



Intellectual Property Group Podcast

Difference Between a Patent, Copyright, and Trademark

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Hello, welcome to the Garfunkel Wild Intellectual Property podcast. My name is Philip Hammarberg. I'm an Associate with Garfunkel Wild and the head of the Intellectual Property Group.

In this episode we're going to touch on some high level intellectual property topics such as the difference between a patent, a copyright, and trademark.

A patent is a type of intellectual property that protects new and useful inventions. An invention can be a plant a machine a composition of matter, a process, or a manufactured article.

There are different types of patents that you might be able to obtain which include plant patents, design patents, and utility patents.

A patent is a negative intellectual property right that allows the patent owner to prevent others from making, using, or selling the patented invention in this country.

Unlike some other types of intellectual property, patent rights can only be granted after filing an application.

The key takeaway is that patents are used to protect inventions and that the only way to obtain patent protection for an invention is to file a patent application and be issued a patent by the USPTO.

Next we're going to discuss copyrights.

A copyright is an intellectual property right that protects original works of authorship.

Works of authorship include written works such as novels, articles, and even computer code.

One can also protect visual works such as photographs, statues, movies, and even auditory works can be protected, such as songs.

Whenever you take a photograph or create a work of authorship, the copyright to that work of authorship is almost magically vested with you. This is called a common law copyright.

Unlike patents, you can obtain common law copyright protection just by creating the work of authorship.

In order to obtain a higher level of protection, you must file a copyright registration application with the Copyright Office.

Copyright registrations are entitled to statutory damages, meaning if someone misappropriates a copyrighted work that has been registered with the Copyright Office, you may be able to see up to \$150,000 in damages, in statutory damages, whereas without the registration you'll be limited to the actual damages.

The key takeaway regarding copyrights are that common law copyrights are granted whenever you create an original work of authorship and that, in order to obtain a copyright registration, you must file a copyright registration application with the Copyright Office.

Last but not least, let's discuss trademarks. A trademark is its designator of origin. What does that mean?

A trademark is something that identifies the origin of goods or services, for example, a name of a brand can be a trademark, a logo can be trademark, a signature look, for example, Louis Vuitton shoes with the red soles - that's the signature look that can be a trademark. That type of a trademark is usually called trade dress.

The look or feel of a chain restaurant can even be trademarked.

There are three levels of trademark protection: common law trademarks, state trademarks, and federal trademarks.

You can obtain a common law trademark through the use of the trademark in association with goods or services in commerce.

You can obtain a state trademark by filing a state trademark application when you use the trademark in state commerce.

You can obtain a federal trademark registration through filing a federal trademark application.

Generally speaking, common law trademarks can give you trademark rights in a geographical location where you're using the trademark.

A state trademark registration can give you rights to the trademark within the state, assuming that there isn't a federal trademark registration that supersedes your state registration rights.

A federal trademark registration provides trademark rights nationally.

The key takeaway is that trademark protection protects company names, logos, and other identifiers of origin. And that there are three levels of trademark protection.

So now, you know from a high level, the difference between patents, copyrights, and trademarks. Patents protect inventions, copyrights protect works of authorship, and trademarks protect company names and logos or designator of origin.

So thank you for listening to this podcast. Please like and subscribe and we'll see you next time.