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Dunner Law PLLC

Small IP Practice specializing in trademark and copyright law; IP counseling, domestic and international protection of IP portfolios; internet-issues; IP audits and strategies relating to IP portfolios; drafting and negotiating IP and IT-related agreements

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How Long Does Intellectual Property Protection Last?

Although intellectual property – patents, trademarks and copyrights – is intangible, these assets do not all last forever, and in some cases must be maintained in order to remain protectable. Understanding the various terms of these valuable assets is important for the purpose of asset protection and enforcement.

Patents: Patent law protects ideas embodied in inventions. Patent rights are granted by the U.S. Patent and Trademark Office (“PTO”) to inventors who have applied for and successfully prosecuted patent applications on their inventions; there are no common law patent rights. A patent grants the holder the right to exclude others from making, using, offering for sale, or selling the holder’s invention in the United States or importing it into the United States.

There are three types of patents: utility, design, and plant. Utility patents protect new and useful processes, machines, articles of manufacture, or compositions of matter, or any new and useful improvements thereof. Design patents protect new, original, and ornamental designs for an article of manufacture. Plant patents protect new varieties of asexually reproduced plants.

Patent protection is for a limited duration. Utility and plant patents filed on or after June 8, 1995 carry a term of protection of 20 years from the date of filing. In contrast, the term for design patents are 14 years beginning on the issue date. In order to keep a utility patent enforceable during its term, maintenance fees must be paid to the PTO 3 ½ years, 7 ½ years, and 11 ½ years after the patent issues. Design and Plant patents require no maintenance fees.

Trademarks: A trademark is a word, name, symbol, device, sound, smell or even color used to identify and distinguish one company’s goods and/or services from another’s. Trademarks help consumers because trademarks represent the goodwill of the company and the quality of the company’s goods and services.

Trademark rights arise out of use and generally begin on the day in which the trademark was first used in commerce in connection with goods and/or services. Importantly, trademark rights are perpetual as long as the trademark continues to be used in commerce. While trademarks may be federally registered with the PTO, registration is not required for protection. However, in the absence of a federal registration (which provides nationwide rights), the scope of trademark rights extends only to the geographic areas in which the trademark is being used.

Federally registered trademarks carry a term of protection of 10 years from the date of registration so long as maintenance fees and a declaration of continued use are filed with the PTO during the sixth year of registration. After the initial 10-year term, registered trademarks may be renewed every 10 years in perpetuity as long as a declaration of continued use, a renewal application and fee are submitted. Failure to timely maintain a federal registration will result in cancellation, but in the event of cancellation, the trademark owner would still have common law rights to the extent that the trademark is still in use.

Copyrights: Copyright protection extends to original works of authorship that are fixed in a

tangible medium of expression (e.g., book, artwork, photograph, website, etc...). Similar to trademarks, copyright protection exists regardless of whether the work has been registered with the federal government. Importantly, copyright protection also exists regardless of whether the work has been “published,” meaning distributed to the public by sale or other transfer of ownership or by rental, lease or lending.

Copyright protection does not last forever, and the duration of protection is the same whether or not the work has been registered. Works created after January 1, 1978 by individuals generally receive protection for the life of the author plus 70 years thereafter. Works created after January 1, 1978 anonymously or in the name of a company generally receive protection for 95 years from the date of first publication or 120 years from the date of creation (whichever ends earliest). Works published without a copyright notice between 1978 and March 1, 1989 fell into the public domain, unless the mistake was cured within five years of publication. Notice is no longer required for works published on or after 1989.

The rules governing the length of protection for works created prior to 1978 vary and are summarized in the following chart:

Copyright Protection for Works Created Prior to 1978

| Date of Work | When Protection Attaches | Did the work contain a copyright notice? | Duration |
|---------------------------------------------------|--------------------------------------|-------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Created, but not published before January 1, 1978 | January 1, 1978 | | Single term of at least life of author plus 70 years; earliest termination date December 31, 2002 (if work remains unpublished); if work was published by end of 2002 the time period is extended to December 31, 2027 |
| Published 1964 to 1977 | Upon publication with notice | If published without notice, work fell into public domain | 28 years from the date of publication; automatic 67 year renewal term |
| Published between 1964 to 1923 | Upon publication with notice | If published without notice, work fell into public domain; no chance for cure | 28 years; renewal term of 67 years available |
| Published Prior to 1923 | The work is now in the public domain | | |

Conclusion

Understanding what your intellectual property protects and how long it is protected are the first steps in maintaining and enforcing these valuable assets. Future editions of *Dunner Law Dicta* will address the remedies available when others infringe your intellectual property rights.

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