

KAHN, DEES, DONOVAN & KAHN, LLP
ATTORNEYS & COUNSELORS AT LAW

August 2000

A PRIMER ON TRADEMARKS AND COPYRIGHTS

Trademarks and copyrights - what are the differences between the two and what are the benefits of registration?

TRADEMARKS

A trademark can be either a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs which identify and distinguish the source of goods or services of one party from those of another party. There are two types of marks, a trademark identifies the source of a good, and a service mark identifies the source of a service.

Trademark and service mark rights arise from either the actual use of the mark, or the filing of an application to register the mark with the Patent and Trademark Office (PTO). Although federal registration is not required to establish rights in a mark or to begin use of a mark, registration secures benefits above those rights acquired by merely using the mark. One of the basic benefits of federal registration is that the owner of the registration actually has ownership rights in the mark and is entitled to use the mark nationwide. Federal registration can provide significant advantages if a court dispute arises over the use of a mark.

In order to alert the public to their claim, the TM (trademark) or SM (service mark) designation may be used by anyone claiming rights in a mark. A registration or even a pending application is not necessary to use these designations. However, use of the TM or SM designation does not guarantee that the mark is valid. The registration symbol, ®, designates that the mark is valid, but can only be used after registration issues.

Unlike copyrights, trademark rights can last indefinitely as long as the owner continues to use the mark to identify its goods or services. The registration term for a trademark is 10 years, with 10-year renewal terms.

COPYRIGHTS

A copyright protects "original works of authorship" which include the categories of literary works, musical works (including any accompanying words), dramatic works (including any accompanying music), pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings, and architectural works. This protection is available to both published and unpublished works.

The owner of a copyright has the exclusive right to do and to authorize others to reproduce the work, prepare derivative works based upon the registered work, distribute copies, and/or perform or display the work publicly. No publication, registration, or other action in the Copyright Office is required to secure copyright protection. However, registration establishes a public record of the copyright claim and provides many advantages if a court proceeding would ensue because of dispute over the use of a copyrighted work.

What form of notice the owner of a copyright uses to alert the public to their claim depends upon the type of work. Visually perceptible copies should contain the symbol, ©, or the word "Copyright," or the abbreviation "Copr."; and the year of first publication of the work; and the name of the owner of the copyright.

Example: © 2000 John Doe

Notice of phonorecords of sound recordings have the same requirements as visually perceptible copies except that the letter C in the circle is replaced with the letter P.

A work that is created on or after January 1, 1978, is automatically protected from the moment of its creation until 70 years after the author's death. Works created before January 1, 1978 are eligible for a total term of protection of 75 years.

By registering your trademark, service mark, or copyright you provide your business with a valuable asset. Registration protects your development and marketing investments and distinguishes your product, service, or original work from your competitors'.