

Chapter 8 – Intellectual Property Rights

Introduction

- **Intellectual property** is any property resulting from intellectual, creative processes—the products of an individual's mind.
 - Includes: information contained in books, computer files, apps for your smartphone, movies you watch, music you listen to

Trademarks

- A **trademark** is a distinctive word, symbol, sound, or design that identifies the manufacturer as the source and distinguishes its products from others.
- Protection of trademarks is important to protect manufacturers from losing business to rival companies.
- Statutory Protection of Trademarks
 - Lanham Act of 1946 provides federal protection of manufacturers from losing business to rivals that used confusingly similar trademarks.
 - Trademark dilution
 - Use of a similar mark may constitute trademark dilution
- Trademark Registration
 - U.S. Patent and Trademark Office
 - A mark can be registered if in use or mark will be used within 6 months.
- Trademark Infringement
 - Unintentional or intentional substantial copying of mark.
 - Injunctions are the most common remedy.
- Distinctiveness of the Mark
 - Strong marks
 - Fanciful, arbitrary, or suggestive trademarks, normally not related to product
 - Suggestive trademarks
 - Bring to mind something about a product without describing the product
 - Secondary meaning
 - Arises when customers associate a specific term or phrase with specific trademarked items
 - Generic terms = no protection
- Service, Certification, and Collective Marks
 - **Service mark**: used to distinguish services
 - **Certification mark**: used by one or more persons, other than the owner, to certify the region, materials, or other characteristics of specific goods or services
 - **Collective mark**: used by members of a coop, association, union, or other organization

- Trade Dress
 - Broad concept that can include all or part of the total image or impression created by a product of its packaging
- Counterfeit Goods
 - Stop Counterfeiting in Manufactured Goods Act (SCMGA)
 - Criminalizes intentional trafficking in counterfeit goods
 - Penalties for counterfeiting
- Trade Names
 - Indicates part or all of a business's name
- Licensing
 - Way to avoid litigation and still make use of another's trademark or other form of intellectual property

Patents

- A government grant that gives inventor the exclusive right to make, use, and sell an invention for 20 years.
- America Invents Act (2011), first person to file receives protection.
- Searchable Patent Databases
 - www.uspto.gov
 - www.epo.org
- What Is Patentable?
 - Item must be novel and not "obvious."
 - Almost anything is patentable (excluding laws of nature, natural phenomena, abstract ideas).
- Patent Infringement
 - If a firm makes, uses, or sells another's patented design, product, or process without permission
- Remedies for Patent Infringement
 - Sue for relief in federal court
 - Injunction
 - Request damages for royalties and lost profits
 - Reimbursement for attorneys' fees (sometimes)
 - Treble damages

Copyrights

- **Copyright** is an intangible property right granted by federal statute to the author or originator of certain literary or artistic productions.
- Registered with U.S. Copyright Office

- What Is Protected Expression?
 - Work must be original and “fixed in a durable medium.”
 - Section 102 Exclusions
 - Excludes copyright protection for any “idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied.”
 - Compilations of facts are copyrightable.
- Copyright Infringement
 - Form or expression of an idea is copied (does not have to be in its entirety).
 - Penalties, damages and criminal actions are possible.
 - Remedies for copyright infringement
 - The “**fair use**” exception
 - Certain persons or organization can copy materials without penalty (e.g., education, news, research).
 - The first sale doctrine
- Copyright Protection for Software
 - 1980 Computer Software Copyright Act
 - Includes computer programs in the list of creative works protected by federal copyright law
 - Courts have not extended protection to the “look and feel” of programs.

Trade Secrets

- **Trade Secrets**
 - Information of commercial value
- State and Federal Law on Trade Secrets
 - Section 757 of the *Restatement of Torts*
 - Uniform Trade Secrets Act
 - 1996 Economic Espionage Act
- Trade Secrets in Cyberspace

International Protections

- The Berne Convention
 - 1886 international copyright agreement
 - 2011 EU extended period of royalty protection for musicians from 50 to 70 years
- The TRIPS Agreement
 - Established standards for international protection of intellectual property rights
- The Madrid Protocol
 - Designed to reduce the costs of international trademark protection
- The Anti-Counterfeiting Trade Agreement (ACTA)
 - Increase international cooperation to combat counterfeiting
 - Provisions and goals
 - Border searches