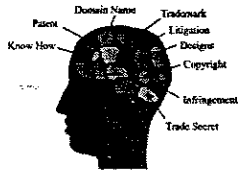


Anatomy of Intellectual Property For New Businesses IP Overview



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Agenda

- Provide an overview of the Basic Types of Intellectual Property (IP)
- Selecting the Right Type of IP for the Job

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What is Intellectual Property?



Intangible Creations

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Nature of Intangible Assets (IP)

- Intangible assets include trade secrets, patents, copyrights, trademarks and brand recognition, among other things...
- The bulk of intangible assets are Trade Secrets!

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4 Basic Types of "IP"

- Patents
 - Trademarks
 - Copyrights
 - Trade Secrets
- Each is a different "bundle" of legal rights providing different protections.

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Hey, Ask Me Why You Should Care About IP?

- I'm glad you asked...

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Asset Allocation in 1978

- Corporate tangible assets = 80%
- Corporate intangible assets = 20%

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Asset Allocation in 2005 A Complete Reversal...

- Corporate tangible assets = 20%
- Corporate *intangible assets* = 80%
- In high-tech co's, the intangible asset portion is even higher...
- Some co's have little to no book value, yet command high share prices...why? Intangibles.

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Still Not Sure Why Should You Care About IP?

- The total market value of U.S. publicly-held corporations is approximately \$11 Trillion.
- The total value of Intangible Assets held by U.S. Corporations is approximately \$9 Trillion!

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Rubber Hitting Road...

- Power to control the marketplace
- Increase ROI
- Possibility of Licensing Revenue

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PATENTS

- Patents protect an Idea by giving the Inventor/Assignee a Limited Monopoly
- Length of Patent Term: 20 yrs from filing of application, no less than 17 yrs from issuance

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Patents – Continued

- Patent Owners May EXCLUDE Others From:
 - (1) Making
 - (2) Using; AND
 - (3) Selling the patented invention for the life of the Patent..

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Patents – Cont.

- Patents DO NOT Provide Owners With the Right To Practice Their Invention!
- Can still infringe Other Patents!

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Patents - Continued

- What is Patentable?
- Anything that is . . .
 - Useful
 - Non-obvious
 - New
 - Not barred

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What is Not Patentable?

- Not much
- Barred inventions
- Laws of nature
- Mental processes
- Mathematical formulae
- Naturally occurring substances
- Ornamental Non-Functional Design Features (Design Patent)

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Basic Features of Patents

- Must file timely application with US PTO
- For a new, useful and non-obvious invention
- BEFORE ANY Public Use/Disclosure, if foreign rights are desired, or within 1 year for U.S.
- Application Publishes 18 mos after filing
- Must sue in Federal Court to enforce.

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What is a Trade Secret?

- Generally, any SECRET formula, pattern, device or compilation of information...
- Used in a Business...
- Providing a competitive advantage

Examples: Coca-Cola formula, business practices, manufacturing processes.

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Why Should I Care About Trade Secrets?

- Recall: Total value of intangible assets in U.S. public corps = \$9 Trillion.
- Total value of Trade Secrets held by U.S. public corps exceeds \$5 Trillion.

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Trade Secret "Theft"

- In a recent Report, *Fortune* 1000 companies sustained losses of more than \$45 billion due to "theft" or misappropriation of Trade Secret or other proprietary information.
- This number has grown rapidly as information technology makes data more accessible and more portable.

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Trade Secrets

- Essentially **Value-Less**....IF inadequately secured from unwanted release or disclosure.
- Enforcement options regarding misappropriation in this situation are extremely limited.
- If a secret is no longer a secret...what is it?

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Trade Secrets

- Misuse/Misappropriated by Employees, Ex-Employees, Contractors, or other Third Parties
- This includes your Employees injecting, without authorization, another's Trade Secrets into your company...wittingly or unwittingly.

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Approaches to Limit Loss of Trade Secret Status

- Use NDAs!!!
- Use carefully drafted non-competition provisions for employees, vendors and contractors
- Conduct Exit Interviews
- Physical security measures
- Employee Training
- Litigate if you must...but Keep the Secret.....A Secret.

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Protect Your Company During Hiring Process

- To avoid a claim of Trade Secret misappropriation, make certain you know whether incoming employees are subject to an Agreement, e.g., NDA or Non-Compete.
- If so, ensure there is no leaking of Trade Secret data...work restrictions, etc.

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First Things First

- What are your Trade Secrets?
- Identify them so that they can be protected from loss.

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An Ounce of Prevention = Value Retention

- When the Trade Secrets are identified, Then develop protection strategies.

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COPYRIGHTS

- Protection for Original WORKS of Authorship (expression of ideas)...
- Not the Idea itself, that is the province of Patent Law and, perhaps, Trade Secret Law.

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COPYRIGHTS

- The "work" must be "fixed" in a tangible medium such as:

Books

Advertising materials

Computer programs (s/w code)

Photos

Blueprints

Engineering drawings

Instruction manuals or Technical manuals

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Copyrights

- A Copyright Exists immediately after a work is created and fixed.
- Federal Copyright Registration is not required, but there are some benefits, such as a more full assessment of damages.
- Otherwise, "Common law" Copyright protects the "work"

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Copyrights

- The Copyright Notice is now optional
E.g.,

Copyright © Altera Law Group 2005, All Rights Reserved.

NOTE: Independent creation is not an infringement, must show Access and Copying to prove infringement.

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COPYRIGHTS

- Employers may be liable for violations by employees.
- Do you use an Independent Contractor for s/w coding?
- Unless expressly agreed otherwise, the IC owns the copyright to the code...

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Trademarks

- Trademarks are words, symbols, sounds, colors...that indicate a Source or Quality of a Good or Service used in commerce.
- May be federally protected by Registering the mark with the USPTO. State Registration and Common Law Protection is also available.
- TM's may exist (and are renewable) for as long as they continue to be used in commerce.

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TRADEMARKS

- Common Law Protection: Rights confined to the geographic area wherein Actual Use of the Good/Service occurs

For example, Hard Rock Café, Empire Colorado; Amazon Bookstore Coop, MPLS

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TRADEMARKS

- State Registration Protection

Extend common law rights...may be appropriate for goods/services that are used in one or just a handful of states.

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TRADEMARKS

- Federal Registration "®"

Provides the Exclusive Right to use the mark in commerce in connection with the registered goods/services throughout the U.S.

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Once a TM is Federally Registered

- Have to Maintain and Enforce the Marks
Monitor, police and enforce potential infringers or face dilution of the mark and associated rights.

Use Mark correctly...with the goods/services as registered.

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THANK YOU!

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