

By Bambi Faivre Walters

The term “intellectual property” is composed of what my second grade son would call “robust words” – meaning that when he uses such words in a sentence, he gets extra credit. For the most part, intellectual property includes the people, processes and products that make your business successful over your competition. From a legal perspective, the term “intellectual property” includes patent, trademark, copyright, and trade secret rights.

*Why is intellectual property important?*

Piracy, counterfeiting and the theft of intellectual property costs United States businesses more than \$250 billion and 750,000 jobs per year. For many businesses, particularly small and mid-sized businesses, they are overwhelmed in the day-to-day operations and oftentimes find themselves at a disadvantage because they lack resources and expertise to familiarize themselves with protecting their intellectual property. To help address this problem, this column will routinely identify topics that encourage businesses to recognize and consider the benefits of identifying and protecting intellectual property assets. For example:

- What type of protection(s) to apply for;
- When, where & how to apply;
- How to protect trade secret and proprietary information;
- What to consider if you run a web-based business; and
- Foreign and domestic considerations.

According to the United States Census Bureau, small businesses represent more than 99% of all employers and make up 97% of all identified exports. With our current domestic economy and our expanding global economy, it has never been more essential for your business to consider the incentives of protecting intellectual property — whether to patent an innovative product or whether to register a product name as a trademark or whether to register a web site or creative work for copyright protection or whether to protect trade secret information.

So, how does a business start to identify who, what, when and how to protect? The first steps are to have a basic understanding of the robust terminology used to describe various types of intellectual property.

*Patent Basics*

A patent is a right granted by the United States Patent and Trademark Office (USPTO) to exclude others from making, using, selling, offering for sale, or importing an invention for a limited time. A patent may be granted to the inventor or discoverer of any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, or on any distinct and new variety of plant, which is asexually reproduced, or on any new, original, and ornamental design for an article of manufacture.

While “mere ideas” are not patentable, patents come closer to any other form of intellectual property except trade secrecy to protect ideas.

### *Trademark Basics*

A trademark is a word, symbol, or phrase, used to identify a particular manufacturer or seller’s products and distinguish them from the products of another. For example, the trademarks Nike® along with the Nike “swoosh,” identify the shoes made by Nike and distinguishes them from shoes made by others. The symbols ®, ™ and ℠ provide notice to the world that an owner is claiming trademark rights in any mark using these symbols. An owner may use the ™ on marks identifying goods, and the ℠ on marks identifying services. An owner need not have a federal or state registration to use the ™ or ℠ symbols. However, the ® symbol, which provides “statutory notice” can only be used if the mark is federally registered by the USPTO.

### *Copyright Basics*

Copyrights protect original works of authorship including literary, dramatic, musical, and artistic works, such as web sites, poetry, novels, movies, songs, computer software and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. The author automatically has a copyright when the work is created. Registration with the United States Copyright Office is not a prerequisite, but it can give one additional protection — one can only get statutory damages for infringement of a registered copyright.

### *Trade Secret Basics*

A trade secret is a “secret” formula, practice, process, design, instrument, pattern, or compilation of information because it is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. A trade secret is protected through the use of contracts with your employees, independent contractors and other businesses, primarily non-compete and non-disclosure agreements. Consequently, it is advised that for any work for hire by an employee or independent contractor that works with a business to have confidentiality/non-disclosure agreement, a non-compete agreement, and in some instances, a termination agreement.

Any business or individual having concerns or issues about the topics in this article should consult with qualified intellectual property counsel to address their innovative processes, products, and people.