

Patents, Trademarks and Copyrights 101
The differences between patents, trademarks and copyrights.
By David P. Badanes, Esq.

What are the differences between a patent, trademark and a copyright? Using a Nike® sneaker as an example will help illustrate some of the differences.

When shopping for sneakers, you may prefer one brand over another. You go to the store and ask for Nike® sneakers. That is the trade name under which this particular brand of sneakers is sold under. The company also happens to be called Nike®, but that is coincidental, for example, you may like Cheerios® cereal, the brand name for cereal sold by General Mills.

Nike® has also obtained several patents on inventions contained in its sneakers. For example, the Nike® AIR system patented a pressurized gas contained in polyurethane. A patent grants the right to anyone who invents any new and useful process, machine, article of manufacture or composition of matter. In addition, you can obtain a patent for any improvement upon an existing process, machine, article of manufacture or composition of matter.

Inside the sneaker box, Nike® has written a story explaining the history of Nike® and how their sneakers are the best sneakers in the world. Nike® would own a copyright right to this story.

The above example demonstrates that a trademark is used to help consumers and the public identify a particular brand or source of a product; a patent is for inventions; and a copyright is for a creative expression.

PATENTS:

In the United States, if you are the owner of a patent that gives you the right to exclude others from making, using, selling, offering for sale, or importing the patented invention for 20 years from the filing date (formerly 17 years from the date the patent was issued). As the owner of the patent you do not have to actually use or make your invention, however, you still have the right to exclude others from making and using your patented invention.

You are given this limited monopoly right, because your patent is made available to the public. The public and other inventors can determine how your invention works. This encourages innovation as other inventors, knowing how your patented invention works, can apply your invention to a “new and improved” invention.

In the United States, patent applications are submitted to the Patent and Trademark Office (the PTO). The PTO determines if your application is eligible for patentability. As the PTO is making this determination it will probably request further information from the applicant or issue what is called an “Office Action.” An Office Action informs the applicant of some problem with the application that must be corrected. Responding to an Office Action is very complicated and if not done correctly can jeopardize your patent application. If a response to an Office Action is insufficient, then your application for a patent can be denied.

Patents and trademarks are not related, you can have one without the other. There are thousands of products that are sold under a trademarked name which have no patent. Similarly, there are thousands of patents which are sold or used without the patented invention having a trademark.

TRADEMARKS:

A trademark (or a “mark”) can be more than just a simple name, it can also be a phrase (McDonald’s “I’m Loving it”), logo or symbol (McDonald’s double arches), design or image (the Nike® “swoosh”), colors (the UPS Brown and John Deere Green), or any combination of these items.

The purpose of a trademark is to protect consumers from being confused about the goods and services they buy. For example, if I wanted to obtain a trademark for the name Niike in order to sell socks, that may confuse the public into thinking that my socks are made by the real Nike® or somehow related to the real Nike®. Although, socks are not sneakers, they are related enough to possibly cause confusion in the eyes of the consumer.

In comparison, if instead of sneakers, I decided to sell hamburgers under the name Niike, consumers may not believe that the company that sells sneakers (Nike®) is also selling hamburgers. Therefore, I may be able to get a trademark for a product called Niike that only sells hamburgers, but, I would not be able to get a trademark for a product called Niike that sells socks (or sneakers).

You can also obtain a trademark for names used to provide a service. For example H&R Block® provides accounting services to the public. Yet, for the most part, H&R Block® does not sell any goods. H&R Block® is a trademarked name for services related to providing tax and accounting services.

COPYRIGHTS:

Copyrights are not limited to books, music and movies. You can obtain a copyright on an article in a magazine, a piece of art, photographs, computer software, choreography and architecture. To obtain a copyright, it has to exist in some tangible form, which means that it has to be on paper, on film, in a computer’s memory, or the like. In the copyright world the “thing” you are trying to copyright is often called your “work”. The second requirement is that your work has to be creative, at least in some respects.

What this means is that if you simply write “ $2 + 2 = 4$ ”, that is a fact and there is no creative idea in the presentation of this fact. Therefore, you could not obtain a copyright on this simple sentence. However, if you explain why two plus two equals four and explain it in such a way that is “creative”, you could obtain a copyright on that explanation. This is why a math book could have a copyright.

You also can not obtain a copyright on an idea. For example, your idea could be to tell a story about President Obama and how he became president. You could take your idea and write a book, produce a movie, or even sing a song with this idea. All the ways you express your idea can be copyrighted. However, another person could come along, with the same idea about President Obama and how he became president. As long as that other person did not copy your book, movie, or song and came up with a different way to present his book, movie, or song, then his different expression could also be copyrighted.

Copyrights can be obtained via the web site www.copyright.gov. If someone is using your copyrighted material without your permission (called copyright infringement), then that is a matter that is usually best left for an attorney.

The owner of a copyright has the right to control how the work is reproduced, distributed, adapted, displayed and performed. If you obtain copyright registration, you own this right for their lifetime plus 70 years after your death (after your death, the estate owns the right).

SUMMARY:

In summary,

- Trademark: A trade name for a product or a service
- Patent: An invention
- Copyright: a creative expression of an idea (but not the idea itself)

CONCLUSION

If you require help in obtaining a patent, trademark or copyright, please contact David P. Badanes, Esq. of the Badanes Law Office.

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