

General Information of Intellectual Property Law

"Intellectual Property" is used to describe various types of property that can be owned by a person or a company. It differs from real property (land and buildings) and personal property (cars, clothes, jewelry) in that intellectual property is developed through the effort of a person's thought. It also differs from real and personal property in that an infringer can use the intellectual property of another without depriving that owner of its continued use. It is common to refer to intellectual property as "IP".

IP law is an umbrella term. It really involves four distinct fields of law:

- Patent law – used to protect inventions
- Trademark Law – used to protect words or symbols that indicate the source of goods or services
- Copyright Law – used to protect a work of authorship
- Trade Secret Law – used to protect anything that has value because it is not generally known by others

Each of these areas of law has a specific purpose. Sometimes an invention will need to be patented and its product name will also need to have a trademark registered. Software nested inside of the product can be protected with copyright. And customer lists and vendor pricing might be protected as a trade secret.

Each form of protection provides the owner with certain rights. In simplified terms, these rights include:

- Patents – the right to exclude others from making using or selling the claimed invention;
- Trademarks – the right to use the product name and the right to prevent others from using a similar mark if there is a likelihood that it would cause consumer confusion;
- Copyright – the right to keep others from making additional copies of the copyrighted work, the exclusive right to create a work derived from the original work, and the right to control distribution of the work up to the first sale;
- Trade secrets – the right to prevent the use or dissemination of the trade secret by someone who has gained the information by improper means or whose disclosure would violate a confidential relationship.

It is important to understand the limitations for each of these areas as well. For example, a patent provides its owner with rights that are defined by the "claims" in the issued patent. These claims may be very narrow in scope and the validity of the claims may be challenged. A trademark must be "distinctive" to be registered or enforced. Distinctiveness is a subjective standard that can be lost over time and improper use. A copyright is relatively simple and inexpensive to register. However, it is common for infringers to alter a copied work. This adds to the burden of the copyright owner to prove infringement. A trade secret can be very valuable, but that value can evaporate if a competitor reproduces the secret through reverse engineering.

Carstens & Cahoon LLP has developed this series of informational brochures to explain some of these concepts in greater depth and to introduce additional issues to keep our clients educated about IP Law. If you have additional questions, please feel free to give us a call at 972.367.2001.