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Intellectual Property: What Every Entrepreneur Should Know

By GEORGE W. JORDAN III

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Intellectual property has the power to grow, transform, impede or sink a business. Businesses thus have the daunting task of protecting their intellectual property and avoiding the intellectual property of others. Here are eight strategies every entrepreneur should consider.

1. Monitor Patents In Your Industry

A failure to monitor patents in your industry places your company at a competitive disadvantage. Patents are commercial weapons not to be taken lightly, and any company that uses innovations should understand the patent landscape. Patent monitoring can be an effective tool for planning your patent portfolio and early identification of patent infringement concerns.

2. Obtain Patent Clearance Searches For Your Key Products

To reduce the risk of being blindsided by a patent infringement suit, obtain patent clearance (a.k.a. "freedom to use") searches on your key products. The goal of a patent clearance search is to identify potentially conflicting patents. This is an effective way of identifying potential patent infringement problems in advance.

3. Obtain A Search Before Adopting A Mark

A search is important in assessing the risk of adopting a new trademark. While a preliminary search examines federal registration records, a "full" search typically examines federal and state registration records, trade directories, business name lists, and domain names. Though no search can uncover every potential problem, an appropriate search is an effective way of identifying problems and minimizing risk.



George Jordan

This Week's Poll

Has the process of building a start-up company caused you miss social obligation with friends and family?

YES

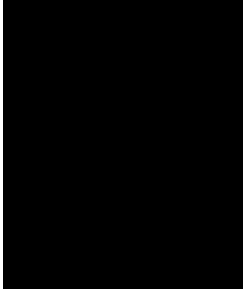
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4. Federally Register Your Marks

The advantages of federally registering your marks on the principal register (the list on which distinctive trademarks and service marks for federal regulation are placed) include the right to use the ® registration symbol, constructive nationwide use of the mark upon filing, the presumption that you own the mark, the presumption that the mark is valid, the presumed right to use the mark on the recited goods and services, and the possibility of incontestability after five years from registration.

5. Police Your Marks

To preserve the value of your marks, it is important to monitor the activities of others in your industry. As such, a "trademark watching" service and periodic trademark searches may be advisable for your key marks. Failure to police your marks may result in the loss or narrowing of your rights.

6. Employment Agreements Should Guard Against Future Competition

To guard against unfair competition by employees that may later become competitors, employment agreements should include appropriate protections such as non-competition, non-solicitation and non-disclosure provisions.

7. Ensure You Own Your Website and Other Works

If your website or other works were created by someone who is not an employee, you might not own those works. You should consider an assignment or similar protections to ensure your company owns the copyrights in the works.

8. Websites Should Include Terms of Use

To guard against improper use of your website content and potential liability in connection with the website, your website should include terms of use containing appropriate use restrictions and liability disclaimers. This is especially important for e-commerce websites and websites that link to other sites.

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