does not remain a secret for long. As a company expands, it hires more people, and as it hires more people, the company typically shares the trade secret with the new employees to improve productivity. From this point, it is only a matter of time before one of the employees with knowledge of the trade secret is fired for some perceived misstep and divulges the trade secret.

In that case, trade secret protection kicks in to give the company a right to sue the former employee for damages. Unfortunately, the right to sue the former employee may not be very satisfying.

Logos

A logo is a type of intellectual property traditionally called a "trademark." Trademarks are words, names or symbols that distinguish and identify the source of a business's goods or services. Subject to certain conditions, entrepreneurs can protect their trademarks by registering them.

Additionally, entrepreneurs can use trademarks to protect any other means of identifying the source of goods or the source of services. Consequently, sounds (the NBC chimes), colors (pink house insulation) and scents (lavender thread) may all become registered trademarks.

Trademark registration prohibits others from using a "confusingly similar" trademark in the United States and gives the trademark owner a right to sue for unauthorized use of that trademark.

Trademark registration lasts for as long as the registrant continues to use the mark and pay periodic maintenance fees.

The most common problem facing entrepreneurs attempting to register trademarks is the requirement that the trademark be more than merely descriptive of the goods or services under the mark. To fulfill this requirement, the trademark must be fanciful, arbitrary, suggestive or descriptive with a "secondary meaning."

Fanciful trademarks are invented for the sole purpose of functioning as a trademark -- Kodak and Exxon are fanciful trademarks because the words "Kodak" and "Exxon" had no common meaning before they were used in relation to goods.

Arbitrary trademarks have a common meaning, but that common meaning is unrelated to the goods or services under the mark, such as Apple -- an arbitrary trademark because apples are commonly known as fruit, but are unrelated to computer technology.

Suggestive (or "allusive") trademarks suggest a quality or characteristic of the goods or services under the mark, but require the consumer to use "imagination, thought, and perception" to understand the exact nature of the goods or services. Citibank (financial services) and Playboy (magazine) are suggestive trademarks.

While entrepreneurs might find the "more than merely descriptive" requirement bothersome, it makes sense when you consider the consequences of trademark protection. If a trademark is registered, all others are prohibited from using marks confusingly similar to the registered mark. Consequently, to prevent excessive trademark conflicts, it makes sense to require that trademarks be specific and distinctive such that only a relatively small number of subsequent marks might be "confusingly similar" to the registered mark.

Novellas

A "novella" is a type of intellectual property known as "original works of authorship," including short stories, musical scores, paintings and software. Entrepreneurs can protect original works of authorship using copyrights.

Since 1976, authors can automatically have a copyright in their original works of authorship as soon as the

original work is "fixed in a tangible medium." In other words, the copyright is created when the original work is created without any additional effort by the author.

Authors may register their copyrights with the Copyright Office in Washington, however, authors are not required to register until they intend to file a lawsuit for copyright infringement. Copyright infringement occurs when someone creates a work substantially similar to the author's original work.

A copyright lasts for the life of the author plus 70 years. The copyright term differs slightly where the copyright owner is a company.

Intellectual property can sometimes be classified both as a traditional invention and as a work of authorship. Consequently, the intellectual property can be protected by either a patent or a copyright.

For example, imagine a trendy new drink. If the drink meets certain conditions, it could be patented or copyrighted. Now, contemplate the results. If the drink is patented, others would be prohibited from making, using or selling the drink; however, the drink recipe could lawfully be copied and freely distributed. On the other hand, if the drink recipe is copyrighted, others would be prohibited from copying the recipe. However, anyone capable of memorizing the recipe would be free to make, use or sell the drink.

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