



Developing Your Intellectual Property Strategy

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Taking the time to plan an intellectual property (IP) strategy appropriate for your business can yield a substantial return. It can help your business secure its competitive advantage, grow its market share, and increase its valuation. For most businesses, an effective IP strategy will prioritize the IP that protects their core assets—trademarks protect branding, patents protect inventions, copyright protects original works, and trade secrets protect confidential information. Your IP strategy will evolve as your business grows, and should make up an important part of your business plan that is revisited often, especially at key milestones.

When developing and reviewing your IP strategy, consider:

- **Is branding critical to your market success?**

When your brand is key to your market success, trademark protection should be a priority in your IP strategy.

Trademarks include a design or expression that associates a product or service to the trademark owner. When a brand garners significant goodwill in the marketplace, consumers are likely to associate that goodwill to any future products or services with that same brand. By taking the steps to properly clear and protect your brand (e.g., through a trademark search and application), your business can be one step ahead of competitors who may try to appropriate the goodwill that your business has developed with respect to its brand. This can also help reduce the likelihood of encountering problems with your brand later on, and the associated costs of any corrective actions that may be needed.

- **Are innovations critical to your competitive advantage?**

If innovations are key to distinguishing your business from your competitor's, patent or trade secret protection can play a key role in securing your competitive advantage.

Patents can help protect any new process, machine, manufacture, or composition of matter that your business develops. Patent rights can be asserted to stop another party from making, using, selling, or importing the patented invention. Patent rights can also be transferred or licensed, and so patents can be a critical tool in any plan to commercialize innovations—whether the plan is to grow market share or license the innovations to third parties.

Trade secrets are information that a business can keep confidential and has commercial value. Examples of trade secrets include a secret recipe or internal business data. An advantage to trade secrets is that the term of protection lasts as long as that information is kept confidential. This is in contrast to patents, which provide only a limited term of protection. However, there are risks in relying on trade secret protection. The moment the information is disclosed, it is no longer protected as a trade secret. Trade secrets will also not protect against independent development of the invention by third parties.

- **Does your content or design distinguish you from competitors?**

If it is your content or design that attracts customers to your business, industrial design and copyright protection should be a focus in your IP strategy.

Industrial designs (also referred to as design patents) protect the “look and feel” of a product. Where customers choose your product over a competitor's largely due to aesthetic design considerations, industrial design protection



should be a key component of your IP portfolio. This applies to finished products, as well as designs intended to improve user experiences, such as graphical user interfaces.

Copyright protects original works and exists the moment the work is created. An author of an original work has the exclusive right to control most uses of the work. However, copyright is focused on protecting how a work is expressed (e.g., the wording used in a novel, or lines of code in a software program), rather than ideas (e.g., themes used throughout the novel, or functionality provided by the software program). Furthermore, infringement of a copyright often occurs only when access to the original work can be shown and when a substantial part of the work is copied.

A typical IP strategy will likely involve several forms of IP protection. For example, the success of a new consumer product likely relies on product research and development and branding, in which case trademark and patent protection is likely critical. Your patent counsel can guide you in developing an IP strategy that is aligned with your business goals and budget.

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