



Top Ten Tips For Protecting Your Intellectual Property.

1. Confidentiality

Before you discuss your ideas and concepts for business with friends or business acquaintances, ensure that although your idea or concept is not intellectual property at this stage, it may become valuable to you in the future. Therefore before discussions start, ask that they sign a simple non-disclosure agreement or if your business planning or discussions are going into greater detail, then ensure that a more detailed confidentiality agreement is signed which does not have a termination date.

2. Copyright

The importance of copyright is to prevent the unauthorised use of an original work and to reward authors by giving them control over their work. Copyright is a bundle of exclusive economic rights that belong to the copyright owner. These rights include the right to reproduce, publish, broadcast and publicly perform copyrighted material. Only the copyright owner or someone with the copyright owner's permission can use these rights. Unauthorised use is a copy infringement unless an exemption applies. The simplest way of copywriting any written document that you may produce is to place in the footer the words "Copyright (your business name or company name) the copyright symbol and the year". Remember to update your copyright notification in your documentation each new years day. This also applies to all your web pages.

3. Business Name

Start with doing a business name search through the Dept of Fair Trading in your state. If the name is available then apply for registration. This will then enable you to obtain an Australian Business Name (ABN) and register for a tax file number. Remember that the registration of the business name is subject to paying a renewal amount every few years and if this registration renewal amount is not paid then the business name will be come available to other parties.

4. Domain Name

First do a search to see that a domain name is available which is the same as your business name. If not, register a domain name, which relates closely to the business name eg. www.petespies.com.au. Just remember that the domain name does not give you an exclusive perpetual right to that name. If you look at domain name registration on domainaustralia.com or on the American domain name registration site godaddy.com you'll see that they provide for registration and re-registration for

periods of one and two years. There is no such thing as the permanent right to a domain name so if the domain name licencing period expires then someone else may register that same domain name. There is no need to take the domain name any further by producing a website as the registration of the domain name is adequate for it to remain your right to use for the registration period.

In Australia only eligible entities can be allocated a .com.au domain name such as an Australian registered company, and the owner of an Australian registered trademark. The restrictions and requirements can be viewed at the website www.auda.org.au. It is also possible to register a domain name for email only so that by registering the domain name “mycompany.com.au” persons in the company can then have email address to “bill.smith@mycompany.com.au”.

5. Trade Marks

Most business owners will start their business with the design of their business logo, this may or may not be simply an image or it may be an image with words. Essentially a trademark is protection for the logo, brand or words and can be a letter, word, name, signature, phrase, numeral, sound, smell, shape, logo, picture, aspect packaging or a combination of those. Having a registered trademark means that you have an intellectual property right which can be bought, sold or licenced. It identifies you and your business as the source of the product or service being provided and as a means of notifying enforcing ownership of rights.

Secondly it acts as a marketing tool and a basis of building a branded image through carefully planned advertising and promotion. In the first instance go to the website ipaustralia.com.au and look at their quick application for registration which is called Headstart. Your application will fall under a class or classes and it would be appropriate to look at the Trademarks Act 1995, which covers the registration protection of trademarks within Australia and it’s territories to ascertain whether your product or service comes under a particular class or is an exclusion from a particular class. It is advisable that as soon as you have your logo and any appropriate words to go with the logo that you start a trademark application, as there is an advertisement period of many months so it may take six to seven months before you can get a registered trademark. In the interim, after your business name or your logo, add the symbol TM, which means that a trademark application has been applied for.

6. Patents

Patents come into play when there is an invention. The Patents Act 1990 governs the registration and enforcement of patents in Australia. A patent is an exclusive right granted under the Patents Act to exploit an invention. A valid patent enables a patent owner to prevent others making, using, selling or importing the invention covered by the claims of the patent unless they have the patents owners consent. In order to obtain a patent, there must be a patent application filed with IP Australia. If the application is accepted then IP Australia will grant the patent. There is a period where

while under advertisement the patent application can be opposed. The patent will last for a set period of time called the term of the patent. There are two kinds of patent protection available in Australia, one is for a standard patent and the other is for an innovation patent. A patent is the strongest way of protecting new technology and it will prevent competitors from using or selling your patented invention. Licencing the patents rights to someone else can be effected quite easily and will guarantee a return of a fixed fee for sale of the right or continuing royalties.

One of the major provisos in relation to obtaining a patent is that it must be novel ie. new. For a standard patent it must involve an inventive step, in the case of an innovation patent it must involve an innovative step.

There are complex definitions and case studies under the Act which are of an interpretive assistance. Inventors should be careful about appearing in public and disclosing their invention as to be novel the invention must not be disclosed or publicly used prior to the filing of the application for the patent. So therefore an invention is not novel if it is disclosed in a publicly available document anywhere in the world prior to the filing date or is publicly used anywhere in the world prior to the filing date. One would therefore be very careful of appearing on the ABC's New Inventors program if one had not filed a patent application prior to appearance.

7. Trade Secrets

Trade Secrets are precisely the type of intellectual property you **don't** want to be made public. Illustrations of this are the secret formula relating to the ingredients in Coca Cola, and the 57 secret herbs and spices used on the chicken with Kentucky Fried Chicken and Colonel Sanders looking on. So if your business product or invention contains an element of something special, and you don't wish it to be discoverable in the public domain, then there is a strategy to protect it. First identify the trade secret, and write a specification so it can be identified. Then start with labelling that as Confidential, and copyright it. In employment agreements, identify the fact that the organisation does have trade secrets, that they are not to be disclosed or dealt with in any way, and that it is a terminable offence if caught in possession of such trade secrets without permission by senior delegated management. Reduce the number of copies and the number of persons who have the right to hold a copy. Implement strict security even to the extent of holding copies in a safe repository off site. Protect your trade secrets with court action if they are threatened or disclosure is threatened.

8. Designs

Design law protects the appearance or look of manufactured articles. The term "design" refers to the features of the shape, the configuration and or the pattern and ornamentation applied to the article. The Designs Act 1906 established in Australian design registration scheme that is used to obtain legal protection for the look of the manufactured article or product. On a proviso that the design meets certain criteria under the Act, the visual appearance of a manufactured product or article can be registered as a design. Once registered and as the design owner you will have the right

to an exclusive legally enforceable right to use that design for a manufactured product for a specified period of time. Some of the requirements include that the design features must be distinct and visible to somebody looking at the article, the design must be new and original, the design must be used or conceptually applied to an article of manufacture and the design must be more than a display for the design, it should be noted that the design cannot be registered if it has been used or shown in public before it's first application.

9. Commercialisation of your IP

Intellectual property rights provide a number of competitive advantages to the owners so that for example IP rights can provide a valuable bargaining tool and in most cases the right can be transferred, sold or licenced for financial reward. The current IP laws give owners of IP the right to exclusively determine who can use the IP and how it can be used in many cases how long those rights last. IP ownership provides the owners with a number of options in the event that the IP relates to a product and the owner cannot afford to manufacture that product. The most common way therefore of commercialising IP is through licencing or assignment of licences to manufacturing parties on an exclusive or non-exclusive basis. Consider the aspects of the owner of a software application. That owner could licence the rights to sell the software application exclusively throughout the world or exclusively in Australia or non-exclusively through various countries through various outlets.

10. Hire a Lawyer

Most of the applications for registration under the Australian Acts are reasonably complex, particularly the Trademarks Act and the Patents Act. It is worthwhile in those situations and particularly where a business owner may want to commercialise and then subsequently protect his intellectual property rights to utilise the resources of an intellectual property lawyer or in some cases specialist advisors such as a patent lawyer or a lawyer who specialises in the registration and commercial use of trademarks. In terms of protecting confidentiality and then protecting the commercialisation of your intellectual property it is wise to obtain the services of a lawyer to draft appropriate agreements which provide contractual protection in addition to the statutory protection.

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