

Trademark or Copyright?

Few things in the law of intellectual property (“IP”) are as confusing as trademarks and copyrights, but there are significant differences and a basic understanding of them can be critical to protecting your IP rights.

Trademarks. The U.S. Patent and Trademark Office (or the “PTO”) defines a trademark as “a word, phrase, symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others.” In essence, a trademark identifies the source of specific goods or services and the statutes which cover trademark law were created to protect consumers from confusion about those sources.

A trademark owner can establish rights in a mark based on use of the mark in commerce even without registration, but federal trademark registration on the Principal Register provides important benefits. Most trademark registrations are processed through the PTO even though certain states (such as California) provide for a state trademark registration.

Copyrights. Conversely, the U.S. Copyright Office defines a copyright as “a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.” Essentially, a copyright protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. However, it does not protect facts, ideas, systems, or methods of operation.

Copyrights exist and are protectable the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device. Registration of a copyright is a prerequisite in order to enforce it in the federal courts. In the U.S., copyright registration is processed through the Copyright Office.

KEY CONCEPTS

- 1 Trademarks identify the source of goods or services.
- 2 Copyrights protect the expression of ideas in a fixed medium.
- 3 Copyright registration is required for enforcement. Trademark registration is a good idea.
- 4 Registration is a good first step to protecting and enforcing both copyrights and trademarks.

“When it comes to registration of trademarks and copyrights, a self-help approach can be disastrous and even more costly than consulting a good IP attorney.”



Partner David Baker

IP Law Fundamentals is one in a series of white papers provided by the law firm of Hart, King & Coldren on intellectual property law topics of interest to clients, prospective clients, and the general public. These materials are provided for educational purposes only and are not intended to be nor should they be interpreted as specific legal advice. No attorney-client relationship is created by the presentation of these materials and any specific legal questions should be directed to a competent attorney after having entered into an appropriate retainer agreement.