



Is My Stuff Protected By IP Law?

Have you come up with a great new name for your company or product? Have you developed a new logo for your product or service? Have you written a screenplay, launched a blog, recorded a song? Have you invented the next revolutionary thing? Do you have a secret recipe that gives your company unique value? If you've answered yes to any of these, then the answer is most likely YES!, intellectual property law may protect you. Of course, this is not a complete list of all of the scenarios in which intellectual property is created or protected, but it's a good starting place. There are four main areas of intellectual property law – also known as "IP law." These areas are (1) trademark, (2) copyright, (3) patent, and (4) trade secret. So, how do you know which area of IP law will protect you?

Trademark:

Trademark law protects words, phrases, symbols, product shapes, product packaging, trade dress, sounds, colors, and designs identifying the source of the goods or services of one party and distinguishing them from those of others. To put it another way, a trademark is almost anything that is used by a person or entity to identify and distinguish his/her/its goods or services from those manufactured, offered, or sold by others, and to indicate the source of the goods or services. The key is that trademarks identify the source of goods or services, so that consumers know where their products and services come from.

Trade dress law, a separate but related area to trademark law, protects the total image and overall appearance of a business or product. This may include the size, shape, color, texture, graphics, or even particular sales techniques related to a product or service.

Some examples of the most common types of trademarks and trade dress are:

- Words (Sony, Nike, Crown)
- Numbers (7-11)
- Logos/Pictures (Morton Salt Girl, Golden Arches)
- Symbols (Nike Swoosh)
- Slogans (Just Do It)
- Characters (Mickey Mouse)
- Sounds (NPR jingle, NBC chimes, Homer Simpson's "D'OH")

- Shapes/Product Configurations (Coca-Cola bottle, Hershey chocolate bar, Converse low-top shoes)
- Colors (brown for UPS trucks, canary-yellow color of Post-it Notes, red sole of Louboutin women's shoes)
- Visual Moving Images/Motions (animated Microsoft Windows logo, Lamborghini's vertically opening scissor doors)
- Fragrance/Smell (the scent of Play-Doh)
- Certifications ("Energy Star" appliances, "Grown in Idaho" potatoes)

Copyright:

Copyright law protects original works of authorship fixed in a tangible medium of expression. One thing to remember is that copyright protects the *expression* of ideas, but not the ideas themselves. It really wouldn't be fair to protect ideas, not to mention it would be rather boring. Imagine if there was only one Spaghetti Western movie, or only one sci-fi television show, or only one romance novel?

Some examples of the most common types of copyrightable works are:

- Literary works (article, novel, essay, poem, short story, nonfiction work, computer program, manuscript, newsletter, dissertation, architectural works)
- Work of the Visual Arts (photograph, logo, sculpture, piece of jewelry, painting, drawing, illustration, comic strip, fabric design, textile design, wallpaper design)
- Sound Recordings (recordings of songs)
- Work of the Performing Arts (a musical work (with or without lyrics), a dramatic work, such as a screenplay, play, or other script, choreography)
- Motion Picture/AV work (motion picture, animated film, video game)

Patents:

Patent law protects inventions or discoveries. To qualify for patent protection, an invention or discovery must meet three main criteria: it must be (1) novel (new), (2) nonobvious, and (3) useful (must have utility). To be novel, an invention must be substantially different from anything else that is public knowledge. It also must be able to be adequately described so that someone with ordinary skill in the art can make or use the patented item/device/process/etc.

Some examples of the most common types of patentable subject matter are:

- A process
- A machine
- An article of manufacture or composition of matter
- An improvement of any of the foregoing

Trade Secret:

Trade Secret law protects anything that a company owns that it wants to keep secret because it gives the company value. A trade secret can be any type of information, including a recipe, formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. To maintain trade secret status, the owner must make reasonable efforts to maintain its secrecy.

Some well-known examples of company trade secrets are:

- Google's algorithm
- Kentucky Fried Chicken's spice recipe
- The recipe for Coca-Cola

Right of Publicity:

Although not technically under the umbrella of intellectual property, a related area of the law is Right of Publicity law.

This is the right of each individual to control and profit from the commercial value of his or her own identity – your name, image, persona, etc. And no, you don't have to be famous to have a right of publicity! Everyone has a right of publicity, but the question is: does your identity have "commercial value"?



As you can see, a lot of these intellectual property protections overlap. For example, if you design a logo it may be protectable as both a trademark and a copyrightable work of art. Or you may develop something that could be protected by patent, but you choose to protect it as a trade secret instead.

If you think that you have created something that qualifies as intellectual property, contact us at Crown[®], LLP to help you protect it! We help our clients by Advising Creativity[™].

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