

Biz Voices

Guard intellectual property

Despite the increasing awareness in the business community of the value of intellectual property, many businesses fail to fully safeguard these important assets. In the process of seeking protection, mistakes can be made that can cost time and money and leave those assets vulnerable to misuse by others. Here are five strategies to help protect your intellectual property. **By David M. Lilenfeld**

1. Register your trademarks with the United States Patent and Trademark Office.

A trademark is a word, phrase, symbol or design that distinguishes the source of goods or services of one party from those of others. Trademarks which should typically be registered are company names, logos and names of services or goods your company provides. Taglines — such as Home Depot's well-known "You Can Do It. We Can Help." — are another type of mark that warrants registration.

All too often, many trademark owners fail to register their trademarks, register them in the wrong manner or only register them at the state level. Registering trademarks with the United States Patent and Trademark Office provides rights and relief only available with a federal registration. For example, a federal registration gives the mark owner access to a federal court, puts the public on notice of ownership and can streamline registration in foreign countries.

Occasionally, a trademark owner needs to persuade a third party, like Google, YouTube or a website hosting company, to help stop the owner's mark from being infringed. For example, an infringer may use another's trademark online and refuse to cede to the owner's demand that the infringement



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stop. The trademark owner may then turn to the third party who is hosting the infringing content. A federal registration provides credibility and legal presumptions that are often persuasive to third parties and makes them more likely to assist the mark owner or to assist more quickly.

2. Reserve your name and company name as domain names, as well as social media "handles" on Facebook, Twitter and LinkedIn.

Social media websites allow businesses to choose their own user names. If you do not occupy your company's "handle" on these sites, an imposter might. Someone with bad intent could wreak havoc on your company's online reputation by posting defamatory content. An unhappy ex-employee may set up a website using his former employer's name and post derogatory content. Competitors may also hijack your company's name on social media sites to try to steal

customers. Reserving these important "handles" can prevent or at least minimize the potential for this type of damage.

3. Register written and other valuable materials with the United States Copyright Office.

Copyright is a type of legal protection for original works set in tangible formats. While company and product names are protected under trademark law, written or graphic materials are protected under copyright law. Software, website content and graphics, marketing materials, instruction manuals, presentations and databases are types of works that are typically eligible for copyright registration. You can obtain copyright registrations by applying to the United States Copyright Office in Washington. Without a copyright registration, the owner of the material has no standing to file a copyright infringement lawsuit, cannot sue for money or statutory damages and cannot recover attorney fees. Also, you should act promptly. It is best to apply for registration within three months of making the material public.

4. Apply for patents judiciously.

Patents protect inventions and improvements to existing inventions. While patents can be critical to a company's strat-

egy, businesses should have their plan to file well thought-out first. Whether funds will be available to develop and commercialize the invention or whether potential licensees exist are the types of long-term planning questions that should be asked. Filing a patent application is costly and is at least a two-year process. If not undertaken judiciously, a company can wind up with a costly patent that is weak and gives only narrow protection. Businesses should file a patent application only if there is a clear understanding of how the issued patent will fit into the objectives of the business. They also should be confident that the patent will be strong and broad enough to enforce against infringers. Otherwise, your patent may be nothing more than an expensive wall hanging.

5. Monitor your intellectual property for possible infringement.

Securing registrations or patents is not the final step in protecting intellectual property assets. It is up to you to monitor for infringement. As soon as you are aware of infringement, take action — either contact the infringer yourself or consult with an intellectual property attorney. Once an owner's rights are weakened by waiting too long, it will be more difficult to assert those rights later.