

# Business Law

## Text & Exercises *6th Ed.*

Roger LeRoy Miller  
William Eric Hollowell



## Chapter 6: Intellectual Property

# Learning Outcomes

- LO1** • Identify intellectual property.
- LO2** • Discuss the law's protection for trademarks.
- LO3** • Define the law's protection for trademarks on the internet.

# Learning Outcomes

- LO4** • Describe the protection that the law provides for patents.
- LO5** • State the law's protection for copyrights.
- LO6** • Discuss how licensing can protect intellectual property on the internet.



# Intellectual Property

**Intellectual Property:** Property resulting from intellectual, creative processes.

- **A trademark is a distinctive identity that a manufacturer attaches to its product.**
- **Consumers can be misled when a trademark appears on other products.**
- **The tort of trademark infringement occurs when one who does not own a trademark uses all or part of it.**

# Trademark Protection

- **Distinctive trademarks are less likely to be infringed.**
  - Fanciful: Xerox, Kodak.
  - Arbitrary: English Leather
  - Suggestive: Dairy Queen

# Trademark Protection

- **Descriptive terms are not inherently distinctive and do not receive protection under the law.**
  - Geographical terms, personal names:  
Calvin Klein
  - Secondary meaning may arise once customers associate the product with the name.

(→)

# Trademark Protection

- Once secondary meaning is obtained, the trademark is considered distinctive and is protected.
- **Generic Terms: Bicycle, Computer.**
  - These do not receive protection under the law, even if they acquire secondary meaning.



# **Trademark Registration**

- **State and Federal governments provide for the registration of trademarks.**
- **Registration is not required for protection, but the mark must be distinctive and in use.**
- **Trademark registration provides for proof of the date of inception.**

# **Service, Certification, and Collective Marks**

- **Service marks distinguish services rather than goods.**
- **Certification marks can be used to independently vouch for a product or service.**
  - Example: “UL tested.”

# **Service, Certification, and Collective Marks**

- **Collective marks denote the participation of a group or organization in the production of a product.**
  - Example: Union marks.

# Trade Names

- **Trade names are not the same as trademarks.**
- **Trade names indicate part or all of a business name that is directly related to it and its goodwill.**
  - Example: Safeway.

# Counterfeit Goods

- **Counterfeit goods copy or imitate trademarked goods.**
- **Both counterfeit goods and counterfeit labels, whether attached to the product or not, are crimes punishable by law.**

# Cyber Marks

- **Cyber marks are trademarks found on the internet.**
- **No two business can have the same name on the internet.**
- **Cybersquatting occurs when a person registers a domain name the same as or similar to a business with intent to sell it to the business.**

# Cyber Marks

- **ACPA (1999): Anticybersquatting Consumer Protection Act.**
  - A mark's owner can file a suit under ACPA against an alleged cybersquatter.
- **Unauthorized use of meta tags constitutes infringement.**
- **Dilution: unauthorized use of mark that diminishes its distinctiveness.**

# Patents

- **A patent is a grant from the government that conveys to, and secures for, an inventor the exclusive right to make, use, and sell an invention for a period of twenty years.**



# Patent Infringement

- **If a firm makes, uses, or sells another's patented design, product, or process without the patent owner's permission, the tort of patent infringement exists.**
- **Business processes can be patented as well.**

# Copyrights

- **Intangible right granted by statute to the author or originator of certain literary or artistic productions by federal law (U.S. Copyright Act).**
- **® or © are not required for protection against infringement.**

# Exclusions

- **Work must be “fixed in a durable medium”.**
  - Ideas cannot be copyrighted, only expressions of an idea can be copyrighted.
- **If the idea and its expression are inseparable, it cannot be copyrighted.**

# What is Protected Expression?

- **To obtain protection under the Copyright Act, a work must be:**
  1. Literary
  2. Musical
  3. Dramatic
  4. Pantomimes and choreographic
  5. Pictorial, graphic and sculptural
  6. Films and other audiovisual
  7. Sound recordings
  8. Computer software

# Copyright Infringement

- **Whenever the form or expression of an idea is copied, an infringement of copyright occurs.**
- **“Fair use”— exception to infringement. Courts consider:**
  1. Purpose of use.
  2. Nature of the copyrighted work.
  3. How much of the original is copied.
  4. Effect of the use on the market for the original.

# **Copyrights in Digital Information**

- **Copyright law is probably the most important form of intellectual property protection on the Internet.**
- **The Digital Millennium Copyright Act of 1998 provides civil and criminal penalties for anyone who circumvents encryption software or other technological antipiracy protection.**

# Copyrights in Digital Information

- **Exception to DMCA Liability:** under “Fair Use” doctrine.
- **Internet Service Providers’ Liability:** ISP’s are not liable for infringements by subscribers if unaware of the violation.
  - ISP may be liable if it has knowledge and fails to take action. Copyright holders must act promptly to file suit.

# Copyrights in Digital Information

- **File sharing:**
  - *A&M Records, Inc. v. Napster, Inc.* (2001)
  - Federal court found that failure to obtain permission before facilitating the transmission of copyrighted material via a Web site constituted copyright infringement.



# Trade Secrets

- **Trade secret:**
  - Information or a process that gives a business an advantage over competitors who do not know the information or process.
- **The Economic Espionage Act of 1996 made the theft of trade secrets a federal crime.**

# Licensing

- **A license is permission granted by the owner to another to use, make, or sell the item.**
- **Licenses on the internet need to take into consideration all U.S., foreign, and international laws.**

# **International Protection for Intellectual Property**

- **Paris Convention of 1883**
- **Berne Convention of 1886**
- **1994 agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).**
  - Specifically provides protection for computer programs.