Protecting Your Company’s Most Valuable Asset:
Its Intellectual Property

Your company’s willingness to protect its intellectual property is central to its long-term viability. This is so because a company’s intellectual property is at the very core of who it is and how it makes money. But before you can maximize the value of your intellectual property, you must first understand what it is and how you can protect it.

Intellectual property refers to creations of the human mind that are accorded legal rights and may have commercial value. Like real property, intellectual property can be sold, bought, licensed, or even given away. And as with real property, the law enables owners of intellectual property to protect it from unauthorized use. Once it is properly secured, however, intellectual property can be licensed or sold to generate revenues or even serve as security for loans to the owner. Equally important, once a company has protected its intellectual property, it may legally prevent infringement or misappropriation of that asset by its competitors.

Intellectual property consists of four general categories: patents, trademarks, copyrights, and trade-secrets.

A patent is a grant by the federal government that enables the patent holder to prevent others from making, using, offering to sell, or selling a particular invention. To be patentable, an invention – whether machine, design, composition, article of manufacture or business method – must be new, useful and non-obvious. Patents are sought and obtained from the United States Patent and Trademark Office. A trademark is a word, phrase, symbol or design – or combination of these things – that can identify and distinguish a company’s goods from those of a competitor. It thus can serve both as an indicator of quality and as a means for accountability. Conducting a trademark search and registering your company’s mark with the U.S. Patent and Trademark Office are essential aspects of comprehensive trademark protection.

A copyright protects original works of authorship, fixed in a tangible medium of expression – think book, software, DVD or website – from which they can be perceived, reproduced or otherwise communicated. Unlike patents, copyrights do not have to be registered with the federal government in order to warrant legal protection. However, prompt registration of the copyrights with the U.S. Copyright Office provides numerous advantages.

Turning to the last of the four major categories of intellectual property, definitions vary as to what information constitutes a trade secret, but two characteristics are universal. First, the information for which a company seeks legal protection must derive independent economic value from not being known by competitors or the public; in other words, its secrecy is valuable. Second, the company must undertake reasonable measures to keep the information confidential.

How can your company best protect its trade secrets? As with secrets generally, the fewer employees and third parties who know a trade secret, the less likely it is that the information will be disclosed and the more likely it is that a court will credit your efforts to safeguard it should litigation become necessary. Because use of trade secrets is a natural incident of running your business – increasing the likelihood of disclosure – it is essential that you craft a clear and comprehensive trade secrets policy. Then you must seize every opportunity to make known to your employees what is expected of them, and require them to buy into it at all phases of their employment: in employment agreements, job descriptions, employee manuals and perhaps, depending on the nature of the position and the anticipated access to confidential information, a trade secret acknowledgment.

Taken together, patents, trademarks, copyrights and trade secrets can form the creative cornerstone of your company’s long-term success. To maximize the value of your intellectual property, however, it is vital that you first understand the nature of and the law pertaining to, this unique asset and then exercise vigilance in maintaining and protecting it.

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When Upstate Niagara—one of New York State’s largest dairy cooperatives—needs legal advice, they turn to Harter Secrest & Emery attorneys Phil Fileri and Joe Casion. Phil and Joe work with Upstate Niagara on every aspect of their legal affairs. From corporate and labor law, to environmental law, to intellectual property—and everything in between. “It’s about knowing more than the paper in front of us,” says Phil. “We know the people, the owners, the stakeholders. And we’re proud that we’ve helped them to thrive.”

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