

# **GOT IP?**

## **Intellectual Property as a Marketing Tool\***

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### **I. Introduction**

In today's competitive marketplace, most businesses are trying to find business strategies that will help their voices be heard in the ever-increasing cacophony of marketing noise. One often overlooked strategy that can raise the profile of a business or product is the tactical use of intellectual property as a marketing tool. By gaining a better understanding of what intellectual property is, and how it can be marshaled as part of an effective marketing campaign, most businesses can create additional leverage in the market.

Additionally, it has been my experience that most small businesses assume, wrongly, that they either don't have any intellectual property or that they don't need any intellectual property. After reading this article, you should be better prepared to identify and profit from your intellectual property. We'll begin with a brief refresher course on what intellectual property is and then discuss how to use it to your best advantage.

### **II. What is Intellectual Property?**

Collectively, patents, trademarks, copyrights, and trade secrets are known as "intellectual property," referring to products that come from the creative mind. Most people know that the term "real property" refers to things like homes, commercial buildings, land, etc. Similarly, most people know that the term "personal property" refers to things such as cars, stereos, clothing, etc.

While many people may have heard the term "intellectual property," few understand what it really means. Intellectual property (sometimes called "IP") is the legal embodiment of the creative efforts of a person or business. Intellectual property can be an asset just like your home, your car, or your bank account. As with other types of property, intellectual property should be protected from theft and misuse. Additionally, you can profit from your intellectual property, if you know how to use it in a targeted marketing effort.

There are four basic types of protection for intellectual property – patents, which protect inventions and improvements to existing inventions, trademarks, which are brand names and/or designs that are applied to products or used in connection with services, copyright, which provides protection for literary, artistic, and musical works, and trade secrets that protect, well, secrets. Intellectual property is widely viewed as one of the most important assets that a company can own and can be considered to be the driving force behind the value of many businesses in the 21st century.

Some people tend to confuse the terms patents, copyrights, and trademarks. Although there may be some similarities among these kinds of intellectual property protection, they are quite different in their application and serve very different purposes.

### **III. What is a Patent?**

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office (USPTO). Generally, 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 or, in special cases, from the date an earlier related application was filed, subject to the payment of periodic maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.

The right conferred by the patent grant is, in the language of the law, “the right to exclude others from making, using, offering for sale, or selling” the patented 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. Once a patent is issued, the patentee must enforce the patent without the aid of the USPTO.

### **IV. What is a Trademark?**

The term "trademark" is typically used to refer to any type of mark, name, design, logo, or slogan that can adequately identify a product or service and that can be registered with the USPTO. The two primary types of marks that can be registered with the USPTO are:

**Trademarks** - used by their owners to identify goods, that is, physical commodities, which may be natural, manufactured, or produced, and which are sold or otherwise transported or distributed via interstate or international commerce.

**Service marks** - used by their owners to identify services, that is, intangible activities, which are performed by one person for the benefit of a person or persons other than himself, either for pay or otherwise and offered in interstate or international commerce.

### **V. What is a Trade Secret?**

Many businesses have developed valuable ideas, techniques, and processes that give them a competitive advantage in producing their products and/or services. If this specialized knowledge is not widely known, it can be considered a “trade secret.” The real value in a trade secret comes from the fact that the competitors of the trade secret’s owner don’t know the trade secret. Trade secret protection may be available to any specialized knowledge that is “used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” The real trick is to keep the secret a secret because if the secret becomes generally known, it may lose its protected status.

### **VI. What is a Copyright?**

A copyright is the legal name for the legal protection afforded to original works of authorship including literary, dramatic, musical, and artistic works such as poetry, novels, movies, songs, computer software and architecture. Copyright law does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

Your work is covered by copyright protection from the moment it is created and “fixed in a tangible form” so that it is perceptible either directly or with the aid of a machine or device. The moment you write it, paint it or put it on the Internet, your work is copyright protected. For greater protection and additional flexibility in policing your copyright, it’s a good idea to register your copyright with the Library of Congress. Failure to promptly register your copyright can be a problem if someone copies or otherwise exploits your creative effort without your permission.

Now that you have a basic understanding of what types of protection are available for your intellectual property, let’s talk about using intellectual property as a marketing tool to increase your sales and enhance your bottom line.

### **VII. Using a Patent as a Marketing Tool – Patents and Patent Pending.**

Many companies advertise that their products are “patented” or “patent-pending.” In most cases, this is because the consumers in their market attach some extra value and “cachet” to a product that is identified as patented or patent pending. This can translate directly into a higher selling price for the product or a more desirable marketing message for a product or service. The patent designation can also provide an instantaneous opportunity for product differentiation for a company that is competing in a crowded market. This can be important as you try to generate “mind share” with your potential customer base. If your company has a product or service that is unique in some new way, you should consider the added value associated with securing a patent.

### **VIII. Using a Trademark as a Marketing Tool – The True Value of Name Calling.**

A valuable asset for most businesses is their company name and/or logo. Additionally, a great product name can help set the stage for future growth. A strong, readily identifiable trademark can help with the sales of goods and services and very desirable goods or services can, over time, make a trademark famous. You can build customer loyalty and increase profit margins by uniquely naming and marking your products and services.

Think of the Nike “swoosh.” This little symbol can turn a pair of \$25 sneakers into a pair of \$95 dollar sneakers faster than you can say “Air Jordan.” You can evaluate your products and services and identify those special names, designs and phrases that serve to differentiate your product from those of your competitors. By using these things as trademarks, you can raise the level of recognition for your products and services, thereby standing out from the crowd as you build brand recognition over time.

### **IX. Using a Trade Secret as a Marketing Tool – I’ve Got a Secret.**

Most people understand the concept of a “secret” but don’t readily grasp how keeping something a secret can provide marketing leverage. Well, just think about Kentucky Fried Chicken and their “secret herbs and spices.” How about the “secret formula” for Coca-Cola? These are two well-known examples of companies using a “trade secret” to provide marketing horsepower for their products. Whether or not you like these products, you understand that possession of the “secret” allows the companies to claim that they offer something unique to their consumers. Perhaps your business has a trade secret? Maybe you have a special way to provide a product or service that gives you a competitive advantage. If so, you should consider marketing your product or service with the extra pizzazz that comes from having a “secret.”

## **X. Using a Copyright as a Marketing Tool – Imitation Isn't Always Flattery.**

If you're in the business of content creation, copyrights can be a ticket to greater exposure. Copyright registration is fairly easy and inexpensive to procure and can be used to promote your "copyrighted content" to your existing and prospective customers. By including professional and appropriate copyright notices on your creations, you can present a more polished and sophisticated business image to your market. Finally, you can set yourself apart from your competitors by using your copyrighted content in newsletters, flyers, and promotional materials.

## **XI. Summary**

With a few simple ideas, and a little bit of work, even the smallest business can create an effective and successful program of marketing with their intellectual property. The next thing you should do is sit down with your staff and review your products, services, processes and procedures to identify your intellectual property. Then, you can take the appropriate steps to protect your valuable intellectual property and, by following the guidance in this short article, add some value to your bottom line. Remember, just like other company assets, intellectual property can make your business more valuable to its owners, investors, partners, and others. This is especially important if you'd like to position your business for eventual acquisition or merger.

## **About the Author**

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## **\*Legal Disclaimer**

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