"Intellectual Property" is the body of law that protects the fruits of human intelligence: our inventions, our creative works, and the logos and brand names that we adopt for the goods and services we sell. There are three major types of intellectual property protection – patents, trademarks, and copyrights. Generally speaking, patent protection is available for inventions that are useful, such as a novel product, a new method of doing business, or a new process for making or using something. Patents and are may also be available to also a means to protect a new and original ornamental design for an article of manufacture. Copyrights law protects original works of authorship such as books, music, artwork, photographs, web pages, and software. Trademarks law protects the brand names used for goods or services, logos, as well as distinctive product and packaging designs. Trademark law is part of the law of unfair competition, which also addresses includes trade secret protection, unfair competition, and deceptive and unfair trade practices.

Sometimes aAn invention or work may beis eligible for more than one type of protection. Take, f For example, a lamp with an elaborately sculpted base that incorporates a novel on-off switch. The creator of this the lamp might be able to claim copyright protection in the lamp's shape as a sculpture, apply for a design patent to protect the ornamental features of the lamp, and apply for a utility patent on the on-off switch invention. Over time, if the public came to associate the lamp's design with a particular source of lamps, as we have learned to associate the shape of a Coca-Cola® bottle with cola manufactured by the Coca-Cola Company, then the lamp's shape could be claimed as a trademark. An attorney can will help you to determine what which types of intellectual property protection are available to you and how best to protect your intellectual property.

Trademarks

What is a trademark?

The term "trademark" (or "mark") refers to any word, name, symbol or device, or any combination of these, that is used in commerce to designate, identify and distinguish the goods of one manufacturer or seller from the goods manufactured or sold by others; , and to indicate the source of the goods. In common language, a trademark is a brand name or other brand-identifying device (such as the color pink used by Owens-Corning for its brand of fiberglass insulation, the Pillsbury doughboy, or NBC's three-tone sound mark). Marks that are used to identify or advertise services rather than goods are often referred to as "service marks." Rights in a trademark are acquired and maintained only by use; however, as discussed below, registration does provide you with additional benefits and rights.

The primary function of a trademark is to indicate the origin of goods or services. Trademarks also enable consumers to identify products and service-providers so that they can either look for them again or avoid them. In this way, a trademark represents the quality and uniformity of the goods bearing

the mark. The goal of trademark law is to protect the source-identifying and quality-designating functions of trademarks. The first party that acquires rights in a trademark for a particular good or service (the "senior user") owns certain exclusive rights in the mark —— namely, the right to prevent others (called "junior users") from creating confusion by using the same or a similar mark for similar goods or services. Some trademarks are so famous that third -party use of them for any goods or services is likely to cause confusion and infringe the senior user's rights.

Selecting a trademark

Businesses often desire to adopt a trademark that clearly evokes or describes their product. However, such marks may be impossible or very difficult to protect. Words that are the generic name for the user's goods or services cannot function as trademarks at all. For example, the term "apple" cannot be appropriated as a trademark for apples. Words that are descriptive of the user's goods or services may be protectible as trademarks, but only under certain circumstances, which your attorney can explain to you. The most easily protectible trademarks are those that are arbitrary or fanciful when applied to the user's goods or services. Kodak®, Xerox®, and Exxon® are examples of fanciful marks, while "apple" used as a trademark for computers is arbitrary.

Before adopting a trademark it is advisable to have an attorney evaluate whether the term or brand-identifying device is eligible for trademark protection and conduct a "trademark search" to find out whether the mark is already owned by another party. While such searches do not guarantee that the desired mark is available for adoption, they minimize the risk that the mark you adopt will infringe a third party's rights.

Many people believe that they automatically have the right to use the name of their corporation, LLC, or other business as a trademark. This is not the case. Just because the state allows you to form a business entity under a given name does not mean the name does not infringe someone else's trademark.

Registering your trademarks

Trademarks may be registered with the United States Patent and Trademark Office ("~~PTO~~USPTO") and/or the Florida Secretary of State. Since trademark rights arise from use, registration is not necessary to create rights. However, by registering a trademark with the USPTO, you can secure trademark rights in areas of the United States in which you have not yet used your mark. Federal and state registrations also provide advantages in lawsuits to enforce trademark rights. An attorney can advise you as to whether a federal and/or state registration ~~would be~~is advisable.

In order to be eligible for federal registration~~,~~ a mark must be used in commerce that may lawfully be regulated by Congress —— for example, interstate commerce —— at the time the registration is granted. Generally speaking, the use that is required to register a mark for goods consists of

placing the mark on the goods, or on their packaging, tags or labels; while, for services, the mark must be used or displayed in the advertising or sale of the services and the services must actually be rendered. You may file a federal application, but not a Florida state application, ~~(not Florida)~~ to register a trademark before you use it if you have a bona fide intent to use the mark, but the registration cannot issue until you commence actual use.

The total time for a federal trademark application to be processed ~~may be~~is from almost a year to several years, depending on the basis for filing and the legal issues which may arise in the ~~PTO's~~ USPTO's examination of the application. Federal trademark registrations must be renewed every ten years and certain filings are required between the fifth and sixth years following registration.

The federal registration symbol ® ~~may~~ should be used ~~once~~ after the mark is ~~actually~~ successfully registered with the ~~PTO~~ USPTO or, in some cases, if the mark is registered in a foreign country. Use of the ™ and SM symbols is not required, but may discourage others from infringing your mark; these two symbols may be used before the mark obtains federal registration.

Enforcement of Trademark Rights

Infringement of a trademark occurs when someone other than the trademark owner uses the mark, or a similar mark, on goods or services in a manner that is (1) likely to cause confusion concerning the source or origin of the parties' respective goods or services, or (2) ~~to~~ suggests an affiliation or an endorsement of the junior user's goods or services by the owner of the mark.

Trademark ~~D~~ilution occurs when someone uses a similar mark in a manner likely to diminish the distinctiveness of or tarnish a famous mark.

Enforcement of federally registered marks ~~can~~ takes place in either federal or state court~~;~~, while enforcement of Florida-registered marks typically takes place in state court. A mark that is not registered may still be eligible for protection in federal and/or state court depending upon factors ~~which~~ that a trademark attorney can explain to you. The remedies available to a successful trademark owner in an infringement lawsuit may include: an injunction; a monetary award; impoundment and destruction of infringing items; and, in exceptional cases, recovery of the trademark owner's attorney's fees. Special procedures and remedies, including potential criminal liability, apply in cases involving counterfeit goods or goods labeled with counterfeit marks (such as counterfeit purses).

Copyrights

What does Copyright Protect?

Copyright protects "original works of authorship." Most writings and artistic creations are subject to copyright protection including books, photographs, musical recordings and computer programs. Copyright arises automatically as soon as a work is fixed in a tangible medium of expression;

that is, written down, painted, filmed, recorded, etc. Copyright gives the author of a work a bundle of exclusive rights, including ~~the~~ rights:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission; and
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works.

Copyright does not protect the ideas that are expressed in a work; it is the tangible expression of the idea that is protected. However, the line between "idea" and "expression" is not always easy to identify.

Who Owns the Copyright in a Work?

Many copyright disputes involve competing claims of ownership of a copyright. Your attorney can help you ~~make sure~~verify that you own or have a right to use ~~the~~ given copyrighted works, such as photographs, illustrations, designs, software, or other items that your business may purchase, commission from freelancers, use or supply to others.

Generally, the person who actually creates a work owns its copyright. This is the case even if the work was commissioned and the creator was paid to create it. However, there are exceptions. As a general matter, works created by employees within the scope of their employment are owned by the employer.~~employers own the copyrights in the works that their employees create within the scope of their employment.~~ Special rules are applied to determine who qualifies as an "employee" for this purpose, but one should not rely on these rules. Written agreements are recommended to avoid confusion over ownership.

~~-~~In addition, with respect to a limited number of types of works ~~—~~ such as encyclopedias, tests, audiovisual works, and compilations ~~—~~ the party ~~that~~ who commissions a non-employee (e.g., freelancer) to create the work pursuant to a written work-for-hire agreement signed by both parties will be considered the "author" and owner of the copyright. Ownership of a copyright can also be acquired through a written assignment from the author.

How Long Does Copyright Protection Last?

For most works created after January 1, 1978, copyright protection lasts for the life of the author plus 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright term is 95 years from the year of first publication or 120 years from the year of creation,

whichever expires first. Your attorney can help you to determine the length of copyright protection for works that predate 1978.

Registering Copyrights

Copyrights are registered with the Copyright Office of the Library of Congress by submitting an application to the Registrar of Copyrights along with a modest fee and a "deposit" of the work being registered. The particular application form that must be used and the deposit requirements vary depending on the type of work being registered. Registration is not required to own a copyright. However, the cost of registering a copyright is fairly modest and the benefits from registration ~~can be~~are significant. In most cases, registration is a prerequisite to filing a lawsuit to enforce the copyright. Furthermore, with some exceptions, certain infringement remedies, such as statutory damages and attorney's fees, are only available if the copyright is registered before the infringement begins.

Enforcement of Rights in a Copyright

A copyright is infringed when someone violates one of the exclusive rights of the copyright owner~~;~~. ~~f~~ Examples of infringement include:~~or example~~, ~~by using~~use of a photograph in an ad campaign without the photographer's permission, installing software that is licensed only for use on a single computer on more than one computer ~~that is licensed only for use on a single computer~~, or creating a derivative work (such as a sequel) based on a copyrighted work. Any lawsuit asserting claims of copyright infringement must be brought in federal court. Remedies include injunctive relief and recovery of damages.

Patents

What is a Patent?

There are three types of patents: utility patents, design patents, and plant patents. A utility patent may be granted to one who invents or discovers a new and useful process, machine, article of manufacture, composition of matter, or a new and useful improvement of any of these. A design patent may be granted to one who invents a new, original, and ornamental design for an article of manufacture. A plant patent may be granted to one who invents or discovers and asexually reproduces any distinct and new variety of plant.

Patent protection is only available for inventions and designs that are novel and would not have been obvious to a person of ordinary skill in the art ~~as of~~at the time of the invention ~~or design was made~~. In addition, utility patents are only available if the invention is useful. In applying for a patent, a prototype is not typically required~~;~~. ~~h~~However, your patent attorney or patent agent can explain this in more detail.

A U.S. patent gives ~~the owner~~the patent holder ~~the~~ a right to exclude all others from making, using, selling, and importing into the U.S. the invention defined by the claims of the patent. In exchange for this exclusive right~~,~~ the

patentee holder is required to disclose the invention in the patent application with sufficient detail so that ato allow a person "with ordinary skill in the art" is able to understand how to make and use the invention without undue experimentation.

Patents are a negative property right, not a positive property right. Thus, a patent creates a right to exclude others, but does not The patent "right to exclude" does not grant or imply that the owner patent holder has the an affirmative right to make, use, or sell the patented invention. If the owner's patent holder's patented invention infringes another a separate person's patent, the owner patent holder may not be able to exploit the invention without a license from that person.

Because patent rights are territorial, the patent right to exclude is generally limited to the U.S. and its territories (although there are limited circumstances under which activities aimed at a foreign market can infringe a U.S. patent). An inventor who desires to prevent others from exploiting an invention in foreign markets would mustneed to seek patent protection in each market.

How are Patents Obtained?

Patents are granted by the United States Patent and Trademark Office (USPTO).PTO. As a patent application is a highly technical document, it is advisable to have itbest prepared by a patent attorney or patent agent registered with the PTOUSPTO. Under U.S. law, an inventor has only one year to file a patent application after the invention is offered for sale or publicly disclosed. Other countries do not offer even this one-year grace period. Thus, it is generally advisable to consult with an attorney promptly after conceiving conception of your invention.

The United States is transitioning from a first-to-invent system to a first-to-file system. The distinction is important when two parties are filing patent applications for the same invention. Under the first-to-invent system, the issue of which party filed first was less important than who invented first, with the patent ideally going to the party who invented first. But under the new first-to-file system, the patent applicant who files first obtains the patent over someone who files second, unless very specific exceptions apply.

The most significant exception applies when the party who files second was the first to "publicly disclose" the invention. It is unclear what constitutes a public disclosure, thus it is risky to rely on this exception to compensate for a delay in filing. Thus, given a choice, filing a patent application earlier is safer than relying on public disclosure.

Before filing a patent application, it is advisable to have your attorney conduct a patent search to make sure that your invention is novel and not obvious in light of prior inventions. Once the patent application is filed, a patentPTO examiner will evaluate whether the invention or design qualifies for patent protection. PTO Patent examiners often require modifications to the patent application. This process can take several years and involve a substantial amount of interaction between the PTO patent examiner and

your attorney. Because patent applications are ~~so~~ technical and the examination process is generally fairly time-consuming, the cost of obtaining patent protection is significantly greater than the cost of registering a trademark or copyright.

How Long does Patent Protection Last?

For applications filed on or after June 8, 1995, ~~the term of~~ a utility patent will generally expire 20 years after the application date. Design patents ~~last~~ expire 14 years ~~from~~ after the date ~~the patent issues~~the patent issues (this will change to 15 years at the end of 2013 as a result of the Patent Law Treaties Implementation Act of 2012). There are exceptions to these general time frames, which your patent attorney can explain. ~~Once~~ After a patent issues, patent maintenance fees must be paid at designated times during the life of the patent~~;~~. ~~i~~If a maintenance fee is not paid, the patent expires. Upon expiration of the patent, whether at the end of its term or due to the failure to pay a maintenance fee, the subject matter disclosed in the patent passes into the public domain. Subject matter within the public domain can be used by anyone without fear of patent infringement. ~~the public is free to use the invention.~~

Patent Ownership and Licensing

The America Invents Act (AIA) has changed certain aspects of patent ownership. As has been the case for many years, a patent application must include the name or names of the one or more individuals who conceived of the invention. These are the inventors. But the inventors are no longer required to be the applicants before the USPTO. Instead, a corporation or business can be the applicant.

As before, ~~Patents can only be granted to inventors; that is, to the persons who have engaged in the mental act of invention. Corporations and other business entities cannot initially own title in a patentable invention. For this reason,~~ it is highly advisable to put appropriate invention ownership agreements in place with all employees and consultants who ~~may come~~conceive of ~~up~~ with inventions ~~of importance~~ relevant to your business.

Patent rights can be assigned or licensed, but there are restrictions on how a patent ~~owner~~ holder can use the "clout" of a patent to extract royalties or other benefits from third parties. For example, generally speaking, a patent license may not lawfully endure beyond the term of the licensed patent. Before licensing rights under a patent, it is advisable to consult with an attorney regarding the permissible scope of patent licensing.

Enforcement of Patent Rights

The federal courts have exclusive jurisdiction over patent infringement suits. Relief in patent litigation includes injunctions extending for the life of the patent, money damages, and enhanced damages and attorney's fees in exceptional cases. In addition, under certain circumstances, a patentee can obtain an exclusion order from the U.S. International Trade Commission to bar importation of infringing goods from foreign countries.

Other types of intellectual property

There are other types of intellectual property beyond copyright, trademark, and patent, such as trade secrets. These other ~~and~~ intellectual property ~~disputes~~ areas of law often implicate the law of unfair and deceptive trade practices. Additionally, other~~There are also~~ other areas of law often ~~which often~~ involve intellectual property issues, ~~like~~ such as computer and internet law, franchise law, and licensing. This pamphlet does not contain a discussion of these areas. You should consult with a competent intellectual property attorney if you believe you have any legal issue related to any of the areas of law described in this pamphlet.

The material in this pamphlet represents general legal advice. ~~Since t~~The law is continually changing and as a result~~,~~ some provisions in this pamphlet may be out of date. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.