



TECH LAW
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6 Reasons to Protect Your Intellectual Property with Trademarks and Patents

Companies often put off contacting attorneys until they're in a bind. This can be for a variety of reasons, like wanting to avoid the expense or the idea that attorneys are just for lawsuits.

Unfortunately, this leads some companies to get into bigger messes or lose business assets. Here are the top six reasons you should consult a patent attorney before you launch your website and start selling your goods and services.

1. Patent rights don't wait forever

One of the first thoughts that goes through a lot of business owners' minds when they come up with a new widget is to go start selling. Making money is grand, but if you don't also think about protecting your shiny new widget, you may lose your right to file a patent. Patent attorneys call this the "on-sale bar" and it prevents someone from obtaining a patent after selling a widget for more than a year before proceeding with filing a patent. Luckily for proactive companies, initial patent filings can be fairly inexpensive in contrast to losing the ability to keep your competitors from making your widget.

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2. Fame comes at a price

We love seeing our clients get sales and recognition for their products and services, but sometimes that recognition can lead to some copycats. Copycats can start with small things, like hashtag usage, and escalate to social media cloning and domain name misdirection to get your customers to go to these fraudulent accounts. On top of it all, sometimes the duped customer turns to you to fix the fake product. Strong brand and thoughtful trademark protections can make stopping the fakes a less expensive and faster process, letting you get back to your customers.

3. Speaking of fame

Some people will do anything to make a buck. That includes creating a domain name that's similar to a famous person or brand – let's go with www.mcdonalds.com – and putting up either advertising click-bait or redirecting to their competing products. This bad-faith domain name registration can be dealt with, but it's a lot easier (and cheaper) if you have a registered trademark to show that you own the rights in the real trademark.

4. Sometimes hitting the big-time hurts

The pandemic has shown us that technology can grow quickly. Having an attorney watching your back and your growth can help keep you out of sticky situations. Take, for example, the security issues with Zoom early in the pandemic. These issues led the Federal Trade Commission, the governmental department tasked with protecting consumers, to realize that Zoom had marketed 256-bit encryption for user communications when it was really using a lower level of encryption than promised.

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The lower security allowed people to engage in Zoom-bombing and enabled access to user communications. Zoom now must pay for and get the Federal Trade Commission to approve of biennial assessments of its security, when having counsel review their advertising materials and security protocols in advance would have been a less costly option.

5. Confidentiality is not one-size-fits-all

Most businesses want to maintain confidentiality for their new widgets and, regrettably, find a confidentiality or non-disclosure agreement off the internet to use with everyone they meet. Some of these agreements aren't horrible, but they don't all take into account who is signing the agreement. If you're having a portion of your widget prototyped, developed or tested, the run-of-the-mill confidentiality agreement isn't taking into account who is going to own any improvements in the widget at the end of the process. This can create ownership issues for a business later and a hole for a good defense attorney to manipulate if you're suing to assert patent rights.

6. Secrets are only secrets if they're secret

Customer lists are important assets for businesses and many confidentiality agreements between businesses list them as "CONFIDENTIAL." Sadly, some of those businesses don't tell their employees they're secret and confidential as well, opening a potential hole in any trade secret protection the business might want to claim. Businesses should make sure employees and contractors are aware of trade secrets, sign confidentiality agreements and limit access to information for those who need to know.