

# AMP CIRCUIT

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## Trademarks and Copyrights and Patents... Oh My!



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### I often come across

business owners or advisors who don't understand the concepts of "intellectual property." Simple mention of the words "trademarks, copyrights, and patents" can create unimaginable anxiety. As is often the case in many areas of law, not just intellectual property (IP), there is good reason for that – it's confusing!

#### Trademarks are identifiers

Let's say on my lunch break I leave the office and drive to the nearby Wendy's® in my Honda® Accord. On the way, I stop for gas at the local Shell® station and make payment with my American Express® card. I decide the afternoon is full of meetings (yawn) so I run inside to buy a 5-Hour Energy® shot and tuck a Providence Journal® under my arm. Trademarks permeate our everyday lives; they are the result of the marketing world's hard work to generate brand identity. Protection of this brand identity is the basis of trademark law so that businesses can continue to grow unencumbered.

A trademark is any word, name, symbol, or device used to identify and distinguish a business owner's goods or services from those manufactured or sold by others and to indicate the source of the goods. In other words, a trademark is a source identifier. It's what tells me the car I drive is a Honda and the energy booster is a 5-Hour Energy. If I like it, I know how to go back for more. From a legal perspective, trademark owners are protected against infringement, which occurs most often when a later-adopted trademark is confusingly similar with an earlier-adopted trademark. Registration is encouraged but not required, though doing so provides the owner additional legal benefits. A trademark lasts forever, as long as it is in use and properly maintained.

#### Copyrights protect forms of expression

Back on my lunch break, I'm sitting in the Wendy's® drive-thru, blasting the latest and greatest hits from Lady Gaga while enjoying the Dilbert comic strip in the ProJo. Copyright law protects these forms of expression. A copyright is the bundle of rights an author gets

when she creates an original work that is "fixed in any tangible medium of expression" that can be "perceived, reproduced, or otherwise communicated." Copyright law provides protection the moment the work is created. For example, when a new web page is created or picture painted, copyright law gives the creator the exclusive right to reproduce, prepare derivative works, display it publicly, and license it to others. Like trademarks, registering a work gives the author important legal benefits. Copyrights last 70 years after the author's death.

#### Patents cover inventions

Pulling back into my office parking lot, I have a few minutes to kill before my afternoon meetings. I turn on my new car seat neck massage cushion and fire up my Apple iPad 2 to order a Chin Putter for my failing golf game. These products and designs are examples of patents. A patent grants the inventor of a novel, non-obvious, and useful invention the right to exclude others from making the same or similar product and selling the invention. There are three kinds of patents – utility, design, and plant patents. Patent registrations are limited monopolies granted by the government to use the invention for a limited time (20 years). After that, the patent is opened to the public. This timing allows the inventor an opportunity to recoup her costs through exclusive use before others can use it for free.

#### All together

What is the interplay with these forms of IP? Well, imagine you are tasked with creating a marketing campaign for a new product that will introduce a new slogan, which also appears in advertisements for the product. The advertisement's text and graphics, as published in a particular medium, will be covered by copyright, but this will not protect the slogan. The slogan may be protected by trademark law. Didn't I say this is confusing?!

#### So what's the point?

The point is all advertising, marketing, and public relations professionals come across identifiers, expressions, and inventions in everyday work activities. These forms of IP are a business asset and may require legal protection from copycats, infringers, and other free-riders in the marketplace. Recognition of IP is a great way to add value to your services as a marketing professional.

Now, if you will excuse me, my Baconator® is getting cold. ■

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