INTRODUCTION

• Patent
• Trademark
• Copyright
THREE KINDS OF PATENTS

- Plant
- Design
- Utility
DESIGN PATENT

• Protects the way something looks, not how it works

  ▪ Configuration or shape of something

    o E.g., Coke bottle
DESIGN PATENT

- Protects the way something looks, not how it works
  - Surface ornamentation of something
    - E.g., Engraved plate
DESIGN PATENT

• Protection for 15 years
  ▪ Cannot be renewed
DESIGN PATENT

- Costs with attorney
  - $1K to $2K to file
  - $4K to $6K for entire process
DESIGN PATENT

• Possible strategy
  ▪ Use design protection instead of utility patent
  ▪ Faster and cheaper than utility patent
    ○ 80% less time, 80% less cost
UTILITY PATENT

• “New and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof”

  ▪ Protects how something works, not how it looks

    ○ E.g., medical device, drug
UTILITY PATENT

• Yes – includes software and business methods
UTILITY PATENT

• Legal hurdles
  ▪ New
  ▪ Not obvious
UTILITY PATENT

- Overcome legal hurdles
  - Search for prior patents
  - USPTO.gov website
UTILITY PATENT

- Two kinds
  - Provisional (only application)
  - Non-provisional
UTILITY PATENT

- **Provisional** benefits:
  - Patent pending status
  - Early filing date
  - Fast, low cost
UTILITY PATENT

• **Provisional** disadvantages:
  - Cannot sue infringer
  - Potential missing information
  - Expires in one year
UTILITY PATENT

• **Provisional** costs with attorney
  - $1K to $5K to file
  - No processing
UTILITY PATENT

• **Provisional** strategy:
  - Use one year to test your market
  - Convert to non-provisional within one year
  - Re-file after one year
UTILITY PATENT

• **Non-Provisional** benefits:
  - Stop others from making, using, or selling your invention
  - Potential protection broader than product sold
  - Protection for 20 years
UTILITY PATENT

• **Non-Provisional** disadvantages:
  - Only protection in US
  - Cannot renew
  - Must disclose all important information to make invention
UTILITY PATENT

• **Non-Provisional** costs with attorney
  - $5K to $20K to file
  - $10K to $50K for entire process
UTILITY PATENT

- **Non-Provisional** strategy:
  - Get issued patent against potential infringer
  - Sell your inventive idea
FOREIGN PATENT

• Why:
  ▪ Selling outside US
  ▪ Manufacturing outside US
FOREIGN PATENT

• How:
  ▪ In specific foreign countries
  ▪ In regions of countries
  ▪ Within one year of US patent filing
FOREIGN PATENT

- Costs with attorney
  - $2K to $7K to file
  - $5K to $20K for entire process
TRADEMARK

• Something that identifies and distinguishes one’s goods or services from another
  - Word, name, symbol, sound, color, product configuration
    - E.g., Nike swoosh
TRADEMARK

- What trademark protects
  - Likelihood of confusion
  - Latecomer mark is confusingly similar to earlier mark
  - Need not be identical marks
TRADEMARK

- Available for registration
  - Search USPTO.gov website
  - Search state databases
  - Search domain names
  - Google
TRADEMARK

• What trademark does NOT protect

  ▪ Non-trademark use of mark
  ▪ Advertising to describe competitor’s product
TRADEMARK

- Length of federal protection
  - 10 years
  - Unlimited renewals if continued use
TRADEMARK

- Costs with attorney
  - $1K to $3K to file
  - $3K to $10 for entire process
TRADEMARK

• Strategy
  - Use sooner rather than later – with TM mark
  - B to C – brand is very important
  - B to B – brand is less important
COPYRIGHT

• Original work of authorship fixed in a tangible medium of expression
  ▪ Expression of an idea
    ○ E.g., novel, movie
  ▪ Not just an idea
COPYRIGHT

• Includes
  ▪ Software
  ▪ Websites
  ▪ Videos
COPYRIGHT

• What copyright protects
  ▪ Exclusive right to reproduce, publicly distribute, publicly display
  ▪ More than de minimis copying
COPYRIGHT

• What copyright does NOT protect
  ▪ Independent creation
  ▪ De minimis copying
COPYRIGHT

• Who owns the copyright
  - Author
  - Work made for hire - employer
COPYRIGHT

• Work made for hire
  ▪ Employee
  ▪ Specially ordered audiovisual, motion picture, instructional text
COPYRIGHT

• Length of protection
  ▪ Life of the author plus 70 years
  ▪ Work for hire – life plus 95 years
  ▪ No renewal
COPYRIGHT

- Costs with attorney
  - $1K to $2K to file
COPYRIGHT

- Strategy
  - Copyright notice
  - Registration for each version
QUESTIONS?

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