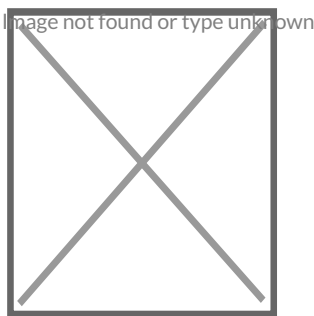


Why Small Business Owners Should Consider Registering Copyrights and Trademarks



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Time and money — the two most valuable resources for any small business owner — are often the reason why a company's intellectual property (IP) protection is ignored. Many business owners conjure up images of expensive attorneys or think IP protection is an issue that only applies to big corporations.

This couldn't be further from the truth, especially with the rise of global competition through the Internet. Understanding intellectual property — and protecting it — is more important than ever for small business owners.

Copyright protects original works of authorship, such as literature, drama, music, photographs, works of design, visual art, software, and others. Copyright registration, however, is not required to enjoy legal protection. As soon as an original work of expression is “fixed” in a tangible medium — for example, the lyrics of a song are written down, an image is captured in a photograph, or a musical performance is recorded — copyright rights automatically vest in the creator.

Similarly, rights in trademarks or service marks — a word or words, logo, sound, shape or color used to distinguish the goods or services of one from another — arise out of use of the mark to promote a business' goods or services, not from

registration. Registration is necessary, however, for an inventor to obtain patent rights.

Although business owners are not required to register their copyrights or trademarks, there are significant benefits for doing so.

An application to register a trademark with the United States Patent and Trademark Office can cost as little as \$275 per mark for the filing fee, and there are a number of benefits. The application is based on either the actual use of the mark in commerce in the U.S.; a “bona fide intent to use” the mark, which allows the applicant to effectively “reserve” a mark for up to three years in preparation for use in commerce; or ownership of a foreign application or registration. Georgia, like other states, maintains its own trademark registry, which confers additional benefits under state law.

When you consider how highly trademarks are valued among a business' assets (accounting for, on average, one-third of corporate value), it makes sense to develop and protect trademarks. Registering a trademark gives the owner presumptive nationwide rights in the mark, discourages others from using similar marks, protects against registration of confusingly similar marks, and grants the right to sue in federal court as well as obtain enhanced damages and attorneys' fees in certain cases. Registering a trademark also entitles you to certain statutory damages in the case of counterfeiting and empowers U.S. Customs and Border Protection to block imports that infringe the mark.

Copyright registration also provides business owners with peace of mind when it comes to protecting their intellectual property. Once a copyright is registered, the work will be published in the Copyright Office's Catalog and will be searchable to the public, limiting the defense of “innocent infringement.” Registration confers a presumption of ownership, helping minimize or avoid a costly dispute over that issue.

Perhaps most importantly, registration allows the copyright owner to bring an infringement suit. With very limited exceptions, a copyright cannot be enforced through the courts unless the work is registered with the U.S. Copyright Office. In addition, timely registration entitles the copyright holder to seek statutory damages that can reach as high as \$150,000 per infringement, plus attorneys' fees. It is sometimes difficult to prove actual monetary damages in an infringement suit, so the availability of statutory damages can be a tremendous advantage. A copyright may be registered at any time. It is good practice, however, to register soon after the work is created. As a general matter, registration within three months of the work's publication or creation will make it more likely for statutory damages and attorneys' fees to be available to the owner, so time is of the essence.

As intellectual property becomes more important to the competitive strategies of both large and small businesses, it is imperative that new businesses develop an intellectual property protection strategy and existing businesses consider their intellectual property as part of their ongoing planning. Whether you consult with an attorney, patent agent or a firm specializing in valuing and exploiting IP, be sure that person or firm understands your industry, your company, and your particular problems, and has a successful track record in your market.

Benjamin W. Karpf is an attorney at Bouhan Falligant LLP. His practice focuses on intellectual property litigation, advising clients on matters related to copyright law, the Internet, mobile devices, social media and related technology, the clearance, and prosecution of trademarks and service marks, and general business matters. He can be reached at 912-644-5740 or bwkarpf@bouhan.com.

Practice Areas

- Business & Corporate Law
- Intellectual Property & Technology