

The Most Neglected Business Assets

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Business people take great care to protect their business assets – from securing property insurance to promoting workplace safety. But many business people mishandle, or worse, ignore some of their most valuable business assets—intellectual property. This is particularly true in small and mid-sized businesses and start-ups. Unfortunately, this neglect can prove to be very costly in terms of lost opportunities or resources spent on resolving disputes. The good news is that a bit of sound legal planning can help prevent many of the problems related to intellectual property loss, misuse, or infringement.

Identifying your business's intellectual property is the first step in protecting it. The four forms of intellectual property – patents, copyrights, trademarks and trade secrets – have different functions, features and procedures for protection. A patent is a license from the United States Patent and Trademark Office (or an international government) giving the holder the exclusive right to manufacture a certain item or perform a certain process. A patent can be issued only if the item or process is novel, unique, and is not obvious to a person having ordinary skills in the particular industry or trade. A copyright is the exclusive right to copy, license or otherwise use a literary, artistic, musical or expressive work that is fixed in a tangible form (such as print, audio or video).

Trademarks are any words or phrases, symbols, or other designations used to identify goods or services to their consumers. Finally, trade secrets can include formulas, patterns, and compilations (like customer or vendor lists) that have been kept confidential to the business. Trade secrets may include or overlap with copyrights and patents, but there are many valuable business trade secrets that can only be legally protected by appropriate contractual safeguards and secrecy.

Most business that derive their primary revenue from patentable material like chemical formulas and unique devices or from copyrightable works like software or movies actively seek legal advice in their daily operations. More commonly neglected are trademarks and trade secrets, because businesses fail either to recognize that these are intellectual property, to understand that that affirmative steps can and should be taken to protect their rights, or to accurately evaluate the risks from infringement.

Almost every business has an interest in protecting its name and the words and symbols used to promote its goods and services. Yet many fail to investigate trademark and service mark availability before investing in their marketing campaigns. Likewise, many businesses fail to require non-solicitation or non-compete agreements from employees that have access to trade secrets like key business strategies and customer contact information. Furthermore, many businesses do not maintain an appropriate level of secrecy, with the result that in the event trade secrets are stolen, monetary damages cannot be recovered.

The best in business will meet with their legal counsel and inventory which of the four areas of intellectual property their businesses are vulnerable in and what legal strategies they should be using to protect their most neglected business assets.