

Business Tips

Patents, Trademarks, and Copyrights

The differences between patents, trademarks, and copyrights are often confusing for small businesses interested in protecting these intellectual properties. It is important to understand these forms of intellectual property in order to properly protect the intangible assets of your business and to avoid any infringement on the intangible assets of others. The following is a brief explanation of each term from the U.S. Patent and Trademark Office.

What Is a Patent? A patent for an invention is the grant of a property right to the inventor, issued by the Patent and Trademark Office. The term of a new patent is 20 years from the date on which the application for the patent was filed in the United States. U.S. patent grants are effective only within the U.S., U.S. territories, and U.S. possessions. The right conferred by the patent is, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States.

What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.

Since 1995, a person may file a provisional patent application which is less expensive and gives you 12 months before you have to file a regular non-provisional patent application. An inventor may use the patent pending term during the 12 months of a provisional patent application. Keep in mind that if a non-provisional patent application is not filed with 12 months of a provisional application, the application will be abandoned.

What Is a Trademark or Servicemark? A trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are commonly used to refer to both trademarks and servicemarks. Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks, which are used in interstate or foreign commerce, may be registered with the U.S. Patent and Trademark Office. Only this federally registered trademark entitles you to use the ® symbol with your mark. Otherwise, you may use the ™ symbol to alert the public to your claim to the rights of the mark. Also, most states offer a state registration of trademarks that gives you priority of rights within that state.

What Is a Copyright? Copyright is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly. The copyright protects the form of expression rather than the subject matter of the writing. The Copyright Office of the Library of Congress registers copyrights.

For more information visit the U.S. Patent and Trademark Office website at www.uspto.gov. Counselors at the SBDC can also provide assistance with understanding your intellectual property.

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