

# Patents, Trademarks, Copyrights and Trade Secrets (“IP”) – 15 Minute, “Bare Bones” BASICS

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# IP IS A BIG DEAL

## **USPTO Says IP-Heavy Industries Drew \$7.8T In GDP In 2019**

A U.S. Patent and Trademark Office report issued Thursday shows that U.S. industries that rely intensively on intellectual property — including utility and design patents, copyrights and trademarks — accounted for 41% of all domestic economic output in 2019, amounting to \$7.8 trillion.

 *Report attached* | [Read full article »](#)

# IP PROTECTION IS THE EXCEPTION, NOT THE RULE

- GENERAL RULE = **FREE ENTERPRISE**
- IP RULES AND DEADLINES ARE **STRICT** AND **UNFOREGIVING**
- GET IP *RIGHT*, AND IT CAN SAVE YOUR BUSINESS – GET IT *WRONG* AND IT CAN DESTROY IT.

# IP CATEGORIES

(EACH WITH VERY DIFFERENT RULES)

- **Copyrights**
- **Trademarks**
- **Patents**
- **Trade Secrets**
- **Choose the right category!**

# COPYRIGHTS

- **Copyright:** Protects original “works” such as books, software, movies, paintings, recorded music, sculptures....  
.
- Copyright Generally Does **NOT** protect “useful items” (that’s mostly patents), and Never protects mere facts, laws of nature, or ideas devoid of original and creative attributes.

# COPYRIGHTS

- **How does one qualify for copyright protection?**
  - Create (or be assigned) an “original”, copyright-eligible work with creative input that is more than mere information or ideas.
- **What about registering?**
- **Is everything I pay to have created a “work for hire”?- NO!!**

# COPYRIGHTS

- **MYTH #1:** If you change someone else's work enough (the *mythical* "percent change rule"), you can "get around" their copyright (**advise that I have heard from numerous lawyers!**).
- **REALITY:** WRONG!! Copyright covers *much* more than just literal, verbatim copying, including the making of "**DERIVATIVE WORKS**".
- **WHY DO YOU CARE?** To rely on the "percent change rule", you are usually *admitting* to copyright infringement.

# TRADEMARKS

- **DANGER!!!!!!**
- **Trademark Rights:** Protect first-adopted words and/or symbols that can and do *DISTINGUISH* the associated goods or services of one vendor or sponsor from those of all others.
- “Coca Cola” (not just “cola”); “Microsoft”, not just “software”; “Amazon”, not just “online shopping”, and “Allstate”, not just “insurance services” .....



# CAN *THIS* BE A TRADEMARK?

## (CHOOSE WISELY!!!)

- “**LIGHT BULB**” (for light bulbs)?  
NO!
- “**ROUGH STUFF**” (sand paper)  
❖ *MAYBE* LATER (IF AVAILABLE)
- “**DRIFT AWAY**”  
❖ YES (IF AVAILABLE)
- “**EXXON**”  
❖ YES!!! (IF AVAILABLE)

“SO, I GET IT - EVERYDAY WORDS,  
LIKE “LIGHTBULB” CAN’T BE A  
TRADEMARK, RIGHT? ”

- APPLE for apples?
- APPLE for computers?



# TRADEMARKS

- **MYTH #1:** Forming a business entity (or filing a “DBA”) in the U.S. means that the name can be used as a BRAND for products or services (**FREQUENT ADVICE FROM SOME LAWYERS**).
- **REALITY:** If someone owns the name as a trademark, the new company name CANNOT be used as a brand. Incorporation or filing “DBAs” do ***NOTHING*** for you in permitting public use of a name.

# TRADEMARKS

## BUSINESS ORGANIZATIONS CODE

### TITLE 1. GENERAL PROVISIONS

#### CHAPTER 5.... Sec. 5.001. EFFECT ON RIGHTS UNDER OTHER LAW.

(a) The filing of a certificate of formation by a filing entity under this code...or registration of [an assumed] name...does not authorize the use of a name in this state in violation of a right of another... (emphasis added).

# TRADEMARKS

## **BUSINESS & COMMERCE CODE TITLE 5. GENERAL PROVISIONS CHAPTER 71.... Sec. 71.157 EFFECT OF FILING.**

(a) This chapter does not give a registrant a right to use the assumed name in violation of the common or statutory law of unfair competition or unfair trade practices, common law copyright, or similar law (emphasis added).

# TRADEMARKS

- **MYTH #2:** Trademark infringement is easy to understand and to avoid - just differentiate spellings a little, change capitalization, add a word, etc.
- **REALITY:** Trademark infringement exists upon the use of **ANY** trademark (even completely different words) which, in view of an earlier used mark of a third party, creates **merely the LIKELIHOOD** of confusion as to source, sponsorship, approval or affiliation.

# TRADEMARKS

- **REALITY** (cont.)
  - **ECKSAHN** would infringe **EXXON** for automobile related goods or services (or just about anything else).
  - **RED DELICIOUS** (for computers) would very possibly infringe **APPLE** (for computers).

# TRADEMARKS – DO IT RIGHT!

- **WHY DO YOU CARE?**: Your business can be destroyed if you attach your reputation to someone else's brand, or adopt a "brand" that actually cannot be owned as a brand;
  - Change all of yours signs;
  - Change product packaging, labels, or even molds;
  - Wasted Internet Expense;
  - Wasted Advertising;
  - Start Anew Building Reputation (explain to customers)
  - *Trademark Infringement Litigation*



# PATENTS

- Patents provide temporary exclusivity for making.... machines, chemical compositions, manufacturing processes, and even some business methods.
- *Legal* monopolies that allows the owner(s) to prevent others from making, selling, using, importing....that which is patented.

# PATENTS

- **MYTH #1:** I can protect my invention by mailing myself a letter.
- **REALITY:** The “poor person’s patent”(recommended by some lawyers) does nothing to protect your invention.
- **WHY DO YOU CARE?:** Relying on this mythical “protection” can lull one into waiving rights by waiting too long to file a real patent application.

# PATENTS

- **MYTH#2:** It is easy to get around a (valid) patent - you just get your own patent, or even just add something to, or change anything that's **shown** in the patent.
- **REALITY:** Patent coverage can be very difficult to interpret, and often has little to do with what "shown" or depicted in the patent.
- **WHY DO YOU CARE?:** Patent infringement costs about \$3.5M to prosecute or defend through appeal, can shut down a business, and can result **\$BILLION** damage awards.

# TRADE SECRET

- **Trade Secret Rights Protect:** Secret business or technology information the secrecy of which gives it possessor a competitive advantage.
- Think Coca Cola formula.

# TRADE SECRETS

- **How does one protect trade secrets?**
- ***Demonstratively* maintain secrecy of qualifying information.**

# IP Myths, Traps and Disaster Avoidance for the Non-IP Lawyer

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