

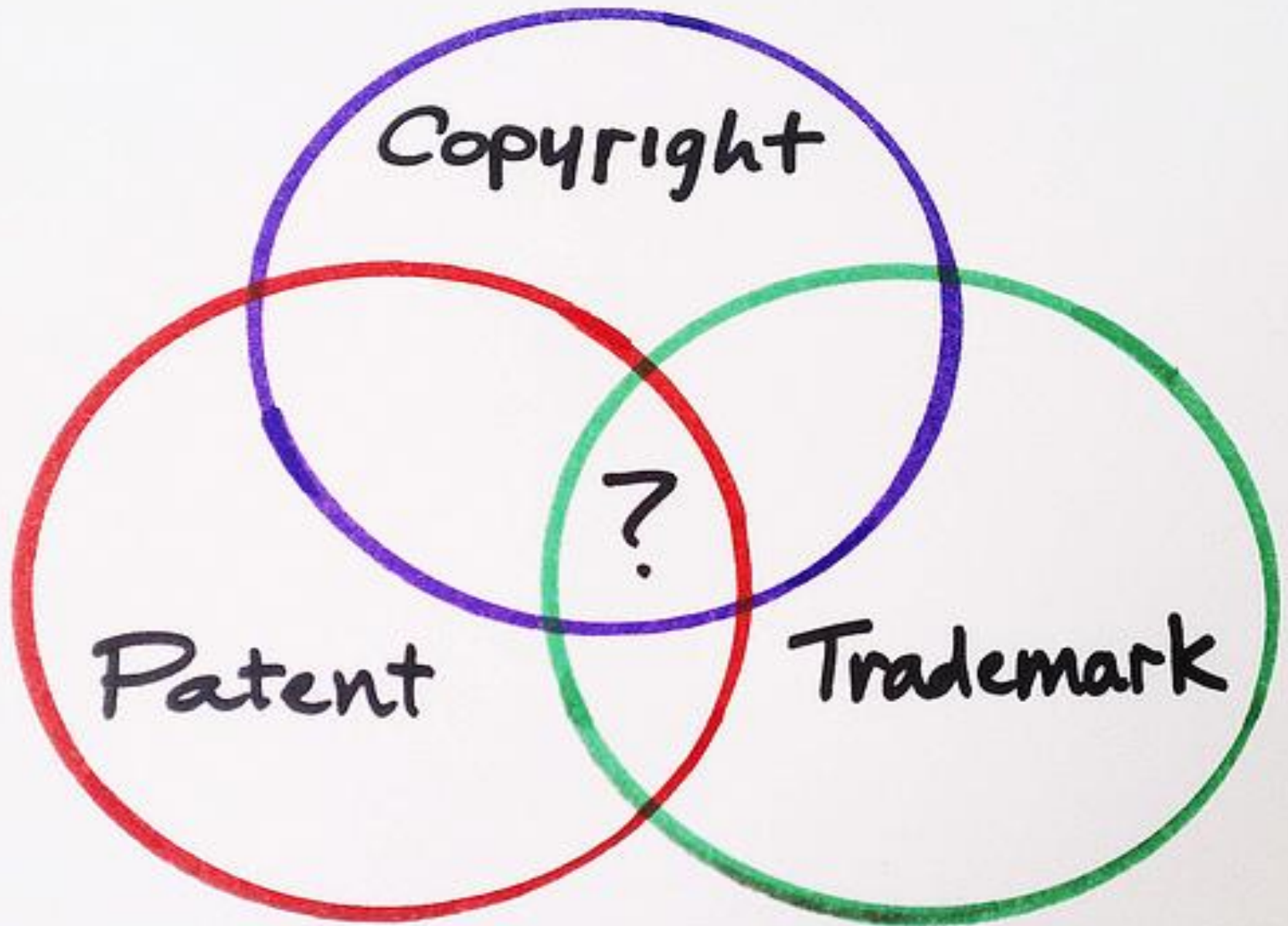
BUSSINESS PLAN



Intellectual Property Rights

INTRODUCTION

- Every entrepreneur should have a basic understanding of Intellectual Property Rights as they are important drivers of growth and prosperity of a business and can turn out to be highly valuable assets of the business. As against physical assets like land, building and machinery, Intellectual Property are new ideas, inventions and creations that are created from the intellect or special talent of human beings





TYPES OF INTELLECTUAL PRO PERTY RIGHTS

Trade Marks

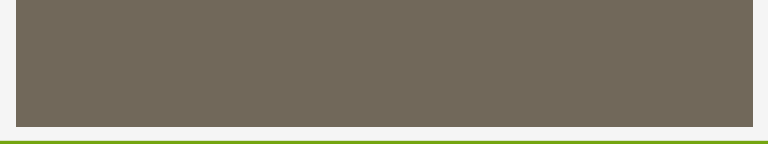
Copyrights

Designs

Patents

TRADE MARKS





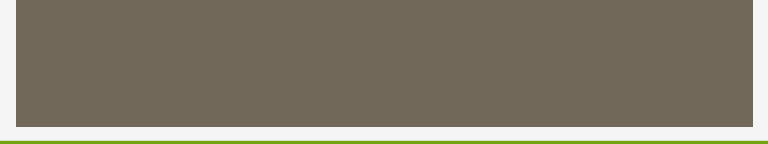
● A trade mark is an 'identifier'. It distinguishes the products/services of one company from those of another, in the course of trade. From the point of view of the manufacturer, a trade mark sends a clear message to the customers that those particular goods or services can be relied upon for a certain quality and reliability. . A trade mark can be used in connection with goods supplied (product Mark/ Brand Name) and/or services provided (Service Mark), in the course of trade. The name of a company, a brand name, a logo, and even a new shape of a product can be trademarks if they distinguish the goods/ services of one organization from those of others.

Relevance and Importance

- A trade mark in many cases is more valuable than the physical assets of a company. Today trademarks which have acquired substantial goodwill and reputation are valued at amounts which are far higher than all the physical assets of an organization put together. A trade mark or a brand drives sales due to the spread of reputation, goodwill and awareness they bring.

Registration and Protection

- Registration of a trademark under the Trade Marks Act, 1999 confers exclusive statutory rights on the proprietor to use the mark, in India, in respect of the goods or services covered by the registration. Registration has many advantages. It increases the chances of being able to stop an imitator from copying a trade mark. The registration process presently takes around two years, unless an opposition is filed, in which case, the registration can get substantially delayed. The registration process comprises of:

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- ◉ Preparing and filing a trade mark application.
 - ◉ Receiving an Allotment Number.
 - ◉ Receiving an Examination Report.
 - ◉ Filing legal submissions to overcome any objections raised by the Registry.
 - ◉ Advertisement of the trade mark application in the Trade Marks Journal for public objection and
 - ◉ If no opposition is filed the registration certificate will be issued.

Creation

- A trademark comes into existence by the creation of a new word or logo or by using an existing word or logo/artistic work to differentiate the goods/services of one person from those of others. There is a constant clash between marketing requirements and legal requirements in the creation of and /or adoption of a trade mark. From the legal point of view, the more descriptive a trade mark ('Best White' for white shirts), the less the probability of obtaining statutory exclusive rights and protecting the same against imitation by others

Types of Trade Marks

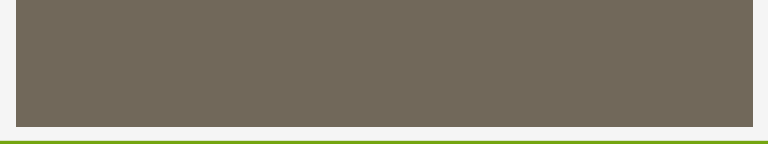
Generic	Descriptive	Suggestive	Arbitrary	Invented
Tea	Dairy Milk	Whirlpoo	Peacock	Konica
for tea	for Chocolate	for Washing Machines	for Matchboxes	for films.

Consequence of non-registration

- Non registration is not fatal to the protection of trade mark. In India the user of a trade mark acquires common law rights and can prevent an imitator if the earlier adopter and user can prove that use of the trade mark by the imitator would create confusion and deception in the mind of the customer. This is known as the principle of 'Passing Off. However, registration is always advisable since more rights are obtained and the chances of getting favorable orders and substantially enhanced.

COPYRIGHTS



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- A Copyright is the statutory exclusive right to make copies of or to broadcast/communicate any of the following 'Works' to the public:
 - Original literary works (books/articles, etc),
 - Original dramatic works,
 - Original musical works (songs/tunes),
 - Original artistic works (paintings, drawings),
 - Cinematograph films (movies),
 - Sound recording (music on tape, CD, etc). Computer programmers are protected as 'Literary Works'.

Relevance and Importance

Copyright protection is critical for rewarding creative efforts. Movies, music, books, etc. are protected under the Copyright Act. Consequently any unauthorized reproduction or publication is an infringement of copyright and can be stopped. Due to copyright protection, authors of books, composers of music, producers of movies, etc., can earn substantial amounts from licensing the use of their copyrighted matters to others

Creation

- Creation of a copyright is always by a person who is called the author. The author who rights a book, the screenplay for a drama, produces a movie, composes music, or a sound recording. On the creation of the work, copyright immediately vests in or is owned by the author. If the author is an employee, creating any copyrightable work in the normal course of his employment, then the employer becomes the first owner of the copyright.

Registration and Protection

- Registration of copyright is not compulsory in India. Whether copyright is registered or not, the author enjoys copyright protection immediately on the creation of the copyrightable matter, such as, a book, music, etc. The courts of law will recognize copyright and enforce an owner's right even if there is no registration provided the ownership of copyright can be proved. The copyright registration process may take around six months to one year in India. The application will have to be filed in the Copyright office at Delhi

Consequence of non-registration

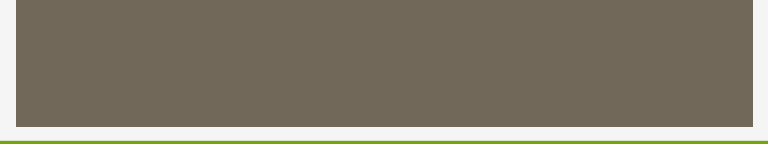
- Non-registration is not fatal to copyright. All the rights under the Copyright Act 1957 can be enjoyed by a copyright owner even if the copyright is not registered.

Tips

- Identify copyright owned by an organization by looking into what is created by the employees of the organization.
- If the organization wants to be the owner of the copyright, then the documentation should be executed to transfer/assign the ownership of the copyright from the individual to the organization.
- In creative organizations such as advertising agencies, music and film companies, ensure that there is a clause in the employment contracts which states that all copyright created by the employee in the ordinary course of employment will automatically be owned by the company.
- Register the copyright if the Intellectual property Right is to be exercised worldwide.



DESIGN

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- A design is a unique and novel external feature of an article which appeals to the eye. The shape by itself need not be unique or novel (for example a circle or a triangle), but the novelty and originality is in the application of that shape for the first time to a particular article. The shape should also not be purely functional, such as circular shape for a car tyre.

Relevance and Importance

- The Designs Act encourages artistic creation in promoting innovation in product shapes. The innovator can be granted a 15 year exclusive use of that new shape. Any innovator can apply an existing shape to products or packaging which have never been earlier used anywhere in the world in such a shape

Creation

- Creation of designs is done by individual innovators or design houses which make aesthetically pleasing and unique designs/shapes which help market the products. Various products and goods including domestic appliances, electronic gadgets, automobiles, etc. seek to stand out from the crowd by adopting attractive shapes and if a demand is created for the product in the new shape, then the design owner may be able to enjoy the exclusive rights to use that new shape

Registration and protection

- Registration is absolutely essential to obtain exclusive statutory design rights. Design imitation can be prevented by approaching a court of law and obtaining an injunction against an imitator, if it is clear that the imitator has substantially copied the protected shape/design of the design owner

Consequences of non-registration

- Non-registration of a design is fatal. In addition to the above, special note must be taken of the requirement that an application for registration of a design has to be filed before the design is made known to the public. Though design registration may take about 1 year to be obtained, the design registration dates back to the date of application

Tips

- Apply for registration of design before making the design public or using it on a NY product sold in the market.
- Ensure that the design is a new/unique shape for that particular article.
- Ensure that the design is not purely functional.



PATENT



- A patent is the exclusive statutory right granted to use a new invention. The invention may be new product which is being created for the first time or a new process for making a product. The product/process should be capable of an industrial application. The new product can be more efficient or better products or a totally new product not in existence before.

Relevance and Importance

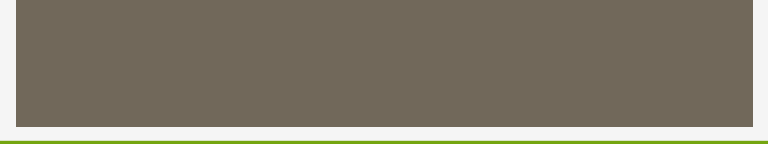
- Patents are today one of the most invaluable assets of an organization. Pharmaceutical companies worldwide are making huge profits from patented drugs. The grant of patent right encourages inventors to come up with new products, more efficient products, and better processes. Patent rights initially benefit the inventor who can cash in on the fruits of his inventions and subsequently after the period of the patent rights, that invention can be freely made use of by the public.

Creation

- Patents are created by individuals or groups of persons who are the owners of the patent rights. When such inventors are employees of an organization and create the invention during the course of their employment, the employment contract normally makes it clear that the invention will be owned by the organization. In addition, as a measure of abundant caution, an assignment deed may be executed by each employee involved, assigning all his patent rights to the organization.

Registration and Protection

- Registration is absolutely essential for obtaining patent rights. If the invention is made public before a patent application is filed, then all patent rights are lost and any third party can use such new invention freely without the original inventor being able to take any action to stop the unauthorized use of his invention. . Imitation of a patent can be prevented by filing a suit in a court of law and proving that the invention consisting of a new product or process has been imitated by the offender.



Consequence of non-registration

- Non-registration of a patent is fatal. If the new product or new process which has been invented is made available to the public, in any manner, before an application to register the patent is filed, then all statutory patent rights are lost forever. It is therefore vital that a patent registration application is filed before an invention is disclosed to the public.

Tips

- Consult a patent expert and check whether your invention, is patentable.
- File a patent application to register the invention before disclosing the invention to any third party.
- If the inventors are working for your company, ensure that the contract of employment states that all inventions of the employees will belong to the company and get the inventors to execute assignment deeds in favour of the company.

Conclusion

- Intellectual Property is one of the most invaluable assets of modern day business. Trade marks (brand names), copyrights (movies, songs, computer programs) designs (electronic gadgets, household articles) and patents (pharmaceutical, engineering chemical patents) are worth crores of rupees. Such invaluable rights and assets can be lost forever if the required steps are not taken in time to protect them. It is well worth the time spent, for all entrepreneurs to carefully assess, protect, preserve and encash any intellectual property rights that are created and are available for protection. It is critical that entrepreneurs who create valuable Intellectual Property do not miss out on the opportunity to reap the benefits of encashing the same.

Thank You!

