How To Protect Your IP As A Business Owner

Understanding and protecting your intellectual property is critical to any business. A quick overview and some thoughts on getting started.

For many of our clients, one of their primary drivers of value, and a key component of their business, is some type of intellectual property. This can range from an invention or software you develop to an element of your branding. Many small business owners aren't exactly sure where they need to begin when it comes to taking the steps to properly protect their intellectual property. Here's where to start.

The Proper Mindset

When it comes to protecting your intellectual property, ideally, you want to act as quickly and aggressively as possible. What this means, in practice, is that as soon as you start to apply for state or federal licensing, incorporating, or taking any sort of legal steps to make your business a reality, you want to start working on getting the proper IP protection. Start identifying elements of the business and products that you can protect via trademark, copyright, and patent (more on those in a moment), as well as practices to maintain your trade secrets.

At this stage, most companies may simply want to make sure that what you're filing for hasn't already been claimed by another business. This can be accomplished by searching the online U.S. Patent and Trademark Office ("USPTO") database for your exact mark or obvious variations. Such a search is useful for identifying the most obvious problems with your new mark that would make it a clear non-starter but it will not necessarily locate all potentially problematic marks. There are also state trademark registries that can be searched in a similar manner.

Actions To Take

As mentioned before, there are three main types of IP protection you can file for as a business owner. Trademarks are designed to protect a business's name, logo, designs, symbols, and even catchphrases Ownership of a federal registration provides you with multiple advantages over an unregistered "common law" mark. However, because of this, it's often a prolonged process to go about getting one. Generally, you need to apply with the USPTO, then wait a few months before the application is reviewed by an Examiner. Once any issues are resolved, your trademark application enters a 30 day period where other people have the right to challenge your trademark. Assuming all goes well, your federal registration can remain active forever provided you continue to use the mark and file all the required maintenance documents.

Copyrights, by comparison, are designed to help creatives protect their original work, like books, art, and music, or even software. Copyrights arise automatically when an original work is created; however registration of your copyrighted material enhances their value by creating a public record of ownership and the ability to file a lawsuit for copyright infringement. Generally, the copyright registration process takes six to nine months to resolve, and you may need to do research beforehand to make sure your

work doesn’t infringe on someone else’s before registering with the U.S. Copyright Office.

Finally, patents focus on the basic ideas that a business owner may have. These are the strongest of any IP protection laws, but the first company to file the patent ends up getting it. If you are working on an invention, you want to have the details and other necessary information ready to file right away. In addition, there are rights you lose if you publicly disclose your invention (i.e. launch your product) before filing for the patent, so it is especially important to start this process early.

In general, you will need the assistance of an attorney for each of these, but there are some steps you can do on your own. The first step is often identifying your critical IP and then understanding the best way to protect it.