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“Tip of the Month”

Do You Know What Assets Your Business Owns?

If you own a business, it would be unthinkable not to have a list of its tangible assets such as machinery and buildings. Yet, many businesses consider it acceptable not to have a list of its intangible assets. The key assets of any business are its people, its innovations, its trademarks, its know-how, and its goodwill. In other words, its intellectual property.

Intellectual property has value in that it can (1) be sold, licensed or franchised, (2) be an effective marketing tool and add credibility to a business, (3) assist in generating income streams, and (4) provide a competitive advantage and deter competitors. The principal forms of intellectual property are patents, trademarks, copyright, and confidential information (trade secrets). Each of these forms of intellectual property is different.

Patents protect for a limited time new products and processes that are useful, novel and nonobvious. Although the requirements for patent protection seem simple, many businesses and inventors make an incorrect assumption that their new product or process (the invention) is obvious or not novel. Oftentimes, inventors wait too long to obtain an independent review of their invention’s patentability. Under US law, an inventor has one year to apply for a patent after the invention has been publicly disclosed, sold, or offered for sale. This is called the one-year bar deadline. If the invention is a process, the one-year deadline applies to any products made using that process.

Trademarks are source indicators. This means that their primary purpose is to prevent consumer confusion as to the source of the goods and/or services. A trademark is usually a word (or words) and/or symbols associated with a product or service. When associated with a service, they are more properly known as “service marks.” The value of a trademark resides in the word or words used. Merely descriptive words used to identify the products and/or services have much less value and provide much less protection than words that are arbitrary and fanciful.

Copyright protects the expression of an idea (a creative work). The creative work can be a story, a picture, a sculpture, a song, a movie, a drawing, a painting, a recording, a compilation, a web site, advertising, brochures, etc. Basically, any expressed work that involves some small amount of creativity is protected by copyright. Copyright gives the author (not necessarily the business) the exclusive right to reproduce, adapt, publicize, perform, and display the creative work.

Trade secrets are anything with commercial value, ideas included. However, they must be kept secret. A business must have procedures that limit access to the trade secret information to specified individuals and that retains control of the trade secret information. Oftentimes, businesses presume that information in a file cabinet is trade secret. This may not be the case if the file is unlocked and any employee including custodians or independent cleaning company employees have access to the file cabinet.

If you need any help reviewing your intangible assets and how to protect them, please give us a call at 603-669-1971 or by email at mailbox@biz-patlaw.com.

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