

THE MANAGEMENT JOURNAL FOR CORPORATE GROWTH

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DALLAS

SMART LEADERS

Nexstar's Perry A. Sook:
Hire good people, give them
the guardrails and send
them down the road

FAST LANE

How Pinnacle's Nina G. Vaca
stepped back to see
the forest instead of
focusing on the trees

Style points

**How Leslie Elliott grows Toni&Guy
USA by constantly evaluating the
way the company does business**

Safeguarding your assets

How you can protect your intellectual property **Interviewed by Curt Harler**

Fire and burglar alarms protect the physical assets of a business. But what protects its intellectual property (IP)?

“Intellectual property is intangible property resulting from creativity,” says William Munck, chairman of the Dallas-based law firm of Munck Butrus PC. “IP describes a wide variety of property created by musicians, authors, artists and inventors.”

Smart Business talked with Munck to find out how a company can protect itself against challenges to its IP.

How do you protect intellectual property?

IP is protected generally by copyright, patent, trade dress, trademark and trade secret laws. These areas of law are designed to encourage the development of art, science and information by granting property rights to creative and inventive people. These rights allow artists, authors and inventors to protect themselves from unauthorized use and misuse of their creations.

What is the difference between patents, copyrights, trademarks, trade dress and trade secrets?

Patents are granted to inventors for new, useful and nonobvious inventions. A patent gives the inventor exclusive rights in the invention for a period of time, so that he can profit from the invention before the right to exploit it is available to the general public. Patents can be granted for plants, manufactured products, machines, processes and combinations of matter. A patent must be applied for from the federal government and will only be granted if the invention is unique.

Copyrights are exclusive rights granted to authors, artists, composers and publishers to create and publish their works. The work must be original and must exist in some tangible form; it cannot exist only in the artist's mind. A copyright arises automatically as soon as the work is made. However, registration affords owners of copyrighted materials additional benefits.

Trademarks allow businesses to protect the symbolic information that relates to their goods and services by preventing similar use by competitors. To receive trade-



William Munck
Chairman, Intellectual Property Section
Munck Butrus PC

mark protection, a word or symbol must be distinctive and must be used in the marketplace so that it gains recognition with the public; this is called ‘secondary meaning.’ A trademark need not be registered, but if it is registered, the owner of the mark is afforded particular federal rights.

Trade dress is similar to trademarks and can be used to identify and promote the product or service. For example, the shape, color and design of a product or its packaging can be trade dress. Likewise, the decor and color scheme of a restaurant or store also can be the subject of trade dress protection.

Trade secrets protect competitively valuable information such as formulas, patterns, devices and compilations of information. A trade secret remains enforceable as long as reasonable efforts have been taken to keep it secret.

Can all IP be protected?

No. Each branch of IP has its own set of standards that need to be met before protection may be granted. To receive patent protection, for instance, the invention must be novel, nonobvious and useful. Copyright protection, on the other hand, must meet certain originality requirements.

Do they hold water legally overseas as well as in the United States?

It depends. Each country has its own rules and regulations governing IP, so an artist or inventor who wants to protect his or her rights in more than one country may need to make several filings. International treaties have streamlined some search and registration procedures.

Other than protecting specific corporate assets, what are some other advantages to legally protecting inventions or publications?

Intellectual property rights and other intangible property, when properly managed, can go beyond securing a business's future — it can also open new sources of value and revenue. With proper planning and the right legal team in place, your business secures its future and maximizes the value of existing and future intellectual property.

How does a company track and pursue violations of IP rights?

A company should consider having a competitive intelligence program in place. The program should not only conduct regular IP audits to monitor the company's own IP but also that of its competitors (and for that matter, its potential competitors).

An IP audit primarily identifies IP currently owned by a company as well as IP not previously recognized. The results of a comprehensive IP audit typically improved the opportunity for a company to exploit, commercialize and profit from its intellectual property. For example, IP audits provide a ‘balance sheet’ of IP owned by the company, which may add value to the business in the event of a sale, investment or public offering. IP audits can also identify potential income streams from licensing.

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